

**Testimony of Inspector General
John Roth**

**Before the Committee on
Homeland Security and
Governmental Affairs**

United States Senate

**“The Security of U.S. Visa
Programs”**





DHS OIG HIGHLIGHTS

The Security of U.S. Visa Programs

March 15, 2016

Why We Did This

The audits and inspections discussed in this testimony are part of our ongoing efforts to ensure the efficiency and integrity of DHS' immigration programs and operations. Our criminal investigators also regularly investigate fraud within the benefits approval process, often involving a corrupt USCIS employee.

What We Recommend

We made numerous recommendations to DHS and its components—primarily USCIS and ICE—in these reports. Our recommendations were aimed at improving the effectiveness and implementation of visa programs.

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What We Found

This testimony highlights a number of our recent reviews related to U.S. visa programs. Our findings include:

- After 11 years, USCIS has made little progress in transforming its paper-based processes into an automated immigration benefits processing environment. USCIS now estimates that it will take three more years and an additional \$1 billion to automate benefit processing. This delay will prevent USCIS from achieving its workload processing, national security, and customer service goals.
- Known human traffickers used work and fiancé visas to bring victims to the U.S. using legal means. USCIS and ICE can improve data sharing and coordination regarding suspected human traffickers to better identify potential trafficking cases.
- ICE did not have sufficient data to determine the effectiveness of its Visa Security Program, which requires the screening and vetting of overseas visa applicants.
- The laws and regulations governing the EB-5 immigrant investor program do not give USCIS the authority to deny or terminate a regional center's participation in the program due to fraud or national security concerns.

DHS Response

With few exceptions, DHS and its components concurred with recommendations in these reports.



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Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me to discuss my office's oversight of the Department of Homeland Security's visa programs and components responsible for administering and enforcing visas. Our recent work has involved a number of audits and investigations. I will discuss each of the audits, as well as a representative sample of some of our investigations.

Information Technology Transformation

This week, we published our sixth report since 2005 on U.S. Citizenship and Immigration Services' (USCIS) efforts to transform its paper-based processes into an integrated and automated immigration benefits processing environment.¹ This program is a massive undertaking to modernize processing of approximately 90 immigration benefits types. The main component of the Transformation Program is the USCIS Electronic Immigration System (ELIS), intended to provide integrated online case management to support end-to-end automated adjudication of immigration benefits. Once implemented, individuals seeking an immigration benefit should be able to establish online ELIS accounts to file and track their applications, petitions, or requests as they move through the immigration process.

We undertook this audit to answer a relatively simple question: after 11 years and considerable expense, what has been the outcome of USCIS' efforts to automate benefits processing? We focused on benefits processing automation progress and performance outcomes. We interviewed dozens of individuals, including over 60 end-users in the field who are using ELIS, and reviewed voluminous source documents.

The answer, unfortunately, is that at the time of our field work, which ended in July 2015, little progress had been made. Specifically, we found that:

- Although USCIS deployed ELIS in May 2012, to date only two of approximately 90 types of immigration benefits are available for online customer filing, accounting for less than 10 percent of the agency's total workload. These are the USCIS Immigrant Fee, which allows customers to submit electronic payment of the \$165 processing fee for an immigrant visa packet, and the Application to Replace Permanent Resident Card (Form I-90).

¹ *USCIS Automation of Immigration Benefits Processing Remains Ineffective*, (OIG 16-48, March 2016).



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- Among the limited number of USCIS employees using ELIS, personnel reported that the system was not user friendly, was missing critical functionality, and had significant performance problems processing benefits cases. Some of those issues are set forth in this chart:²

USCIS ELIS User Feedback on I-90 Processing

- | | |
|--|--|
| <ul style="list-style-type: none">• Need to manually refresh website often to see the most recent information.• Difficulty navigating among multiple screens and web browsers.• Inability to move browser windows to view case data.• Cases getting stuck throughout the process and inability to move to the next step without intervention.• Inability to undo a function or correct a data entry error.• Inability to enter comments on actions taken after a case has been adjudicated. | <ul style="list-style-type: none">• Card errors received when “NMN” is entered for applicants with no middle name.*• Failure to produce cards for approved cases.• Inability to process benefits for military or homebound applicants.• Errors in displaying customer date of birth.*• Scheduling applicants to submit biometrics (photo, signature, prints) that are not needed.*• Inability to create a case referral electronically once adjudication is complete. |
|--|--|

