

**INS'S MARCH 2002 NOTIFICATION OF APPROVAL
OF CHANGE OF STATUS FOR PILOT TRAINING
FOR TERRORIST HIJACKERS MOHAMMED ATTA
AND MARWAN AL-SHEHHI**

HEARING
BEFORE THE
SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION

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MARCH 19, 2002
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INS'S MARCH 2002 NOTIFICATION OF APPROVAL OF CHANGE OF STATUS FOR PILOT TRAINING FOR TERRORIST HIJACKERS MOHAMMED ATTA AND MARWAN AL-SHEHHI

TUESDAY, MARCH 19, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 4 p.m., in Room 2141, Rayburn House Office Building, Hon. George W. Gekas [Chairman of the Subcommittee] presiding.

Mr. GEKAS. The hour of 4 o'clock having arrived, this hearing and the Committee will come to order. Let the record indicate that the Ranking Member of the Judiciary Committee, Mr. Conyers of Michigan, is present; that the lady from Texas, Mrs. Jackson Lee, the Ranking Member of the Subcommittee is present, as is the gentleman from Arizona, Mr. Flake. The attendance of these Members constitutes a quorum for a hearing so that we may proceed immediately to the business of this hearing, which by the way, is apparent to the entire world.

The events of September 11, known to every living human being on the face of the earth, constituted a devastating blow to the United States of America, and everyone knows it and everyone has felt the consequences of it in various ways.

Then to add insult to injury, on March 11, 6 months to the day, while the President is taking some time out to recollect the devastating events of September 11, at that precise time the ghost of Mohammed Atta and his conspirator, co-conspirator, strike the Nation again through the revelations made by the flight instruction company in Florida to the effect that the student visas for these two terrorists have now been approved.

That struck an extra chord of horror on the parts of all American citizens who paid attention to these series of events, and hence we have this hearing, which will go to the plan of determining what exactly happened and how did this situation occur.

We are aware of a chronology of events, but that will be fleshed out by the witnesses that we have brought to the witness table today, we are sure. It should be noted that the witnesses will be able to tell us a series of events and when they occurred in the context of where we found the failings of the Immigration and Naturalization Service.

Following these revelations, we have determined almost conclusively that the Immigration and Naturalization Service is broken, and that we must take giant steps together to try to reconstruct it. The thought that strikes everybody and everyone takes to heart is if the Immigration and Naturalization Service had difficulty and actually an impossibility of identifying the terrorists whose acts were complete, and in the part of the notorious history of the United States, how can we believe that future terrorists will be detected in time to prevent other similar tragedies? That's the burning question that faces the Immigration and Naturalization Service, the Department of Justice, the Bush Administration and the Congress of the United States.

As a matter of fact, because these events have occurred, we believe that the plan that the gentleman from Wisconsin, the Chairman of the Committee, Mr. Sensenbrenner, and I, have offered by way of legislation to reorganize, restructure the Immigration and Naturalization Service is apropos and comes at a time when we should be helping us reconstruct the INS in a way that through such restructuring, full accountability will be accorded, full communication will be presented among the various bureaus and agencies that have our national security as part of their very existence, that we will be able to predict and be able to prevent terrorists from—and potential terrorists from reaching our borders, or if they do reach our borders, to bring them into custody swiftly. All of these things are inherent in the proposed legislation that we will consider fully when we return from the next recess for the purpose of making certain that the type of incidents which now have entered the history of our country should never happen again.

We're going to look forward to the testimony of the witnesses because I know they want the same goals, they want the same fixes to be placed in the system, they want the same accountability for which we yearn, and that they will in their own ways support and help us bring about a good solid system for the American people.

The Chair yields to the gentleman from Michigan, who may want to yield to the lady from Texas, but that's up to them.

Mr. CONYERS. Thank you, Chairman. I'm very pleased to be here with you and the Ranking Member, Congresswoman Jackson Lee of Texas, and to participate in this very important hearing, the purpose of which is to review the events that led the Immigration and Naturalization Service to notify the Huffman Aviation International, the flight school at which Atta and Al-Shehhi trained, that Atta and Al-Shehhi's student visa applications had been approved 6 months after those individuals participated in attacks on the United States on September 11, 2001.

We are here to examine Atta and Al-Shehhi's entries and departures from the United States in order to assess whether those individuals were properly admitted to the United States, and to determine whether their applications to change status should have been approved.

On March 11, 2002, precisely 6 months to the day after the September 11 attacks, the Huffman Aviation School received notification from the Immigration and Naturalization Service that student visa applications for both these persons had been approved. The incident raised almost immediate complaints throughout the Govern-

ment, including from the United States Congress, the President of the United States and the Attorney General. And so the questions that need to be examined is whether paperwork may be pending for other known terrorists in the Immigration and Naturalization system that the INS has failed to intercept. You see, the facts are that both Atta and Al-Shehhi completed their training 7 to 8 months before the INS adjudicated their applications to change status, and almost 15 months before Huffman Aviation was notified that their student visas had been approved.

In light of these facts, INS would be unable to stop another Atta or another Al-Shehhi from receiving flight training in the United States even if it had information indicating that the alien was engaged in terrorist activity. There are those on this Committee who are inquiring as to whether the INS should continue to allow aliens admitted in other non-immigrant statuses to take training in the United States while awaiting their visas. This incident also highlights the INS's computer problems and its inability to track students and others in the United States.

And so I join the Subcommittee Chairman Gekas and the Ranking Member, Ms. Jackson Lee, in the discussions that have talked about how we should restructure the INS. But only yesterday the Administration has come forward with yet another plan that throws all of our work into some kind of peril. Now—

Mr. GEKAS. Would the gentleman yield for a moment?

Mr. CONYERS. I would yield with pleasure.

Mr. GEKAS. I don't believe that characterizing it as putting our work at some peril, but we will consider everything that the White House has proffered, along with the Department of Justice, as part of our continuing effort to bring about a restructuring. We will consider what they have offered.

Mr. CONYERS. Exactly. Of course we will, Chairman Gekas. The problem is though that we thought we were working with the White House when we were putting our plan together, and now we find out that there—maybe they're working with someone else, but they certainly aren't working with any of the Members that I'm aware of.

But the INS apparently remains fixated on detaining and rounding up countless thousands of Arab-Americans and permanent residents without any known justification, but yet has failed to take the most basic steps to ensure that visa approvals are not issued to known terrorists, and since we've had this Administration plan floated within the last 24 hours, I would like to hope that and suggest that we do not turn this hearing into an opportunity to blame other predecessors in the Immigration and Naturalization Services for mistakes that have occurred within this last period of months. Those who have approved the terrorist visas have and must be ultimately accountable to the INS, to the Congress, and to the Administration.

Now, immigration law may be complicated, but I cannot believe that we are in the circumstance that forces us to come here today. The fact that we are operating in a way to determine whether or not we can deal with prominently identified terrorists or not tells me that this situation is—that this—INS is in badly in need of restructuring. But it may need more. It may need to have replace-

ments of personnel there. I understand that four of the people responsible have been already moved in office, but whether that's enough or not, we'll wait to determine.

And I thank the Chairman for giving me additional time.

Mr. GEKAS. I thank the gentleman for his remarks. We now turn to the lady from Texas for an opening statement.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me acknowledge the Ranking Member and of course the Chairman. And, Mr. Chairman, I would like to personally thank you for holding this hearing as soon as you did, within 7 days of the incident that occurred. I think that is a testament to what Congress can do.

Let me also acknowledge the witnesses, and thank you very much for the promptness of which you have responded in order to provide the people of the United States an open book to this particular set of incidences.

Obviously, September 11 sent a shock, a sheering shock, a piercing shock throughout this Nation, both in terms of a loss of life, the violation of our soil and the wondering of how we could have prevented it. But March 11 created a red alert day, and frankly said that what was broken has not been fixed, and that it is now time that the inertia of all who can be held accountable for this particular agency should stop immediately, cease and desist.

I say that, Commissioner, as I look at you in particular, because I recognize the hard work that you have engaged in from the time that you have been sworn in to this present day. It's a tough job. And today's hearing I hope will be based more on fact finding and resolution.

But let me give you my very honest opinion. The dilemma and the debacle of March 11 has the hand prints of Democrats and Republicans. It is based upon partisan inertia, Democratic administrations, Republican administrations, Democratic congresses, if we've had one in the last couple of years, which we've not, and—except for the Senate—and Republican congresses. We have done a lot with hearings and delay and hearings and delay and comment and delay. This is something that we have to address now.

And one of the issues that I think is crucial is the ability to say to the INS to rapidly rehabilitate yourself. We gave dollars in 1996 to do the student tracking system. It is now 2002, and we're not holding you accountable until 2003. As my testimony or my statement will say, I am well aware that part of the delay had to do with our outstanding institutions of higher learning, who are concerned about the invasion of privacy, and I am sympathetic to that. Everyone is well aware of my commitment to civil liberties and civil rights, but it is clearly, the burden is upon our shoulders, that we're talking about a system that is not in place.

The facts are that on March 11, exactly 6 months after the worst terrorist attack in U.S. history, a Florida flight school was notified by mail that the INS had granted student visa status to two deceased terrorists, Mohammed Atta and Marwan Al-Shehhi. These men had already completed their flight training and obviously were dead. Even though the student visas were not necessary to carry out their plots since the men had entered the country on tourist visas, disclosures has raised new questions about the INS' ability.

But let me give you the chronology. It was September 19, 2000 that Mr. Atta applied for a change from a visitor B-2 visa to a M1 student visa. It wasn't until July 17, 2001 that he was even notified, and the school did not get notified until the mailing by the particular company on March 2, 2002. Hand prints all over. And the inertia problem is absolutely outrageous.

Your statistics alone say that 600,000 foreign nationals held student visas in the United States, including more than 10,000 enrolled in flight training, trade schools and other nonacademic programs, and according to an early statement made by the INS after these visas were issued, they said that the system used by the INS to keep track of foreign students was antiquated, inaccurate, untimely, as we have indicated, and of little utility. I already mentioned to you that we assigned the INS the responsibility of changing this system in 1996. It won't be implemented, to my understanding, until 2003. A task force representing the INS, the FBI and CIA, and Defense Intelligence Agency was put together, and it recommended that information on students' I-20 visa applications be shared among Federal agencies. For example, an applicant who came from a country known to sponsor terrorists or has traveled to such a country might be referred for further scrutiny. That's what should have happened to Mr. Atta and his compatriot. The INS was required by law to collect the information on students' addresses, visa status and any academic disciplinary action, but of course, this apparently did not happen to its fullest. In some cases the INS reviews applications from foreign nationals in the United States when they apply to change business or tourist visas to student visas. A House Judiciary Committee investigation last fall determined that the tracking program was scaled back partly because of the pressure of major universities. What I can say is that it is extremely important that we begin to bring all the parties to the table, Mr. Chairman, to ensure that Congress is not in the midst of delay and deterring, delay be not doing the job, and deterring the right thing to be happening.

Let me conclude, Mr. Chairman, by saying this. I'm gratified that you so willingly are open to the Administration's new offer. Speculative at best, I don't know if anyone has a proposal on their desk at this point, but as you're open to the Administration's proposal, let me say that Democrats have been offering a proposal, H.R. 1562, that clearly recognizes even some of the points that Commissioner Ziglar has made in his administrative changes, two freestanding—not freestanding—two institutions, services and enforcement, that are governed by an Assistant Attorney General for Immigration Affairs. In order for this to work, this must be a bipartisan effort where all are involved. And in order for us to be successful, Mr. Chairman, more hearings and more delay and more talk, will not be the solution that we need today.

I would say to us that we need to have a hearing and we need to pass legislation within the next 30 days. I yield back. Thank you.

[The prepared statement of Ms. Jackson Lee follows:]

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STATEMENT OF
CONGRESSWOMAN SHEILA JACKSON LEE
SUBCOMMITTEE ON IMMIGRATION & CLAIMS
OVERSIGHT HEARING ON
“The INS’s 2002 Notification of Approval of Change of Status
for Pilot Training for Terrorist Hijackers Mohammed Atta and
Marwan Al-Shehhi”
Tuesday, March 19, 2002
Rayburn 2141



Thank-you Mr. Chairman for holding this hearing. In this

instance, both Republicans and Democrats are united in trying to fix something that is broken. We are united in trying to solve a problem that needs to be solved. There is something wrong with the immigration system in the United States, and there are several problems that plague the agency that is tasked with administering the immigration policies of our nation. This problem precedes Commissioner Ziglar, and even the Commissioner who preceded

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him. This is not a Democratic problem or a Republican problem, this is indeed a National problem, and Mr. Chairman I am committed to helping to solve this problem. What are the facts.

The facts are that on March 11, exactly six months after the worst terrorist attack in U.S. history, a Florida flight school was notified by mail that the INS had granted student-visa status to two deceased terrorists-Mohamed Atta and Marwan al-Shehhi. These men had already completed their flight training. Even though the student visas were not necessary to carry out their plot since the men had entered the country on tourist visas, the disclosure has raised new questions about the INS's ability to manage its own voluminous records. More importantly, it has also raised questions from Members of Congress concerning the Student Visa program.

According to INS statistics, as of last fall, nearly 600,000 foreign nationals held student visas in the United States, including more than 10,000 enrolled in flight training, trade schools and other nonacademic programs. According to an early statement made by

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the INS after these visas were issued, they said that the system used by the INS to keep track of foreign students was “antiquated, inaccurate, untimely and of little utility to INS, schools or students.”In many respects, Congress should shoulder some of the blame for this.

In 1996, Congress ordered the INS to set up an Internet-based pilot system that would be implemented nationwide in 2003, and a test project was begun with 21 schools and colleges in the south. A task force representing the INS, FBI, CIA, and Defense Intelligence Agency was put together, and it recommended that information on a student’s I-20 visa application be shared among federal agencies. For example, an applicant who came from a country known to sponsor terrorists, or has traveled to such a country, might be referred for further scrutiny. These recommendations stirred strong protests from colleges and universities. Due to this strong opposition by higher education, a scaled back program was implemented. The INS was required by law to collect information

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on students' addresses, visa status, and any academic disciplinary actions taken against them, but it stopped short of implementing proposals to share and coordinate the information. It is a shame that the INS continues to rely on the often hurried checks done at U.S. consulates and ports of entry. In some cases, the INS reviews applications from foreign nationals in the United States when they apply to change business or tourist visas to "student" status. A House Judiciary Committee investigation last fall determined that the tracking program was scaled back partly because of pressure from major U.S. colleges and universities on both Congress and the White House. The schools argued that an aggressive student visa program would put at risk the \$12 billion in tuition collected each year from foreign students. While this may be true and the U.S. welcomes diversity in higher education, we must understand that we are in dangerous times. We need a secure student tracking system that keeps track of every foreign national issued a student visa, and continues to track them when they do not enroll. This is really the

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only way that we can begin to fix this problem.

In this situation, we can not totally blame the INS and its employees. A private contractor, Affiliated Computer Services processed these visa forms. However, there should be some oversight by the INS, and its top officers should certainly be held accountable.

Let's take the case of Hani Hanjour; another one of the September 11 terrorists. He was known to have held a student visa when he entered the country in December of 2000 as he claimed to study English at a Berlitz school in Oakland, California. Instead, Hanjour went to flight school in Arizona and eventually made his way onto American Airlines Flight 77. Authorities believe he steered the flight into the Pentagon, killing 64 people on board and 125 on the ground. This is a problem Mr. Chairman that needs fixing!

The Congress has recently appropriated \$30 Million to implement a student tracking system which would be accessible to

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government officials and educational institutions, with passwords allowing them to track their own students. I am eager to hear an update from the Commissioner where we are on the implementation of this system.

I believe the INS needs restructuring, and it needs restructuring by Congress. I authored H.R. 1562, the "Immigration and Restructuring Accountability Act." This bill not only creates two separate bureaus for enforcement and immigration services but it creates an Attorney General for Immigration Affairs. This person will be charged with directing and supervising the two bureau heads and will be a strong person at the top to ensure coordination between the two bureaus. We need more accountability on all levels where immigration policy is concerned. This latest fiasco points out that something has to be done now. There is a problem Mr. Chairman and it must be fixed.

If its money that's needed, then Congress needs to appropriate it; if the INS needs to be restructured and it does, then the

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Administration need not stand in the Way of Congress to act, if its stronger leadership then the President, the Attorney General, and the Commissioner of the INS need to act. We need to work together on this issue, and we need to ACT NOW.

Mr. GEKAS. We thank the lady for the opening statement. Let the record indicate that the gentleman from Utah is in attendance, Mr. Cannon; the gentleman from California, Mr. Issa; the lady from Pennsylvania, Ms. Hart; the gentleman from California, Mr. Gallegly; and at this time we yield to the gentleman from Arizona for a brief opening statement.

Mr. FLAKE. Thank you, Mr. Chairman. It will be brief. I want to get to the testimony.

Now, let me just say we heard testimony from Commissioner Ziglar in October of last year, I believe, and at that time it was said that the INS was capable of reforming itself from within. I think that this incident last week simply demonstrates that the INS is in a freefall, and I think that this hearing, while about this incident, means something far broader. Is the INS capable of reforming itself, or is the Congress going to have to impose reform from without? And I can tell you, my expectations are pretty low coming into this hearing, and I'm anxious to hear the testimony and to hear why we're wrong if we believe that the Congress needs to move on this.

And with that, I'll yield back, Mr. Chairman.

Mr. GEKAS. We thank the gentleman. Does anyone else wish to be recognized for the purpose of an opening statement? The gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman, for holding this very important meeting.

As many know, I have advocated INS reform for my entire 16 years in this House. In that time I've been angry, I've been frustrated, outright flabbergasted by the bureaucratic incompetence of this agency.

When I heard last Wednesday that Mohammed Atta and Marwan Al-Shehhi's student visas had been approved and received by their flight school, I wasn't surprised. I considered it business as usual.

Let me share just a few of my own personal experiences with the INS to paint a clear picture for reform. In June 1995 I led a delegation to Chrome Detention Center in Miami to evaluate what Congress could do to assist overcrowded INS facilities. When we arrived everything seemed fine. However, we learned a little later—what we learned a little later, that the high-level INS employees had conspired to deceive our congressional delegation. Among other things, just prior to our visit, the INS release 59 detainees includ-

ing 9 criminals and 35 individuals who had not been medically cleared into our streets. Dan Cadman, then the INS Miami District Director, had actively participated in efforts to mislead our delegation. INS Inspector General Michael Bromwich, after I might add a very lengthy investigation, recommended that Mr. Cadman be punished within a range of a 30-day suspension to termination. Most importantly, the IG stated that if Mr. Cadman were not fired, he should be reassigned to a position that did not have significant managerial responsibilities. Why then has Mr. Cadman been promoted to INS Counterterrorism Coordinator? It's troubling to know that INS trusts a person who deliberately deceives Congress, releases criminal aliens into our society as the leader of our counterterrorism efforts.

A more recent example of problems I've had with the INS regards three very basic questions I posed about the immigration status of screeners at Dulles, Newark and Boston's Logan Airport on 9-11. Of course we all know too well now that these were the airports where the four hijackers boarded planes and departed on September the 11. I first posed my question to Commissioner Ziglar in person in late September. I followed up with three letters and several phone calls over the next 4 months. I received no response to any of them. It wasn't—it was not until the end of February, nearly 5 months later I received answers to half of my questions. I still have not received them in writing as I requested. Fortunately, the Subcommittee will soon be holding a hearing on this matter so we can further flush out the inability of the INS to respond to inquiries about national security.

Another example of ignoring national security threats, last August an illegal immigrant with fraudulent papers was caught trying to enter a sensitive military base in my congressional district. The military police called the border patrol. The INS response: "It's not our policy to pick up illegal immigrants in such cases." A policy that was handed down from headquarters. I have asked the question, if we can't protect our military bases, Mr. Chairman, what can we protect?

The INS has received a 250 percent increase in their budget over the past 10 years. It has just approved student visas for two individuals who 6 months ago murdered 3,000 people and it has promoted an individual who knowingly deceived Congress.

Where we do—where do we dig in our heels and say enough is enough, Mr. Chairman? I'm a strong supporter and cosponsor of Chairman Sensenbrenner's proposal to restructure the INS. I believe this legislation will be a key in overhauling the INS and setting it back on the right track, and I yield back.

Mr. GEKAS. We thank the gentleman for his remarks.

We now recognize the gentleman from Utah should he have an opening statement.

Mr. CANNON. Thank you, Mr. Chairman.

I'd like to thank Mr. Ziglar and others for being here with us today. By way of disclosure I should say that Mr. Ziglar's been a friend for about 20 years, and a person that I think highly of but who has a great responsibility right now.

I think it's fair to characterize what the gentleman from California, Mr. Gallegly, has just said, and this may be a little sim-

plistic, but as referring to the agency as a failed organization, failed in some of its major missions. The gentleman from Michigan, Mr. Conyers, has talked about not blaming, and let me just second those remarks and associate myself with them, because the issue here is not blame. The issue here is how do we make this organization work because the problem is not a Democratic problem or a Republican problem. The problem is an America problem, and we want people to come to America. We don't want them to go through an acid bath when they get here to the INS system, but we want to protect America.

So I take this moment for an opening statement to point out that I think that you are going to need some help at the INS, and I am going to be aggressively active in doing that. In the first place I think you need more political appointees because you need to express your will and your organization through this bureaucratic and entrenched organization with force, and it's going to take some help to do that. And I think, by the way, these suggestions are agreeable to many people on both sides of the aisle, so they're not just one party to the other.

In the second place you have some people in your organization who are recalcitrant and who are going to resist a change, and you need to have the ability to fire those people. We want to give you that ability, some of us do, and we're going to have a debate on that.

And finally, you need enough money to put systems in place. This is a retrograde agency. It is largely a service organization, and base don information and your information systems are grossly inadequate and so we need to give you the resources to do that.

Now, having said that, it is my greatest hope that we can change the nature of the organization and the way it operates and the way it reaches people and the way it protects us.