- The limited ELIS deployment and current system performance problems may be attributed to some of the same deficiencies we reported regarding previous USCIS IT transformation attempts. To date, the USCIS has not ensured sufficient stakeholder involvement in ELIS implementation activities and decisions for meeting field operational needs. Testing has not been conducted adequately to ensure end-to-end functionality prior to each ELIS release. Further, USCIS still has not provided adequate post-implementation technical support for end-users, an issue that has been ongoing since the first ELIS release in 2012.
- As it struggles to address these system issues, USCIS now estimates that it will take three more years—over four years longer than estimated—and an additional \$1 billion to automate all benefit types as expected. Until USCIS fully implements ELIS with all the needed improvements, the agency will remain unable to achieve its workload processing, customer service, and national security goals. Specifically, in 2011, USCIS

² USCIS has indicated that the issues marked with an asterisk were addressed during the time of our audit. Because of the nature of the audit process, we are unable to validate that this has occurred.



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established a plan to implement ELIS agency-wide by 2014. However, USCIS was not able to carry out this plan and the schedule was delayed by four years, causing a program breach. An updated baseline schedule for the Transformation Program was approved in April 2015; however, USCIS also shifted and delayed these release dates.

- Certain program goals have also not been met. According to agency-wide performance metrics, benefits processing in ELIS was to take less than 65 days. However, we found that as of May 2015, processing was taking an average of 112 days, almost twice that amount of time. Previous results reported for this metric also were high: 104 days in November 2014, 95 days in February 2015, and 112 days in May 2015. By slowing down the work of adjudicators, ELIS was resulting in less efficiency and productivity in processing benefits.

Similarly, in 2014, we reported that although ELIS capabilities had been implemented, the anticipated efficiencies still had not been achieved. In fact, we reported in 2014 that adjudicating benefits on paper was faster than adjudicating them in ELIS. This remains unchanged to date. Ensuring progress in operational efficiency was hampered by the fact that USCIS lacked an adequate methodology for assessing ELIS' impact on time and accuracy in benefits processing. Beyond obtaining feedback from personnel and customers using the system, the Transformation Program Office could not effectively gauge whether cases were being adjudicated more efficiently or accurately in ELIS.

We acknowledge that DHS has taken significant steps to improve the process by which it introduces new information technology, including moving from a traditional waterfall methodology to a new, incremental methodology, called Agile. We also acknowledge that implementation of automation is very much a moving target, and that USCIS may have since made progress on the problem in the time since the fieldwork of our audit ended in July 2015.

Human Trafficking and the Visa Process

In January of this year, we issued a report on human trafficking and the visa process.³ Our audit objectives were to determine how individuals charged or convicted of human trafficking used legal means to bring victims to the United States, and to identify data quality and exchange issues that may hinder efforts to combat human trafficking. We conducted this audit as part of our "Big Data"

³ [*ICE and USCIS Could Improve Data Quality and Exchange to Help Identify Potential Human Trafficking Cases*](#), (OIG 16-17, January 2016).



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initiative, in which we compare datasets from different DHS components (or other government databases outside of DHS) to attempt to gain insights into potential issues in DHS programs and operations.

In this audit, we compared databases from two components—Immigration and Customs Enforcement (ICE) and USCIS. ICE’s Case Management System, which is housed in the larger Customs and Border Protection TECS system, contains information on human trafficking investigations conducted by Homeland Security Investigations. USCIS uses two databases: (1) the Humanitarian Adjudication for Victims Enterprise Nationwide (HAVEN) system to maintain information on visas granted to victims of human trafficking (U visas and T visas), and (2) the Computer Linked Application Information Management System (CLAIMS3) to process immigrant and nonimmigrant applications and petitions—such as work and family reunification visa requests.

As a result of comparing the data in these databases, our auditors came to the following conclusions:

- Work and fiancé visas were the predominant means that human traffickers used to bring victims into the United States legally. We made this determination based on matching ICE’s human trafficking data against USCIS’ data on visa petitions. Specifically, 17 of 32 known human trafficking cases we identified involved the use of nonimmigrant work visas and fiancé visas; the remaining 15 victims entered the United States illegally or overstayed their visitor visas. In one example, fiancé visas were used to lure human trafficking victims to the United States as part of marriage fraud schemes. The traffickers confiscated the victims’ passports and subjected them to involuntary servitude, forced labor, and/or forced sex.
- Family reunification visas also were possibly used to bring victims into the country. From 2005 through 2014, 274 of over 10,500 (3 percent) of the subjects of ICE human trafficking investigations successfully petitioned USCIS to bring family members and fiancés to the United States. Because ICE data included investigations that were still ongoing and did not reflect whether the final conviction resulted in a human trafficking or lesser charge, ICE could not tell us exactly how many of the 274 individual visa petitioners were human traffickers. However, ICE data showed that 18 of the 274 had been arrested for human trafficking-related crimes.



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- ICE and USCIS could improve data quality to facilitate data matching and identification of possible instances of human trafficking. For example, ICE had to extensively manipulate its system to provide us with reasonably reliable data for our data matching and analysis. USCIS did not always collect names and other identifiers of human traffickers that victims had provided in their T visa applications. Due to incomplete data, we were limited in our ability to match, analyze, and draw conclusions from the components' databases.
- We found that ICE and USCIS cooperated on a limited basis to exchange human trafficking data, but concluded that opportunities existed for improved data exchange between ICE and USCIS.

We made three recommendations to improve the effectiveness of the programs to identify human traffickers and their victims. ICE and USCIS have concurred with the recommendations. The three recommendations are still open, and both ICE and USCIS are taking actions to resolve them. We are satisfied with the progress thus far.

DHS Visa Security Program

In September of 2014, we published a report about the DHS Visa Security Program.⁴ The program, which was established by Congress, requires DHS personnel stationed overseas, specifically ICE Special Agents, to perform visa security activities in order to prevent terrorists, criminals, and other ineligible applicants from receiving U.S. visas. Specifically, they are required to screen and vet visa applicants to determine their eligibility for U.S. visas. This is largely done through a screening process which compares visa application data held by the Department of State with a DHS law enforcement database – TECS – to determine whether there are any matches. In Fiscal Year (FY) 2012, ICE agents screened over 1.3 million visa applicants. Those applicants with a match are then vetted, which involves researching and investigating the visa applicant, examining documents submitted with the visa application, interviewing the applicant, and consulting with consular, law enforcement, or other officials. ICE special agents vetted more than 171,000 visa applicants in FY 2012.

Additionally, ICE agents are required to provide advice and training to consular officers about security threats relating to adjudicating visa applications.

As a result of our inspection, we found:

⁴ [The DHS Visa Security Program](#), (OIG-14-137, September 2014).



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- The effectiveness of the Visa Security Program cannot be determined. Notwithstanding that ICE was required to develop measures to assess performance, it has not taken appropriate actions to ensure that (1) data needed to assess program performance is collected and reported, (2) appropriate advice and training is provided to consular officers, and (3) the amount of time needed for visa security related activities at each post is tracked and used in determining staffing and funding needs. As a result, ICE is unable to ensure that the Visa Security Program is operating as intended.

At the time of our inspection, ICE senior management officials expressed a lack of confidence in the value of the current performance measures. As a result, these performance measures were not included in the DHS and ICE annual reporting of performance.

- ICE has not consistently or effectively provided training or expert advice to consular officers as required. In interviewing consular officers we learned that much of the training provided did not cover critical subjects needed to enhance their skills. Additionally, during our site visits we found a number of embassies where the consular officers have not been provided with any training, or training on a sporadic basis.
- It is unknown how much time ICE agents assigned to the program actually spend on visa security issues. Agents do not record the amount of time they spend on this activity, notwithstanding that ICE had received special funding to institute the program. Anecdotally, we found some agents spent very little time on visa security activities, while agents in other posts spent a high percentage of their time on it.
- The Visa Security Program expansion has been slow. At the time of our report, only 20 of the 225 visa-issuing posts had visa security units. According to program officials, Visa Security Program expansion has been constrained by budget limitations, difficulties obtaining visas for certain countries, State's mandate to reduce personnel overseas, and objections from State Department officials at some posts due to security concerns or space limitations.