And with that, I yield back the balance of my time.

Mr. GEKAS. We thank the gentleman.

Does any other Member wish to be recognized? The gentleman from California, Mr. Issa, is recognized for a similarly brief opening statement.

Mr. ISSA. Thank you, Mr. Chairman. I'll try to be even briefer.

Commissioner, I want to be brief in my opening statement, but I want to let you know that I not only support the Chairman's reorganization plan, but I'm here today to say that it is extremely important that we get this plan behind us so that we can actually get to the more—most important issue which is the whole question of the 3 to 6 million undocumented workers who live and work in America every day, who live outside the law, and who your agency, prior to your coming, totally has failed since 1986 to contain, control, document or do anything properly with. I consider your organization today worse than useless because it expends funds while accomplishing a net nothing. And I know you don't agree with that when you join an organization. My district is in a position today, where if you did your job today, you would put hundreds of businesses right out of business because so much of the workforce in agriculture and in construction and other areas in my district presently has either a large minority or even a majority of undocumented workers. That's a reality of Southern California today.

And so while I support the President's initiative to try to come up with a comprehensive guest worker program, to try to come up with some way to put into control that which is out of control, I have to say here today that this need for reform is standing in the way of what we really need to get to which is a way of controlling our—not just our borders, but our workforce and our workers. And so I will hope that you will take today's hearings in the spirit that it's given, which is to get this behind us and get on to the business of really reforming, as Mr. Gallegly said, the ongoing errors that have been made by this organization to the tune of 3 to 5 million people operating every day as employees outside the law in America.

And with that, I yield back the balance of my time.

Mr. GEKAS. We thank the gentleman for his opening statement.

I would ask the witnesses to please rise so that we may administer an oath prior to their testimony.

[Witnesses sworn.]

Mr. GEKAS. We thank the witnesses. Now we defer to the gentleman from New York, Mr. Weiner, a Member of the Judiciary Committee, to do a preliminary introduction of one of the witnesses, who happens to be his constituent. Mr. Weiner is recognized.

Mr. WEINER. Thank you, Mr. Chairman. As a Member, it's my pleasure to welcome Michael Cutler, my neighbor from Sheepshead Bay, who served in the Immigration and Naturalization Service since 1971, is an inspector, is a special agent of the INS and is a member of the INS Task Force on Organized Crime. I think his insights from within the belly of the beast will prove interesting.

Let me also take this opportunity to say to the panel and to Members, as we know, during the deliberation on the PATRIOT Act, we in this Committee passed language in our version of the bill that not only would have increased the funding to crack down on the abuses of the student visa program, but we also moved up the deadline and said the time for delay of bringing on board the computer system for this purpose has long since passed.

You know, there are many people who say it takes a great deal of creativity to game the system and to get into this country illegally to commit acts of terrorism. It's actually very simple. Just have to go on to the Internet, contact a university, apply for a student visa. You can even come here while the application's in play. You don't need to show up for class. You can apply to study English literature. You can actually take lessons in flying planes without having to learn how to land them. You can overstay your student visa as long as you want, and frankly, no one will catch you. And Lord knows, the educational institutions that we would hope would be supportive of this did quite the opposite. They fought us tooth and nail on even putting in a tracking system.

So this doesn't take a great, creative, sinister mind to beat the system. It's very easy to do, and I hope, Mr. Ziglar, that you can finally get to the bottom of it, but if you're anything like your predecessor, and your predecessor's predecessor, and your predecessor's predecessor, and your predecessor's predecessor, who were all aware of this problem and did nothing, frankly, I'm skeptical that you'll be able to either.

Thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman. We are prepared now to introduce the witnesses formally and proceed with their testimony.

The first and foremost witness is James W. Ziglar, Commissioner of the INS, a graduate of the George Washington University and the George Washington University Law School. After clerking for Supreme Court Justice Harry Blackmon, Mr. Ziglar spent 7 years in the private practice of law in New York and Phoenix. He then went into investment banking, where he worked in management positions at three prestigious firms, Dillon Reed & Company, Paine Webber and Drexel Burnham Lambert. From 1987 through 1988 he served as Assistant Secretary of the Interior for Water and Science. He served as Sergeant at Arms of the Senate from 1998 to 2001, and has been in his current position since August 2001.

Mr. Blodgett joins him at the witness table, the Managing Director of Affiliated Computer Services, Inc., the Business Process Solutions Division.

And he will be joined, and is joined at the witness table by Rudi Dekkers, who is President and CEO of Huffman Aviation. He's a graduate of the Vocational Technical School, the Royal Dutch Military Academy and University for Business Law, all in the Netherlands. He's also President of Aerojet Service Center, Inc., and Dekkers Aviation Group, Inc.

The final witness, introduced by Mr. Weiner, is as he indicated, a special agent with the INS. He started his immigration career as an Immigration Inspector at John F. Kennedy International Airport, became a special agent in August 1975. In 1991 he was promoted to senior special agent and assigned to the INS's Organized Crime Drug Enforcement Task Force.

We will proceed now with the testimony of Mr. Ziglar. Pursuant to the customary allotment of time, which is normally 5 minutes, with an assertion to each of the witnesses that their written statement will become a part of the record, which we now do, we will consider allowing elongation of that 5 minutes as it may appear necessary, but we ask you to keep that in mind as you proceed. After all, it will be the full and complete written statement that will constitute the fullest exposition of what you want to present to the Committee.

We now begin with Mr. Ziglar.

**TESTIMONY OF JAMES W. ZIGLAR, COMMISSIONER,
IMMIGRATION AND NATURALIZATION SERVICE**

Commissioner ZIGLAR. Thank you, Mr. Chairman. I've endeavored to get it down. It's down to about 7 minutes if that's all right.

I appreciate your calling this hearing today. In fact, I'm glad you called this hearing, so that we can have a discussion of about the latest example of why the INS needs reform. While we may differ on some details of that reform, I know we both share a desire that INS quickly and effectively respond to the security needs of the Nation as well as—oh sorry—as well as quickly and effectively processing naturalization applications, adjustments of status, change in status, and other kinds of adjudications. The reorganization of the INS is necessary to provide clearer lines of decision making and specific accountability, but the recent mailings of the return I-20's

to Huffman Aviation International were a direct result of obsolete technology and overly bureaucratic and illogical processes that we have there.

When I started this job about 7 months ago, I found that I had inherited an information technology system, or more correctly, systems that were big on information and small on technology. I found too much reliance on manual data entry, much of which had to be boxed and shipped to outside contractors. Literally, we would have a box that would sit there in some of these places, and as forms came in, they'd wait till the box was full and then they would ship it off to the data entry contractors to put it in. I also found a lack of real-time data and a lack of readily-accessible electronic information for accurate and timely reporting. I found that INS lacked interconnectivity among its own systems as well as those of other law enforcement agencies, and I found that the enterprise architecture was still on the drawing board.

The incident of the return of the I-20's to Huffman Aviation International is a perfect example of the system that existed when I arrived at INS. While distressing, I want to use this incident that just occurred as a catalyst to accelerate the reforms at INS that I've tried to lay out and that I've talked to many Members of the Congress about.

First, before discussing some of these reforms that we already have undertaken or are undertaking, I think it's useful to clear up some of the facts of the case from last week. Contrary to some reports, the INS did not just recently approve the applications for Mohammed Atta and Marwan Al-Shehhi to change their non-immigrant status in order to take flying lessons. What we had here—I'm trying to find an analogy—what we had here is similar to buying an item with a check, go into a store, you buy an item with a check, get the item, and then you don't receive the canceled check for 6 months, the receipt for the check. Simply put, Huffman Aviation International was receiving its file copy of paperwork that they originally prepared on behalf of Atta and Al-Shehhi, and that's it. No new visas were issued, and no new decisions were reflected in the documents sent to them.

However, we should have intercepted these I-20's at the contractor, and we did not. We should have thought that—although this was just a paperwork process, that we should have thought, gee, you know, we've got to go to this contractor and pull back those I-20's because of who these guys are. The contractor's not at fault in this at all. I might add that I have stopped any more sending out of I-20's when this happened, and we are reviewing all of them now to see if there's any other of these kinds of things in there. I don't think there are, but we certainly are going to make sure there are not.

Mr. Chairman, I'd like to present to the Committee today a series of measures that INS is considering to rectify gaps in current processes and policies related to student and visitor visas. The changes fall into two areas, regulatory and administrative. And I might add that some of these changes have already been in the process and are in fact in the approval process before March 11. For example, we are considering a proposed regulatory change that would result in most visitors being admitted for a period of 30 days

unless they can make a case for a longer stay in the country. And let me expand on that just a second.

As it is now the default date for someone coming in on a visa to the United States is 6 months. So you come in, you get a 6-month admission unless there is some other factor in there. We want to change that default date to 30 days, so that when somebody comes in they have to make a case as to why they need to stay longer or the inspector will have the discretion to make the visa time—make the admission time shorter. We think that will be an important initiative.

We also are considering changing our regulations to prevent a person, who has entered under some other status to begin a course of study before their request for a change of status to student is approved, as happened in the cases of Atta and Al-Shehhi. Now let me also mention that in this process what we have are two kinds of things that happen. Students either apply for a visa which is issued by the State Department overseas to come into the United States as a—as a student, an M visa, or they can come into the United States under a visitor's visa and then apply for a change of status to a student visa, and we are looking at how we can correct that system and keep people from gaming the system by coming in as visitors and then changing to a different status.

To prevent the possibility of a long gap in sending a return copy of the I-20, INS has revised the process through which the I-20's are sent to the schools, so that the I-20's—I-20 is returned promptly when the individual is authorized to enter into student status. Once our foreign student tracking system is fully implemented, schools will be electronically notified when a decision is made.

I might add that back in September, before September 11, we were renegotiating the contractor status, and what was then a provision in the contract that said that the contractor would hold the I-20 notice and mail it after 6 months of holding it, that was changed to 30 days or not more than 30 days, but because of a bid protest in the contract, the contract was awarded in October, sometime in October, and I'm sure Mr. Blodgett can talk to you more about the contract terms. We allowed the contractor to continue with the 6 months until we got to the backlog that built up as a result of the bid protest. However, under the contract now, there is 30 days to return the I-20, and this is something that the process started before September 11, trying to clean up this situation that we have here.

And I might add one other thing. I'm parting from my text here, and I'm going to go more than 7 minutes, but I think it's important to say this. Is that the contractor here, ACS, did nothing wrong. They did absolutely nothing wrong, although they had the I-20 in their possession for data entry—data enter it into our systems. The fact is that those I-20's, we should have known to go and pull them out of the system. Today all applications processed at our service centers, including student visa and student status applications, are also checked against law enforcement databases, and that's not always been the case.

INS also will send a cover letter to the school with the school's copy of the I-20. This letter will remind the school of its—of its al-

ready-existing obligation to notify INS if a student fails to attend classes, and it will give the school a process to follow in providing such notice. That is, in the interim, until the student tracking system comes online. And by the way, the student tracking system is beginning implementation in July and will be fully implemented by the end of this year.