We made 10 recommendations to improve the effectiveness of the program. ICE concurred with each of them. Currently, ICE has accomplished five of those recommendations, and is working to accomplish the remaining five. While



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progress has been slow, we are currently satisfied with ICE's activities in this regard.

Investor Visa Program

In December of 2013, we published an audit report on challenges facing the EB-5 program, which administers visas for immigrant investors.⁵ Through the EB-5 Program, foreign investors have the opportunity to obtain lawful, permanent residency in the U.S. for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. The EB-5 program requires that the foreign investor make a capital investment of either \$500,000 or \$1 million, depending on whether or not the investment is in a high unemployment area. The foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving conditional permanent residency.

The purpose of our audit was to determine whether USCIS administered and managed the EB-5 Regional Center Program (regional center program) effectively. We found:

- The laws and regulations governing the program do not give USCIS the authority to deny or terminate a regional center's participation in the EB-5 program based on fraud or national security concerns. At the time of the audit, USCIS had not developed regulations that apply to the regional centers in respect to denying participation in the program when regional center principals are connected with questionable activities that may harm national security.
- Additionally, USCIS has difficulty ensuring the integrity of the EB-5 regional center program. Specifically, USCIS does not always ensure that regional centers meet all program eligibility requirements, and USCIS officials interpret and apply the Code of Federal Regulations (CFR) and policies differently. USCIS did not always document decisions and responses to external parties who inquired about program activities causing the EB-5 regional center program to appear vulnerable to perceptions of internal and external influences.

⁵ [*United States Citizenship and Immigration Services' Employment-Based Fifth Preference \(EB-5\) Regional Center Program*](#), (OIG-14-19, December 2013).



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- USCIS is unable to demonstrate the benefits of foreign investment into the U.S. economy. Although USCIS requires documentation that the foreign funds were invested in the investment pool by the foreign investor, the implementing regulation does not provide USCIS the authority to verify that the foreign funds were invested in companies creating U.S. jobs. Additionally, the regulation allows foreign investors to take credit for jobs created by U.S. investors.

As a result, USCIS has limited oversight of regional centers' business structures and financial activities. For example, we identified 12 of 15 regional center files in which USCIS allowed the creation of new commercial enterprises that collected EB-5 capital to make loans to other job-creating entities. USCIS adjudicators confirmed that because the CFR does not give them the authority to oversee these additional job creating entities, they are unable to inquire or obtain detail that would verify foreign funds are invested in the U.S. economy via a job-creating entity.

Additionally, one regulation allows foreign investors to take credit for jobs created with U.S. funds, making it impossible for USCIS to determine whether the foreign funds actually created U.S. jobs. Consequently, the foreign investors are able to gain eligibility for permanent resident status without proof of U.S. job creation. In one case we reviewed, an EB-5 project received 82 percent of its funding from U.S. investors through a regional center. The regional center was able to claim 100 percent of the projected job growth from the project to apply toward its foreign investors even though the foreign investment was limited to 18 percent of the total investment in the project.

We made four recommendations to improve the effectiveness of the program. Two of those recommendations have been closed. The other two are pending: one is for a study to be done to assess the effectiveness of the EB-5 program, which is being completed by the Department of the Commerce and is scheduled to be completed shortly; the second is update regulations to provide greater clarity regarding USCIS' authority to deny or terminate EB-5 regional center participants at any phase of the process because of national security and/or fraud risks. They would also make it explicit that fraud and national security concerns can constitute cause for revocation of regional center status; give USCIS authority to verify that foreign funds were invested in companies creating U.S. jobs; and ensure requirements for the EB-5 regional center program are applied consistently to all participants. This recommendation is overdue, and we are in discussions with USCIS as to when this action will be completed.



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Our 2013 findings were reinforced and confirmed by an audit released by the Government Accountability Office (GAO) in August of last year.⁶ In that audit, GAO found that the EB-5 program has both fraud and national security risks that USCIS needs to correct. For example, GAO found:

- Limitations in electronic data USCIS collects on regional centers and immigrant investors limits their usefulness in conducting fraud-mitigating activities. Certain basic information, such as name, date of birth and address are either not entered into electronic databases or are not standardized, so basic fraud-related searches cannot be conducted.
- USCIS anti-fraud personnel conduct only limited site visits, and GAO recommends increasing the number of site visits to regional centers and program sites to look for indicia of fraud.
- USCIS does not conduct interviews of immigrant investors to who they award permanent residency, which the GAO believes would assist in establishing whether the investor is a victim of or complicit in fraud.
- USCIS has significant limitations on being able to verify the source of the money invested and, other than by self-certification, does not have a reliable basis to determine whether the money is from an improper source.

The GAO also found (as had the previous OIG audit) that USCIS' practice of allowing immigrant investors to claim jobs generated by investments from other sources overstates the economic benefit of the EB-5 program. The GAO found that, in the one project they looked at, many immigrant investors would not have qualified for lawful permanent residency without the practice of allowing them to claim jobs created by all investments in the commercial enterprise, regardless if they were EB-5 investors.

Other Audits Involving the Visa Process

We have published a number of different audits. Some of those audits may be less relevant either because of the passage of time or a change in circumstances. However, we will briefly describe them here.

⁶ [*Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits*](#), (GAO-15-696, August 2015).



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In August of 2013, we published an audit report regarding USCIS' handling of the L-1 visa program.⁷ The L-1 visa program facilitates the temporary transfer of foreign nationals with management, professional, and specialist skills to the United States. We found that USCIS adjudicators were inconsistently deciding L-1 petitions because of inadequate guidance from USCIS headquarters, particularly as it relates to the requirement that the petitioner have "specialized knowledge." Additionally, we found one regulation, which permits a foreign company to receive an L-1 visa for an employee to start a "new office" in the United States. We found that this provision is "inherently susceptible to abuse."

In June of 2013, we published an audit report regarding USCIS' tracking of potentially fraudulent applications for family-based immigration benefits.⁸ U.S. immigration law grants permanent resident status to aliens who legally marry a U.S. citizen or lawful permanent resident and to certain aliens who are family members of U.S. citizens or lawful permanent residents. We performed an audit to determine whether USCIS recorded information about adjudicated family-based petitions and applications suspected of being fraudulent according to agency policy requirements and in a manner that deterred immigration fraud.

We found that USCIS has procedures to track and monitor documentation related to petitions and applications for family-based immigration benefits suspected of being fraudulent. However, once family-based immigration petitions and applications were investigated and adjudicated, fraud-related data were not always recorded and updated in appropriate electronic databases to ensure their accuracy, completeness, and reliability. Specifically, USCIS personnel did not record in appropriate electronic databases all petitions and applications denied, revoked, or rescinded because of fraud. Supervisors also did not review the data entered into the databases to monitor case resolution. Without accurate data and adequate supervisory review, USCIS may have limited its ability to track, monitor, and identify inadmissible aliens, and to detect and deter immigration benefit fraud.

Finally, in November 2012, we published a report about the visa waiver program, which allows nationals from designated countries to enter the United States and stay for up to 90 days without obtaining a visa from a U.S. embassy or consulate.⁹ The purpose of our review was to determine the adequacy of processes used to determine (1) a country's initial designation as a Visa Waiver

⁷ [*Implementation of L-1 Visa Regulations*](#), (OIG 13-107, August 2013).

⁸ [*U.S. Citizenship and Immigration Services' Tracking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits*](#), (OIG-13-97, June 2013).

⁹ [*The Visa Waiver Program*](#), (OIG-13-07, November 2012).



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Program participant, and the continuing designation of current Visa Waiver Program countries; and (2) how effectively the Visa Waiver Program Office collaborates with key stakeholders. We determined that the Visa Waiver Program Office had established standard operating procedures and review criteria that satisfy the goals for conducting country reviews. Although Visa Waiver Program officials maintained effective collaboration with stakeholders during the review process, additional efforts are needed to communicate with appropriate officials the standards needed to achieve compliance with Visa Waiver Program requirements and the criteria used to assess compliance. In addition, challenges that may reduce the effectiveness of the Visa Waiver review process include untimely reporting of results, current staffing levels within the Visa Waiver Program Office, and its location in the DHS organizational structure.