Finally, since September 11, we've taken numerous initiatives to enhance security, and I—I guess we haven't probably talked enough about some of the things that we have done at the INS, and that's my fault. I should have—I should have been out telling people more about the actions we were taking.

Shortly after the terrorist attacks, INS began Operation Tarmac to ensure that employees who have access to secure areas of airports and other critical security infrastructures are legally in this country, authorized to work and pose no threat to the American people. More than 100 individuals have been arrested on various charges as a result of that operation. INS inspectors now have access to visa information from the State Department's Consolidated Consular Database and can call up photos and visa records of individuals at ports of entry. Under the direction of the Department of Justice, the INS, FBI and the Marshal Service are integrating their fingerprint databases, and by the end of 2001 this effort had already resulted in a number of fugitives being apprehended.

With an appropriation of 36.8 million, INS is moving from a paper system to an Internet based system for the administration and tracking of foreign students, and will meet the PATRIOT Act deadline for implementing the system by January 1, 2003. In fact, we will begin enrolling universities in the new foreign student tracking system, in July, as I mentioned.

The INS has established a multi-agency project management office to develop and implement an entry-exit system, something that the President talked about in his State of the union. We intend to have that entry-exit system in place and operating a year ahead of the congressionally-mandated deadline.

And to increase our presence on both the Northern and Southern borders, approximately 800 National Guard personnel have been added temporarily until we can bring on other people to replace them, to assist INS inspectors at the port of entry.

In November, the Attorney General and I announced a major restructuring of the INS. The INS restructuring plan is a fundamental reform that's put service and enforcement into two distinct bureaus. It will clarify and improve the chain of command at INS, and we believe increase accountability.

Mr. Chairman, all of us at INS want to improve operations and performance. I've seen hard work undertaken by our people. The INS and the Department of Justice have moved forward on numerous important initiatives to enhance our Nation's security, and we will continue to make improvements to enhance both our law enforcement and our service operations. I want to work closely with the Congress, particularly on improving our information technologies and on restructuring. I look forward to moving ahead together in a positive way to improve systems for protecting our borders and our citizens—both native-born and naturalized.

And I look forward to answering any of your questions.

[The prepared statement of Mr. Ziglar follows:]

PREPARED STATEMENT OF JAMES W. ZIGLAR

Mr. Chairman, I appreciate your calling this hearing today so that we might have the chance to discuss the latest example of why INS needs reform. While we may differ on the details of that reform, I know we both share a desire for INS to quickly and effectively respond to the security needs of the United States as well as quickly and effectively respond to the processing of naturalization petitions, changes in status, and other adjudications functions. Reorganization of INS is necessary to provide clearer lines of decision-making and specific accountability. We need to update antiquated technology systems and overly bureaucratic processes that exist at INS that directly caused the recent mailings of the return I-20s to Huffman Aviation International.

When I started this job about 7 months ago—one month before September 11—I found that I inherited an information technology system, or more correctly, systems, that were big on information and small on technology. I found too much reliance on manual data entry, much of which had to be boxed and shipped to outside contractors. I found a lack of real-time data and a lack of readily accessible electronic information for accurate and timely reporting. I found that INS lacked interconnectivity among its own systems as well as with those of other law enforcement agencies, and found that enterprise architecture was still on the drawing board. I also found that the INS lacked a full-time Chief Information Officer who could be responsible for and analyze the best solutions to the agency's IT shortcomings. While some improvements have taken place in recent years, you and I both know that the pace of improvement has been well behind any reasonable definition of the Service's needs.

It has become all too clear that, over time, the processes and procedures involved in approving naturalization petitions, changes in status, and in other adjudications functions have become far too bureaucratic, involving too many steps—many of which add no real value to the final outcome.

The incident of the return of the I-20s to Huffman Aviation International is a perfect example of the system that existed when I arrived at INS. First, before I begin a recitation of the events and of the processes of that system, I think it is useful to clear up some confusion. Contrary to some reports, the INS did not just recently approve the applications for Mohammed Atta and Marwan Al-Shehhi to change their nonimmigrant status in order to engage in flight training. Simply put, Huffman Aviation International was receiving their file copies of paperwork they originally prepared on behalf of Atta and Al-Shehhi. No new visas were issued and no new decisions were reflected in the documents sent to them.

The process for foreign student applications begins with the I-20 form: a document that schools, certified to accept foreign students, give to prospective students to enable the students to apply to the U.S. government for a student visa or student status.

If the student is outside the United States, he submits the I-20 to a U.S. consulate abroad as part of an application package to obtain a student visa. If the student is already lawfully in the United States in another nonimmigrant status, he applies to the INS for a change of status to that of student, and submits the I-20 as part of a package of documents. If this application is approved, the student is sent a Notice of Action (Form I-797), which he uses to show the school that he has been approved for student status. There are two copies of the I-20—one for the student and one for the school. The student's copy of the I-20 form is returned to the student with the Form I-797. The INS Service Center sends the school's copy of the I-20 to an outside contractor to perform data entry to update our automated Student Schools System. When that is completed, the school's copy of the I-20 is returned to the school for its records. This is the return that took place last week with respect to Mohammed Atta's and Marwan Al-Shehhi's earlier approved requests to change status.

The papers sent to this flight school were documents that acknowledged the approval dates of July 17, 2001, and August 9, 2001, for Mohammed Atta and Marwan Al-Shehhi, respectively, to attend Huffman Aviation International. It is worth repeating that at the time the student status for Mohammed Atta and Marwan Al-Shehhi were approved, neither the INS nor the State Department had any adverse information indicating that the applications should be denied. It is also worth noting that the Aviation Security Act now requires that foreign nationals who seek to receive training on aircraft of substantial size must undergo a background records check before they can begin training. Sound intelligence information is necessary to ensure the accuracy of that background records check.

The I-20s in question were sent to an outside contractor in late September for data entry. The contract in effect at that time, which was negotiated in 1996, required that the I-20s be entered into a database system and microfiched within 5 days, and returned to the school for its records after holding them 180 days. The data from these particular I-20 forms was entered into the database on October 5, 2001, and then later mailed, arriving at Huffman Aviation International in March 2002. As the result of September 11, a new contract, with a different contractor, was signed on October 23, 2001, requiring that the I-20s be returned to the school within 30 days after processing. I have been told that, because of a backlog transferred from the previous contractor after a bid protest, the I-20s in question were processed under the terms of the previous contract, which allowed the contractor to extend the time period for mailing to 180 days. I would like to note that it does not appear that either contractor did anything in error. However, I would say that the INS procedures and the terms of this contract were clearly not the most effective or desirable.

As you know, this current system for foreign student applications is being replaced with the new automated Student Exchange and Visitor Information System, known as SEVIS. INS will begin deploying this system in July. SEVIS is an internet-based system and once the system is fully deployed schools will receive quick electronic notification of student approvals, eliminating most of the paper elements in the current foreign student process.

This Committee has also asked questions about the process that allowed Mohammed Atta to come to this country as a visitor and then to attend flight school. The following facts have been determined and may prove helpful:

Mohammed Atta entered this country on June 3, 2000, as a visitor and on September 19, 2000, requested to change his status from a visitor to that of a student. While that change of status was pending before the INS, he started taking classes, which was allowed under INS regulations at that time.

Atta then departed the U.S. in early January 2001, and returned on January 10. Given the sheer volume of inspections and the amount of time that has passed, the Inspectors who spoke to Mohammed Atta on January 10, 2001, do not remember the specific inspection. However, a limited record, based on the Inspectors' notes, does exist of that inspection.

According to that record, Mohammed Atta arrived at Miami International Airport via American Airlines flight 69 from Madrid. Upon inspection, Atta presented Egyptian passport number 1617066. The notes from the primary inspector indicate that Atta had in his possession a Form I-20, which, as noted earlier, is the form issued to foreign students by schools authorized to accept such students. They also reflect that Atta had indicated to the inspector that he had been attending flight school for five or six months. As I mentioned before, current rules permit nonimmigrants with change of status applications pending to attend school while awaiting adjudication of the application. INS is considering changing these regulations so that student status must be approved before an individual can begin a course of study. Also, our backlog reduction plan is being accelerated so that no more than 30 days average processing time will be needed for these applications.

In light of the information given to the primary Inspector, and the fact that Atta was carrying an unexpired B-1/B-2 visa, Atta was referred to secondary inspection to determine admissibility. The notes from the secondary inspection indicate that a query to the CLAIMS system (INS' benefits processing database) was made, which confirmed that Atta had previously submitted an application to change status to M-1 student. The notes also indicate that no grounds for removal were found.

As noted, the record indicates that at the time of the January 10 admission, the Inspector was aware that Atta had applied for a change of status to M-1 student. He also was aware that Atta was not at that time the subject of any lookout or watch list. If Atta's inspection presented issues that needed additional information or further scrutiny, that should have caused the inspector to defer the inspection or deny admission. But, we cannot know today all of the information that was then before the inspector. Therefore, a fair judgment would be that one cannot determine in hindsight, positively or negatively, that the Inspector's decision was not the correct one based on the information available to him at that time. But we do know that the Inspector conducted a thorough check and had no information that Atta was a potential terrorist. Certainly a different decision would have been reached had such intelligence information been available to the Inspector.

Atta's final entry was on July 19, 2001. In the meantime, his application for change of status to student had been approved two days before, on July 17. However, he was not admitted in that status, but instead had been admitted as a visitor. We do not know today what he told the Inspector at the time of that entry.

Mr. Chairman, I would like to present to the Committee today a series of measures that INS is considering to rectify gaps in current processes and policies related to student and visitor visas. The changes fall into two areas: regulatory and administrative.

First, we are considering regulatory changes to tighten up the Student Visa Program. For example, we are considering a regulatory change that would result in most holders of visitors' visas [as distinguished from Visa Waiver Program entrants] being admitted for a period of 30 days. Currently, visitors are generally admitted for a period of six months.

We are also considering changing our regulations to prevent a person who has entered under some other status from beginning a course of study before their request for a change of status to student is approved, as happened in the cases of Mohammed Atta and Marwan Al-Shehhi. Both of them had entered as visitors. In addition, we are looking at the overall process by which visitors can change from tourist to student visa status to consider if there are additional changes that can or should be made.

INS has reduced the processing time for student change of status applications to 30 days at two Service Centers and will reduce the processing time to 30 days or less at the remaining two.

To prevent the possibility of a long gap in sending a return copy of the I-20, INS will immediately revise the process through which the I-20s are sent to the schools, so that the I-20 is returned promptly when the individual is authorized to enter into student status. Once SEVIS is fully implemented, schools will be electronically notified when a decision is made.

All applications filed at Service Centers, including student status applications, are now checked against the Interagency Border Inspection System (IBIS).

INS now will send a cover letter to the school with the school's copy of the I-20, which will remind the school of its obligation to notify INS if a student fails to attend classes, and it will give the school a process to follow in providing such notice.

One thing we need to remember—the student process had become so lax and lengthy because the focus of immigration policies prior to September 11 was not on security but on facilitating the students and the schools that they attended. The focus has changed and our process has changed as well.

I would also like to state that this episode should not reflect negatively on the tremendous job and hard work that the employees of INS have done in response to the tragic events of September 11. Deputy Attorney General Larry Thompson recently underscored something I have stated numerous times: "Since September 11th, INS special agents, intelligence analysts, detention officers, and others have worked closely with FBI-led counterterrorism task forces to track down and apprehend those responsible for the attacks. They have generated, and pursued, thousands of leads, resulting in the arrest of more than 700 aliens for a variety of administrative and criminal charges. They have worked with officials from the Treasury Department's Office of Foreign Asset Control to identify and freeze the assets of terrorist organizations and their front groups. INS detention and deportation officers and attorneys have played a critical role in supporting the nationwide enforcement effort. Border Patrol agents and immigration inspectors have been working just as diligently to strengthen security at our ports and along our borders."

Mr. Chairman, within 36 hours of the September 11 attacks, 317 Border Patrol agents were deployed to nine international airports, where they played a vital role in strengthening security and restoring travelers' confidence in the safety of flying. In addition, our Forensic Document Laboratory examined passports recovered from the crash sites, and it continues to receive requests from the FBI, the Joint Terrorism Task Force and others to analyze documents linked to known and suspected terrorists. It was the Forensic Document Laboratory's Fingerprint Unit that confirmed the true identity of Richard Reid, the "Shoe Bomber," who attempted to blow up a jetliner as it was in flight from Paris to Miami in December.

In addition, since September 11, the INS has undertaken numerous initiatives to enhance security.

- I have directed every component of INS to review their processes and systems with an eye to strict enforcement of our immigration laws, particularly as they relate to the security of our borders. In this war on terrorism, the INS is a front line agency, whether those battles are fought on our enforcement side or our benefits side. Since September 11, ports of entry have been on a Threat Level One alert—the highest state of alert; Border Patrol agents have been assigned to major airports and land ports; and our adjudications process has been changed to ensure that applications are checked against terrorist watch lists.

- Shortly after the terrorist attacks, INS began Operation Tarmac, an initiative designed to ensure that employees who have access to secure areas of airports and other critical security infrastructures are legally in this country, authorized to work, and pose no threat to the American people. This is a huge undertaking; as an example, the Los Angeles and San Francisco Airports alone account for 65,000 employees. To date, INS has conducted investigations at Dulles, Baltimore-Washington International, Atlanta, Boston, Newark, Detroit, Denver, Salt Lake City, San Francisco and Dallas-Fort Worth. More than 100 individuals have been arrested on various charges, including immigration violations and criminal fraud or misrepresentation charges.
- After September 11, INS began conducting the Absconder Apprehension Initiative, designed to ensure that aliens against whom Final Orders of Removal have been entered do indeed leave the country. The initiative consists of entering the names of all aliens who have violated federal criminal law by failing to depart as ordered into the NCIC system. State and local law enforcement officers will be able to detain offenders under their own authority because of the federal crime. To date, 1,751 leads have been sent to INS field offices, which have resulted in 149 arrests. Of those 149 arrests, 77 were priority cases involving aliens with criminal convictions or other law enforcement interest. INS has also been careful to ensure that only aliens who have violated criminal law are entered into NCIC under this initiative. Rigorous review is in place at our Law Enforcement Support Center where each individual file is checked and verified before entry into the system.
- INS also has worked with the State Department to establish new initiatives to increase security. Today, INS Inspectors have access to visa data from the Consolidated Consular Database system and, as a result, can call up visa records for immigrants and nonimmigrants and photos of nonimmigrants as they arrive at ports of entry. This system helps to identify security and fraud risks.
- Under the direction of the Department of Justice, the INS and the FBI are integrating the "IDENT" and "IAFIS" fingerprint databases. As part of this process, the United States Marshals Service Federal Fugitive fingerprints were added to IDENT on August 15, 2001. By the end of 2001, this had resulted in the apprehension of 55 fugitives.
- Building on this success, in December 2001, INS worked with the FBI to include FBI fingerprints of foreign nationals wanted by law enforcement. This effort has resulted in the identification of over 700 individuals wanted for offenses that include homicide, rape, drug crimes, and weapons violations.
- As previously discussed, with an appropriation of \$36.8 million, INS is moving from a paper system to an Internet-based system for the administration and tracking of foreign students, and will meet the Patriot Act deadline for implementing the system by January 1, 2003. In fact, we will plan to begin enrolling universities in the new SEVIS system this summer. Also related to enhancing security in the Student Visa process, INS is participating in an interagency working group on Student Visa issues.
- The INS has established a multi-agency Project Management Office to develop and implement an entry-exit system. For passengers entering the United States under the Visa Waiver Program, INS will deploy the entry-exit system at air and sea ports on October 1, 2002, and will deploy the system for all other air and sea passengers by December 31, 2003. INS is committed to meeting a timetable to implement the entry-exit system at all 300 air, sea, and land ports of entry in the United States by the end of 2004. Initial funding for this effort is provided in the President's FY 2003 budget. INS is working closely with other components of the Department of Justice, and with the U.S. Customs Service, the Department of State, the Department of Transportation, and the Office of Homeland Security on this important initiative.
- Since September 11, INS has been working with the State Department, the FBI and others to enhance refugee screening procedures, including additional fingerprint and database checks.
- As you know, to increase our presence on both the Northern and Southern borders we have entered into an agreement with the Department of Defense to obtain the help of approximately 800 National Guard personnel. Their role is to assist INS officers with such duties as cargo inspection, traffic management, and pedestrian control.
- In December, INS played a major role in the "Smart Border" Declaration signed by Homeland Security Director Tom Ridge and Canadian Minister of

Foreign Affairs John Manley. Also, I have recently returned from a trip to Mexico with Governor Ridge, where we discussed INS participation in bi-national cooperative security arrangements.

- The reduction of backlogs and the improvement of services by INS has long been a subject to which the Attorney General, the President, and I are strongly committed. I want to share some statistics that reflect significant improvements made in the delivery of services:
- In 1999, the average wait for adjustment of status applications was 30 months. Today, it is down to 13 months.
- We are now completing 75,000 adjustment of status applications a month, triple the number three years ago.
- The average waiting time for the processing of naturalization applications, which was two years or longer in 1999, has been cut by more than half. I want to emphasize that our efforts to reduce backlogs will not compromise the national security. Our plans for reducing the backlog include quality control procedures to ensure that only deserving applicants receive immigration benefits.

Although I only began this job in August, I hoped to be further along by now with management changes at INS, particularly the restructuring of the agency. A few days ago, I made a number of important personnel changes in upper levels of management at INS. I will be making additional personnel and structural changes in the very near future that are critical to improving our performance. I have a fiduciary duty to the American people to fix this agency and I am determined to move ahead.

Following up on the President's commitment to reform INS, in November 2001, the Attorney General and I announced a major restructuring of the INS. The INS restructuring plan is a fundamental reform that splits service and enforcement into two distinct bureaus. It will clarify and improve the chain of command at INS and increase accountability.

The plan was presented in November, and includes numerous positive changes. Just recently, I moved forward on three management reforms: establishing the positions of Chief Financial Officer and Chief Information Officer, and creating an Office of Juvenile Affairs. I am pleased to announce that yesterday we received a letter from the House Commerce, Justice, State Appropriations Subcommittee concurring in INS moving forward with the restructuring plan.

In the meantime, I have undertaken a number of information technology initiatives, many of which I previously discussed. In addition to expediting the development of SEVIS, and expanding deployment of ENFORCE and IDENT, I have moved forward on key elements of the agency's Enterprise Architecture plan and established an inter-agency project office to develop and implement an entry-exit system. The emergency supplement provided \$39 million for information technology infrastructure. The FY 2003 budget requests an additional \$83 million for this effort and \$300 million for the entry-exit system. We look forward to Congress' support for these requests.

Mr. Chairman, all of us at INS want to improve operations and performance. I have seen significant actions and hard work undertaken by our people. The INS and the Department of Justice have moved forward on numerous important initiatives to enhance our Nation's security and we will continue to make improvements to enhance both our law enforcement and service operations. I want to work closely with the Congress, particularly on improving our information technology capabilities. I look forward to moving forward together in a positive way to improve systems for protecting our borders and our citizens, native born and naturalized. I look forward to answering your questions.

Mr. GEKAS. We thank the gentleman.

And we turn to the next witness, Tom Blodgett.

TESTIMONY OF TOM BLODGETT, MANAGING DIRECTOR, BUSINESS PROCESS SOLUTIONS, AFFILIATED COMPUTER SERVICES, INC.

Mr. BLODGETT. Mr. Chairman, and Members of the Subcommittee, my name is Tom Blodgett, and I'm an officer of Affiliated Computer Services and Managing Director of ACS's Business Process Solutions Division.

ACS is pleased to assist the Subcommittee in its review of the facts surrounding the March 2002 INS notifications mailed to Huffman Aviation. Mr. Chairman, I have submitted a more details statement for the record, and will offer the highlights in my opening statement.

We want to note at the very beginning of our testimony, that while ACS is confident we performed all services timely and correctly under our contract with the INS, we are concerned American citizens who have shared in the grief of the September 11 tragedy, and we fully appreciate the sensitivity of this matter. We are committed to assisting our public officials in any way possible to improve our Government's information processing capabilities for the protection of all American citizens.

Affiliated Computer Services, headquartered in Dallas, Texas, provides business process outsourcing and information technology solutions to commercial and Government accounts. ACS has revenues of \$3 billion, employs 35,000 people, operates in 35 countries, and has 500 offices. ACS' Federal Government clients include the Office of the President, the U.S. House and Senate, the Pentagon, all branches of the military, the Department of Education, the Department of Labor, as well as the Immigration and Naturalization Service.

In support of the INS contract INS—or ACS operates a high volume back office facility in London, Kentucky for the processing, including microfilming, data entry, and storage of multiple INS forms including I-94 forms and I-20 forms. Specific to I-20 forms, which also could be called applications for student status change, we receive completed forms from INS service centers, schools and ports of entry. Our process is as follows. First of all the forms are scanned, microfilmed and certain data is keyed off the forms. Secondly, the data is returned to INS in microfilm and electronic form. Thirdly, the original form is stored by ACS for a period specified in the INS contract. Fourth and finally, after expiration of the contractual storage period, ACS mails the original form to the originating school. ACS has no involvement in the review, evaluation or determination of INS visa approvals.

In 2001 we processed approximately 575,000 I-20 forms and nearly 30 million I-94 forms. Our contract provided that ACS, "shall store all original source documents for a period of 180 days." After expiration of this mandatory storage period ACS was required to mail the original form to the originating school. This mandatory storage period has been changed to 30 days under our new contract for forms received after December 18, 2001.

Mr. Chairman, Members of this Committee, in conclusion, we are confident that ACS performed in accordance with the INS contract, and I would be happy to answer and respond to any questions.

[The prepared statement of Mr. Blodgett follows:]

PREPARED STATEMENT OF THOMAS BLODGETT

Mr. Chairman and Members of this Subcommittee, my name is Thomas Blodgett. I am an officer of Affiliated Computer Services, Inc. ("ACS") and Managing Director of ACS' Business Process Solutions division.