Criminal Investigations

Our criminal investigators regularly investigate fraud within the benefits approval process, often involving a corrupt USCIS employee. We investigate a fairly steady stream of such conduct. The following are recent examples of the results of our investigations:

- Martin Trejo, a DHS contractor, was convicted for theft of government property, among other crimes, after a DHS OIG investigation determined that he stole approximately 1,000 blank, genuine USCIS I-797 Notice of Action forms over a five-year period for which he was paid approximately \$5,000. Trejo delivered the forms to a civilian who then provided them to a fraudulent document broker.
- Efron DeLeon, a USCIS Immigration Services Assistant in Orlando, Florida, was convicted of obstruction of justice and false statements after a DHS OIG investigation found he illegally assisted immigration petitioners and beneficiaries at the Orlando USCIS Field Office. DeLeon destroyed records in alien files and provided information on how to circumvent questions in a USCIS marriage fraud interview. He also improperly accessed and viewed records in the Central Index System, a DHS database, and made false statements to DHS OIG investigators.
- Cassandra Gonzalez, non-DHS employee, was sentenced for her role in an immigration fraud scheme. Gonzalez and her conspirators, one of which was a former USCIS employee, facilitated false marriages, complete with fake documentation, to illegally obtain immigration benefits.



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- Fernando Jacobs, a Supervisory Immigration Services Officer, and his co-conspirator, an Immigration Services Officer, were convicted of conspiracy, bribery, and other related crimes after a DHS OIG investigation revealed he accepted bribes to issue Lawful Permanent Resident cards to illegal aliens and accessed government databases to obtain information regarding USCIS applicant status.
- Richard Quidilla, a USCIS contractor, was convicted of unlawful procurement of citizenship and other related crimes after an OIG investigation determined that he unlawfully accessed USCIS databases in excess of authority and deleted names and biographical information of 28 bona fide naturalized US citizens, and inserted names and biographical information of individuals who either violated terms of their visas (over-stays) and/or were undocumented aliens. Once altered, the USCIS database falsely depicted the identities of the individuals inserted by the contractor as actual United States citizens.

Other matters

Additionally, as we have in the past, we receive information from DHS employees, which may uncover deficiencies in programs and operations in the visa program, or constitute a violation of law, regulation, and policy. The specifics of some of those complaints are protected from disclosure by the *Inspector General Act* and the *Whistleblower Protection Act*, particularly during the pendency of our investigation of those claims. However, I want the Committee to know that we take each of these claims seriously and will investigate them to the fullest extent possible. We will also take steps to protect whistleblowers from retaliation wherever we find it.

Conclusion

Deciding and administering immigration benefits, including visas, is a massive enterprise. USCIS alone uses about 19,000 people to process millions of applications for immigration benefits. They are required to enforce what are sometimes highly complex laws, regulations, and internal policies. They are rightly expected to process decisions within a reasonable time frame. USCIS and the rest of DHS accomplish their mission while working with an antiquated system of paper-based files more suited to an office environment from 1950 rather than 2016. This system creates inefficiencies and risks to the program. To give you an idea of the scope of the problem, USCIS spends more



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that \$300 million per year shipping, storing, and handling over 20 million immigrant files.

The size and complexity of the mission, coupled with an archaic method of processing applications, brings with it significant risk. There is risk to operations – in that it makes it more difficult for USCIS accomplish their mission. We found, for example, that the time to process immigration benefits was twice that of the metrics that USCIS established. Our earlier report on USCIS IT systems, published in July of 2014, reported that using the electronic files in use at the time took twice as long as using paper files.

Additionally, the present system presents risks to our national security – in that we may be admitting individuals who wish to do us harm, or who do not meet the requirements for a visa. Basic information on visa applicants was not captured in electronic format and thus cannot be used to perform basic investigative steps. Also, because of the poor quality of the electronic data kept by both USCIS and ICE, it was difficult to engage in data matching, which we believe is an effective tool in rooting out fraud and national security risks.

Mr. Chairman, this concludes my prepared statement. I am happy to answer any questions you or other Members of the Committee may have.