INTRODUCTION

ACS is pleased to assist the Subcommittee in its review of the facts surrounding the March 2002 INS notifications mailed to Huffman Aviation. We want to note at the very beginning of our testimony that while ACS is confident we performed all services timely and correctly under our contract with the Immigration and Naturalization Service ("INS"), we do regret that the original I-20 INS forms submitted by Huffman Aviation on behalf of the subject terrorists were not removed from the normal mailings of original I-20 forms in March 2002. We are concerned American citizens who have shared in the grief of the September 11 tragedy and we fully appreciate the sensitivity of this matter. We are committed to assisting our public officials in any way possible to improve our Government's information processing capabilities for the protection of all American citizens.

ABOUT ACS

ACS is headquartered in Dallas, Texas and provides business process outsourcing, information technology solutions and systems integration services to commercial and government clients. ACS has revenues of \$3 billion, we employ over 35,000 people, operate from 35 countries and have over 500 office locations. We are a publicly traded company on the NYSE, traded under the symbol "ACS."

Our services to Federal, state and local governments support government programs for health and human services, public safety, information systems, municipal services, and defense-related work. ACS' federal clients include the Department of Education, the Department of Labor, the U.S. House of Representatives and the U.S. Senate, the Department of Defense, all branches of the military, as well as the INS. Our state and local government services span nearly all 50 states.

ACS SERVICES PROVIDED TO INS

ACS operates a back-office microfilm, data entry, and storage facility in London, Kentucky that performs high-volume transaction processing for the microfilming, data entry, and storage of multiple INS forms, including I-94 and I-20 forms. Specific to I-20 forms (applications for student status), we receive completed forms from INS service centers, schools and ports of entry. Our process is (1) the forms are scanned, microfilmed and certain data is keyed off of the forms; (2) the data is returned to INS in microfilm and electronic form; (3) the original form is stored by ACS for a period specified by our INS contract; and (4) after expiration of the contractual storage period, ACS mails the original form to the originating school. ACS has no involvement in the review, evaluation or determination of INS visa approvals. In 2001 we processed approximately 575,000 I-20 forms and 30 million I-94 forms.

ACS has provided these microfilming, data entry and storage services to INS directly and through predecessor companies acquired by ACS since 1994. Prior to winning a new prime contract with the INS for these services effective December 18, 2001, ACS provided these services as a subcontractor. The prior subcontract provided that ACS "shall store all original source documents for a period of 180 days." See *Exhibit A attached*. After expiration of this mandatory storage period, ACS was required to mail the original form to the originating school.

ACS is currently providing these processing services pursuant to a Blanket Purchase Agreement (BPA), dated October 22, 2001, between INS and ACS Government Services, Inc., a subsidiary of ACS. The BPA became effective on December 18, 2001, and covers the Non-Immigrant Information System (NIIS) and Student/School (STSC) System Support Services. Like the prior subcontract described above, the BPA requires ACS to store original forms, including the I-20 forms. The following requirement is set forth on page 6 of the BPA: "The Contractor shall also be required to safeguard the original paper forms for a specified period, then destroy them appropriately. While they are safeguarded, the Contractor may be required to locate specific forms on request, and to return them to the INS for forensic purposes." See *Exhibit B attached*. Page C-5 of Attachment C to the BPA changes the mandatory storage period from 180 days to 30 days for I-20 forms and requires ACS to "[r]eturn page 1 of the I-20 to the school thirty (30) days after processing." See *Exhibit C attached*. Therefore, for forms received on and after December 18, 2001 ACS is required to store the original forms for 30 days rather than 180 days. At the end of the mandatory storage period ACS mails page 1 of the form to the originating school and destroys the rest of the original document.

FACTS RELEVANT TO THE MARCH 2002 MAILING

In August 2000 Huffman Aviation filed I-20 applications with INS to change Atta's and Al-Shehhi's visas from tourist to student status. INS approved the requested changes in July and August 2001. On September 24, 2001 ACS received the completed I-20 forms for microfilm, data entry and storage for the mandatory 180-day period. ACS processed the I-20 forms and returned the microfilm and electronic data back to INS and stored the forms as required by contract. The BPA changing the 180-day storage period to a 30-day storage period went into effect December 18, 2001 for I-20 forms processed on and after that date. The I-20 forms then in 180-day storage continued in that status until February 27, 2002 when INS requested that ACS begin mailing all of the I-20 forms then held in 180-day storage status to the form originators. On March 5, 2002 ACS did an automated bulk mailing of approximately 4,000 I-20 forms. The Huffman Aviation forms for Atta and Al-Shehhi were part of the 180-day storage and were mailed to Huffman Aviation as part of the March 5, 2002 mailing.

ACS generally receives around one request per month from INS to pull documents. These requests usually are for I-94 forms. We received no requests from INS to pull any documents related to Atta or Al-Shehhi. As INS' processor, ACS is required to treat all documents as confidential to INS and is not authorized to review or pull documents unless requested by INS.

Again, Mr. Chairman, while I am certain that ACS performed as our contract required us to do, I want to emphasize again that we share all Americans' grief at the tragedy suffered by our Nation, and we fully appreciate the sensitivity of this issue. We continue to stand ready to assist our public officials in any way possible to improve the Government's information processing capabilities for the protection of all citizens. Thank you.

EXHIBIT 1

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			
1. AMENDMENT/MODIFICATION NO. 000001	2. EFFECTIVE DATE 08/07/98	3. REGULATION/PURCHASE REG. NO. DMD-8-00291	4. PROJECT NO. (if applicable)
5. ISSUED BY Immigration & Naturalization SVC Headquarters Procurement 25 I Street, N.W., Room 2208 Washington, D.C. 20536	6. CODE HQPRCT	7. ADMINISTERED BY (if other than Item 5)	8. CODE
9. NAME AND ADDRESS OF CONTRACTOR (City, State, county, State and ZIP Code) UNITBAND, INC. HIGHWAY 5 WEST PO BOX 1059 BELCOURT, ND 58316		10. PIN: 450223071	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS		12. AMENDMENT OF SOLICITATION NO.	
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.		13A. DATED (SEE ITEM 11) 13B. MODIFICATION OF CONTRACT/ORDER NO. COB-6-C-0030 COB-8-P-0628 0876-96-804721 13C. DATED (SEE ITEM 11) 07/13/98	
12. ACCOUNTING AND APPROPRIATION DATA (if required) 1581217/01DS.111U.29U.00		Increase \$1875000.00	
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.			
<input checked="" type="checkbox"/> A. THIS CHANGE ORDER IS FILED PURSUANT TO (Specify authority) THE CHANGE ORDER AUTHORITY IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. FCM 15A. <input checked="" type="checkbox"/> B. THIS AMENDED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.102(b). <input type="checkbox"/> C. THE SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <input type="checkbox"/> D. OTHER (Specify type of modification and authority)			
IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.			
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UOP section headings, including solicitation/contract subject matter where feasible). 1. This modification is hereby provided to cover data entry services incurred against Task Order COB-8-P-0628. This modification also amends the above referenced task order, to incorporate the following changes. See page 3, Task Order SOW. delete. The Contractor shall store all original source documents for a period of 120 days, except for I-94T and I-92 documents. The I-94T (continued)			
Except as provided herein, all terms and conditions of the document referenced in Item 8A or 10A, as herebefore changed, remains unchanged and in full force and effect.			
15A. NAME AND TITLE OF ISSUER (Type or print)	15B. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	15C. DATE SIGNED	
	JOHN A. RUSSO, JR.	8/12/98	
15D. DATE SIGNED	15E. SIGNATURE OF CONTRACTING OFFICER	15F. DATE SIGNED	
	<i>John A. Russo, Jr.</i>	8/12/98	
15G. SIGNATURE OF CONTRACTING OFFICER 15H. DATE SIGNED			
15I. SIGNATURE OF CONTRACTING OFFICER 15J. DATE SIGNED			

CONTINUATION SHEET		REF. NO. OF DOC. BEING CONT'D.		PAGE	OF
		CON-6-C-0030 / 0876-26-604721 CON-S-P-0628 000001		2	4
NAME OF OFFEROR OR CONTRACTOR ONIBAND, INC.					
ITEM NO.	SUPPLIER/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	<p>shall be stored for a period of one (1) year, and the I-92 shall be stored for 180 days.</p> <p>Insert: The Contractor shall store all original source documents for a period of 180 days, except for I-94T. The I-94T shall be stored for a period of one(1) year.</p> <p>See page 9, Task Order SOW. Delete the following reports: 1. NKIS Monthly Report 2. Deficient Document Report 3. Visa Waiver Pilot Receipt Summary by POB/Country 4. Visa Waiver Pilot Receipt Summary of Ports of Entry/Country from Unauthorized Countries (Year to Date Statistics)</p>				
1	<p>In accordance with FAR 32.703 Contract Funding Requirements, the total amount obligated under this contract is hereby increased by \$1,875,000.00 from \$41,463,487.00 to \$43,338,487.00.</p> <p>SHIP TO: IMMIGRATION & NATURALIZATION SERVICES Corporate Systems Branch 425 I Street NW WASHINGTON DC 20536 ATTN: ARNOLD KUPERSTEIN</p> <p>FOB: Destination</p>	1	LT	\$1875000.00	\$1875000.00

EXHIBIT B

Immigration and Naturalization Service *NIIS/STSC BPA*

The Contractor shall also be required to safeguard the original paper forms for a specified period, then destroy them appropriately. While they are safeguarded, the Contractor may be required to locate specific forms on request, and to return them to the INS for forensic purposes.

The Contractor provides support to the INS Transit Without Visa (TWOV) Program as well. This support includes the establishment and operation of a tracking system that will identify specific cases where an airline carrier has not complied with applicable Federal regulations concerning the TWOV program. An example of a noncompliance might be where an arrival form has been provided for a specific individual, but there is no corresponding departure form indicating that the individual actually departed within the required time frame. In these cases, the Contractor will generate and issue Notices of Intent to Assess Liquidated Damages to the airline in question. Clearly the exercise of this role will require the Contractor to avoid any and all relationship with carriers in the airline industry, other than arms-length use of air transportation under standard commercial terms. The Contractor has other TWOV support and reporting responsibilities as well.

The end result of the Contractor's services shall be the accurate, expedient, and cost-efficient capture of data that will be transmitted to and processed by the INS NIIS and STSC Systems. This document is not intended to dictate either design or process solutions. The operations required to complete the electronic records processing under this SOW can often be accomplished both manually or through automated hardware and software. The intent of the Government is to minimize technical and schedule risk, maintain customer service commitments, while simultaneously minimizing life-cycle costs

1.2 Blanket Purchase Agreement

In the spirit of the Federal Acquisition Streamlining Act, the Immigration and Naturalization Service and

ACS Government Services, Inc.

enter into a single blanket purchase agreement (BPA) to support the Office of Inspections NIIS/STSC Program. The intent is to further reduce the administrative costs by acquiring commercial items and services from the General Services Administration (GSA) Federal Supply Schedule Contract number GS- (GS-35F-4415G).

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: the search for sources; the development of technical documents and solicitations; and the evaluation of bids and offers. This BPA will further decrease costs, reduces paperwork and save time by elimination the need for repetitive, individual purchases from the Schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

EXHIBIT C

ATTACHMENT C: SPECIFIC FORMS/DOCUMENTS PROCESSING REQUIREMENTS

I-17, I-17A, and I-17B

- If the school code is omitted for a new school, return to the INS District Office for completion and resubmission.
- If the school code is omitted for an existing school, the code shall be obtained from the school code table. If the school code is not on the school code table, then the document shall be returned to the INS District Office for completion and resubmission.
- If Code dates are missing in Item 7, then obtain the dates from the information contained in Item 6.

I-20A/B I-20M/N

- Return page 1 of the I-20 to the school thirty (30) days after processing.
- School Code shall be coded from table provided by INS.
- If the school code cannot be obtained from the table, the document shall be returned to the INS District Office for completion and resubmission.
- Code Major field of study to five character alpha code.
- Convert year/semester to months on length of course of study.

I-702 School Violation

- If the school code is omitted, return document to the INS District Office for completion and resubmission.

I-538A, I-506A, I-539A, and I-530

- If the admission number is missing, return to the INS File Control Office for completion and resubmission.

C - 5

Mr. GEKAS. Before we proceed with the next witness, let the record indicate that the lady from California, a Member of the Subcommittee, Ms. Lofgren, is present.

Mr. Dekkers.

TESTIMONY OF RUDI DEKKERS, CEO, HUFFMAN AVIATION INTERNATIONAL, INC.

Mr. DEKKERS. Good afternoon, Mr. Chairman and Members. Thank you for asking me here. I feel like I don't belong on this table because I'm just having a small flight school. But anyway, I

will give you my testimony. I will concern my 5 minutes or a couple minutes talk to you in the INS matter.

When Atta and Al-Shehhi came to my facility on July 1 they inquired information about how much they have to pay, et cetera, about flying. That is a different situation than normal. Normally foreign students are calling, inquiring over the Internet from their home base, countries overseas. When they inquire for that information, we sent them that. After a while they get back to us and state they want to fly with us. We send them an I-20 form. We fill out the form according to course they're going to follow. We send that form to the students. They go to their United States Consulate in their country. The United States Consulate checks out the information. If there's enough funds, if the person is really the person, and then the consulate stamps it and the student takes it with him to the border. The border will see the I-20 form and the student can continue.

That's a different situation. Atta and Al-Shehhi came through my front door. When I have foreigners coming in—and I'm a foreigner myself; I'm a guest in this country—I am watching a little bit the rules sharper than if I would be maybe an American. Why? Because I want to do it by the book.

We know, as a flight school, when a student walks in and they want to fly a professional flight course, and they're continuing studying, so they're not part time, they need to have a change of status. By the way, a change of status needs to be filled out by the student, individual themselves, not by the school. The school has the obligation to send in an I-20 form in case if it's an M1 student visa. We determined that Atta, who had a B-1/B-2 visa and Al-Shehhi, who had a tourist visa, that we wanted to go for the M1 because they were not part time, they were full time. There are a lot of rules in FAA—INS, that you could train these people even without an M1. My only reason, by being happy what I stated, to receive these forms was that I could show the world we asked for an M1 visa.

So I want to specifically tell you here, this case, when different than normal, they came in the front door. We sent to I-20 form to Texas INS, and we had the approval receipts from ACS. So it's a little bit a different scenario than a normal scenario.

I think this is what I have to say. Thank you, Mr. Chairman.

[The prepared statement of Mr. Dekkers follows:]

PREPARED STATEMENT OF RUDI DEKKERS

On July 1st, 2000, Mohamed Atta and Marwan Alshehhi arrived at Huffman Aviation in Venice, Florida to inquire about taking flying lessons. After a description was given about our flying school, they said they would let us know what they would decide about the flying lessons.

On July 3rd, 2000, Atta and Alshehhi came back to Huffman Aviation to sign up for lessons. Atta already held a Private Pilot License but wanted to advance and get his Commercial License and Alshehhi was there to obtain both a Private and Commercial License. They had stated they were unhappy with a flying school they attended up North.

We told them the cost for the licenses they wanted was about \$18,000 per person with \$1,000 down payment and \$1,000 weekly thereafter paid by Atta with a check drawn from a First Union account.

They inquired about a place to stay. It is normal procedure for a flying school to offer proper accommodations for students whom are learning to fly. However, at the time Huffman Aviation had no such accommodations. Due to the fact they came

through the front door without advanced notice for Huffman Aviation to take care of a room. Rudi Dekkers, owner of Huffman Aviation, knew that Charles Voss, CFO of Huffman Aviation, rented out rooms in his home. Atta and Alshehhi rented a room from Voss, but after one week were asked to leave due to excessive rudeness from Atta to Mrs. Voss. After their eviction there was no mention of where they were staying.

Atta and Alshehhi started their flying lessons on July 6th, 2000 in a Cessna 172, N734EE with flight instructor Thierry Leklou. Then in August Leklou went to the Chief Flight Instructor, Dan Purcell, to complain that Atta and Alshehhi had behavioral problems and that they were not following instructions, they also had bad attitudes. Purcell asked Dekkers if it would be okay to expel them from the program. Dekkers said that if necessary it would be acceptable to expel them from the program. Purcell had a meeting with both Atta and Alshehhi to let them know there had been complaints about their behavior and that if they would not conform they would have to leave the program. Their behavior changed and they were able to continue their lessons without any further problems throughout the course. On August 29th, 2000, Nicky Antini, Student Coordinator of Huffman Aviation, sent in I-20M's to the INS along with a copy of their passports.

Dekkers, on many occasions tried to communicate with Atta, but Atta was very unfriendly with everyone. Dekkers knew that Atta had lived in Hamburg, Germany and one day spoke to him in German as a way of friendly communication. Atta was stunned and quickly walked away. Alshehhi on the other hand was very friendly and willing to communicate with everyone. He always seemed to walk behind Atta, we had the impression that Atta and Alshehhi were family.

In December 2000, Atta and Alshehhi took their last flight tests. Atta had approximately 270 hours of total flight time and received his Instrument, Single/Multi-Commercial Certification. Alshehhi was granted the same certification along with a Private Pilot License. Dave Whitman, the local FAA designated examiner, gave them their exams which they passed with average grades and they were given temporary FAA licenses for 120 days.

On December 24th, 2000, Atta and Alshehhi rented a Warrior (N555HA) from Huffman Aviation for a flight. They landed in Miami when the engine from the aircraft stalled (shutoff) on the taxiway where they abandoned it. They called Huffman Aviation for taxi fare back to Venice but were denied by Huffman Aviation. One to two days later, Huffman received a phone call from the Miami FAA regarding the Warrior that had been unattended for a half-hour on the runway. Dekkers got in contact with Bob Martin, the Operations Manager of Huffman Aviation, who then contacted the FAA. Martin had several phone conversations with the FAA and upon their request sent all maintenance records on the Warrior to the FAA. Nothing else was reported back from the FAA to Huffman regarding the Warrior.

Atta and Alshehhi returned to Huffman Aviation to make final payments on their outstanding bills. Atta paid a total of \$18,703.50 and Alshehhi paid a total of \$20,917.63. Because they were not taking any more flying lessons, they were asked to leave the facility due to their bad attitudes and not being liked by staff and clients alike. Huffman never heard about or from them again until September 11th, 2001.

On September 12th, 2001 at 3:00AM, the FBI Chief Investigator Kelly J. Thomas called Huffman's General Manager Dale Krauss to help them with files on Atta and Alshehhi. Krauss was no longer working for Huffman Aviation so Krauss gave the FBI Susan Desantis' phone number who was Dekkers' assistant. Desantis arrived at Huffman at 4:00AM to give the FBI the files on Atta and Alshehhi. Desantis asked if she should call Dekkers, the FBI told her this was not necessary. At 7:00AM, while the FBI was still looking over the files and computers, Desantis called Dekkers who was shocked and annoyed he had not been contacted earlier. The FBI waited for Dekkers upon Dekkers' request. Dekkers immediately left for Huffman from Bonita Springs, Florida. Dekkers let the FBI know there were more Muslim student files. Therefore the FBI ended up taking over 100 files and 2 computers. Dekkers informed the FBI he also owned a flight school in Naples, Florida named Ambassador Airways. This furthered no reaction.

Several days after September 11th, 2001, the Naples FBI contacted Dekkers and asked for files from students. The FBI asked if Dekkers could recognize the other terrorists. Dekkers did not recognize any other terrorist. The FBI took several files and returned them about 3 months later.

On Friday, March 8th, 2002, a meeting had been set up with CNN Miami to do an interview regarding the six-month anniversary of September 11th, 2001 for Monday, March 11th, 2002. Dekkers opened the mail that Monday morning to eerily discover the original I-20M's (student visa application) for Atta and Alshehhi. It is over a year since Atta and Alshehhi left Huffman Aviation and six months since their

deaths. Dekkers was relieved to see the paperwork, but not surprised. It usually takes a long time for visas to be returned from the INS. Dekkers was relieved because now he could prove that his company had carried out the proper procedures regarding Atta and Alshehhi's I-20M's. Huffman had previously been castigated for not following proper procedures. This new information was brought to the attention of CNN.

On Thursday, March 14th, 2002, President Bush gave a press conference and answered a question regarding the I-20M's that had arrived at Huffman Aviation. He replied there would be a full investigation. At 4:30PM of that day, an INS officer from Tampa arrived at Huffman requesting that all original documents be returned. Dekkers was more than willing to cooperate with the government but was reluctant to surrender the documents until a subpoena was produced by the INS officer from his briefcase. Dekkers immediately surrendered the documents.

On the way back home to Bonita Springs, Florida on Thursday, March 14th, 2002, Dekkers received a phone call from the office of the Assistant General Attorney in Florida named Mr. Marino. Marino wanted to discuss the entire incident and asked if Dekkers would bring along the original I-20M's on Friday, March 15th, 2002. Marino was surprised to discover that Dekkers was no longer in possession of the original documents that were taken by the INS. A meeting has been set up for Dekkers and Marino to meet on Monday, March 18th, 2002 at 12:00PM in Naples, Florida.



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Back in the Lion's Mouth

The INS had two chances to nab Mohamed Atta. It failed both times.

BY BOB NORMAN

When September 11 ringleader Mohamed Atta entered the United States this past January 10, federal inspectors mistakenly gave him two extra months on his visa, *New Times* has learned.

While immigration policy dictated that Atta be allowed six months in the country after returning from a trip to Spain, inspectors at Miami International Airport gave him eight months, Immigration and Naturalization spokesman Rodney Germain said Tuesday. The wrongful visa extension allowed the Egyptian to remain legally in the United States until September 10, the day before Atta and his underlings hijacked four planes and killed thousands in New York, Washington, D.C., and Pennsylvania.

In a remarkable display of gall, Atta made a mistake of his own: He challenged the INS on behalf of his frequent companion and fellow hijacker, Marwan Al-Shehhi, says Stanley Mungaray, vice president of the INS union chapter in Miami. Al-Shehhi, who is suspected of piloting the second plane to hit the World Trade Center, had been given only a six-month visa extension when he entered the United States this past January.

So Atta, with Al-Shehhi in tow, made a trip to the INS building in Miami this spring and complained that his friend should also have been given eight months, Mungaray reports.

The INS, however, refused to grant Al-Shehhi the extra time. Instead,

details

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officials reduced Atta's visa extension to six months. "Six months is the admission time given to people, and Atta got eight months," says Germain, who wouldn't provide the date of the pair's meeting with immigration officials. "Eight months was given to him by mistake, and that was corrected."

Still, this new information illustrates just how little fear Atta -- the man Osama bin Laden referred to as a "brother" on the recently released videotape -- had of the nation's immigration authority.

It also adds to the evidence that the INS bungled Atta's January 10 admission after his trip to Madrid. Atta, *New Times* disclosed October 18, tried to get past a primary inspector using an expired tourist visa, stating that he planned to be a student. An inspector detained Atta and sent him to a room known as "hard secondary," where he was questioned further. In the end, inspectors decided to let him into the country. INS officials have defended their decision to allow Atta's entry, but the agency's chief spokesman, Russ Bergeron, conceded to *New Times* that, had inspectors strictly enforced immigration laws, Atta would have been expelled.

Atta's later visit to INS headquarters provided immigration officials with a second close encounter with the terrorist, and again, the agency failed to investigate him -- despite the apparently fraudulent games he had been playing with his visa. "I guess he knew that he wouldn't get caught," Mungaray surmises. "It's just sad that he was admitted in the first place."

Adds José Touron, another INS union official: "He was daring -- he put his head right back in the lion's mouth. It's amazing they didn't take him to investigations."

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5/1/2002

Mr. GEKAS. We thank the gentleman, and now turn to the final witness, Mr. Cutler.

TESTIMONY OF MICHAEL CUTLER, SPECIAL AGENT, NEW YORK DISTRICT OFFICE, IMMIGRATION AND NATURALIZATION SERVICE

Mr. CUTLER. Chairman Gekas, Ranking Member Ms. Jackson Lee, Members of the Congress, distinguished members of the panel, ladies and gentlemen.

I want to start out by commending Ms. Jackson Lee for her bill on restructuring the INS, and I especially commend her for her efforts as a leader of this Subcommittee in Congress.

I greatly appreciate this opportunity that she has provided to me to share my views and perspectives which I have acquired during my roughly 30 years as an Immigration officer. I began my career with the INS in 1971 as an Immigration inspector, and at that time I was assigned to John F. Kennedy International Airport in New York City. During the course of that assignment, I was de-

tailed for approximately 1 year to an examinations unit known as the I-130 Unit.

In August 1975 I became a Special Agent. I rotated through virtually every squad within the Investigations Branch of the INS at NYC during my tenure as a Special Agent.

In 1991 I was promoted to my ultimate position of Senior Special Agent and assigned to the Organized Crime Drug Enforcement Task Force, and this assignment required that I worked closely with other agencies to investigate, apprehend and prosecute aliens who were involved in narcotics trafficking and other crimes.

The INS is responsible for enforcing laws that govern the entry of aliens into the United States as well as those laws that are involved in granting a variety of immigration benefits to aliens who are in the United States. It was in this latter mission that the INS apparently sent notifications to two terrorists that they were granted permission to attend flight school in the United States, 6 months after they carried out their suicide missions in our country.

The fact that the system failed in such an embarrassing and public way should serve as an alarm that the INS has many serious problems which can no longer be ignored. We are in a state of war, and if we are to safeguard our Nation, we first need to secure our borders, and we also need to make certain that our ability exists to enforce those laws which govern the entry of aliens into the United States, as well as their continued presence in our country. These problems cannot be solved easily, but they must be solved effectively, for our Nation's very survival is at stake.

Although I did at one time act as an examiner, by experience with the process of adjudicating applications is not current. However, I can tell you that from what I have been hearing and reading, the INS appears to have created an unwieldy system to carry out this important aspect of the service side of the operation. Besides displaying ineptitude, this failures by the INS calls into question the procedures that the adjudicators follow. We need to determine if they are required, for example, to check the name on each and every application against a database similar to the one that's utilized by Immigration inspectors at ports of entry to determine if the alien named in the application is wanted by other law enforcement agencies or is otherwise ineligible to receive the benefit that they are applying for. We also need to know if there is any meaningful quality control built into the system to make certain that the examiners are in total compliance with the established procedures.

Finally, we need to determine what if anything is being done by the INS in seeking to uncover instances of fraud in the filing of applications for immigration benefits. The obvious goal of criminal aliens, once they enter the United States, is to be able to remain in the United States without fear of being deported. The easiest way for them to accomplish this goal is through fraud, whether it's by engaging in a marriage of convenience, obtaining a fraudulent labor certification, or submitting a claim for an immigration benefit that the alien in question would not be entitled to if all the facts concerning their case were known.

It is often said that you only get one opportunity to make a first impression. Generally speaking, the first laws that aliens entering

the United States encounters are those laws that the INS is supposed to enforce. When the INS fails to effectively, consistently and fairly enforce these laws, we are sending a very dangerous message to aliens seeking to enter the United States. In effect, we're telling them that not only can they expect to get away with violating our laws, but they can anticipate to be rewarded for violating our laws.

The apprehension of aliens who are illegally in the United States is the responsibility of the special agents. These dedicated employees are also tasked with many additional responsibilities including uncovering fraud, uncovering alien smuggling rings, working cooperatively with other agencies and various task forces, and enforcing employer sanctions provisions of the Immigration Act. We have recently heard that the INS is also going to need to develop an effective departure control system to track foreign students and visitors in the United States. Presumably the goal will be to arrest those people who are found to be out of status within the United States. Currently, according to published statistics, there are fewer than 2,000 special agents in the United States, and at present there's roughly 100 special agents to cover the southern half of the State of New York, including the City of New York. Who's to carry out these vital missions?

I've come to think of the INS law enforcement program as a tripod. The Border Patrol is responsible for enforcing the laws between ports of entry. The Immigration inspectors are charged with the responsibility of enforcing immigration laws at ports of entry. And the special agents are supposed to back up both of these other two divisions. Each of these components of the enforcement program needs to be emphasized equally. Just as a camera's tripod needs to have 3 legs of equal length, the enforcement tripod needs to rest equally on each of its three legs. If you shorten one of the legs on your camera's tripod, it falls over. This is the reality of the INS enforcement program. If we do not boost resources allocated to the interior enforcement mission, as typified by the special agents, then the entire enforcement program becomes ineffective.

We need to have many more special agents. We need to have an agency that functions effectively. At present each district office operates more as a franchise than as a component of a paramilitary organization. While I agree that each office needs to have some autonomy to take regional variations into account, the overall functioning of the agency should stress a direct chain of command from headquarters to each and every field agent throughout the United States.

And finally, the INS needs to take into account the fact that it now suffers from a terrible attrition problem. We spend between 50 to \$100,000 for special agents, to recruit and train them. It takes approximately 5 years for each person hired off the street to become truly effective and proficient as a special agent. If we are unable to hold on to these qualified people, to prevent them from going on to other agencies, then we find that we keep spending an awful lot of money to keep on this revolving door process of recruiting and training, only to watch them leave. Attrition and morale desperately need to be addressed if the INS is to be effective in carrying out its many serious missions.

I thank you for your time. I look forward to your questions.

[The prepared statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MICHAEL CUTLER

Chairman Gekas, Congresswoman Jackson Lee, members of the Congress, distinguished members of the Panel, ladies and gentlemen, I greatly appreciate this opportunity to share my views and perspectives which I have acquired during my roughly 30 years as an immigration officer. I began my career as an Immigration Inspector assigned to John F. Kennedy International Airport in New York City. During the course of that assignment I was detailed for approximately one year to an examinations unit known as the I-130 Unit.

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We also need to determine what, if anything, is done by the INS in seeking to uncover instances of fraud in the filing of applications for immigration benefits. The obvious goal of criminal aliens, once they enter the United States, is to be able to remain in the United States without fear of being deported. The easiest way to accomplish this goal is through fraud, whether it is by engaging in a marriage of convenience, obtaining a fraudulent labor certification, or submitting a claim for an immigration benefit that the alien in question would not be entitled to if all of the material facts in his or her case were known.

It is often said that you only get one opportunity to make a first impression. Generally speaking, the first laws that aliens entering the United States encounter are those laws that the INS is supposed to enforce. When the INS fails to effectively, consistently and fairly enforce these laws, we are sending a very dangerous message to aliens seeking to enter the United States. In effect we are telling them that not only can they expect to get away with violating our laws, they can anticipate being rewarded for violating our laws!

The apprehension of aliens who are illegally in the United States is the sole responsibility of the Special Agents. These dedicated employees are also tasked with the many additional responsibilities including uncovering fraud, uncovering alien smuggling rings, working cooperatively with other agencies in various task forces. We have recently heard that the INS is going to need to develop an effective departure control system and track foreign students in the United States and presumably arrest those who violate their status. Currently, according to published statistics, there are fewer than 2000 Special Agents of the INS nation-wide. At the present time, there are approximately 100 Special Agents to cover the southern half of the

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I welcome your questions.

Mr. GEKAS. We thank the gentleman, and we will proceed now with a round of questioning beginning with the prerogative of the Chair to do exactly that.

I must say that I'm a little bit disappointed, Mr. Ziglar and Mr. Blodgett, that you did not lay before us a chronology of events having to do with Atta and his coconspirator, up to and including March 11 when the aviation school reported the receipt of that status report. I have to—I want to dredge from you, if I can, how this happened and when Atta did what in order to give us a full picture of what went wrong here. And I must ask you that if we do not receive the answers today on this chronology which I am portraying to you, that you would—you would fill in with written answers to those questions.

For instance, we know now, do we not, that Atta initially entered the United States on June 3, 2000, on a visitor's visa? Is that correct? That's the first appearance of this individual in the United States.

Commissioner ZIGLAR. That's correct, Mr. Chairman.

Mr. GEKAS. What visitor's visa was—what kind of was it?

Commissioner ZIGLAR. He had a B-2. Mr. Chairman, I believe a lot of that is in my full testimony.

Mr. GEKAS. Pardon me?

Commissioner ZIGLAR. I believe a lot of the information you're looking for is in my full testimony. It's—

Mr. GEKAS. Well, I hope it is.

Commissioner ZIGLAR. Yes, sir. And I think we've also sent you a letter about that.

Mr. GEKAS. Well, we'll review it.

Commissioner ZIGLAR. Sure, absolutely. Glad to.

Mr. GEKAS. A business visitor's visa?

Commissioner ZIGLAR. A B-2 visitor's—

Mr. GEKAS. And that would have entitled him to be a visitor for how long and for what purposes?

Commissioner ZIGLAR. In this case, he—I believe his admission was until December 2, 2000 under that B-2 visitor's visa.

Mr. GEKAS. That would be the 6 months that—

Commissioner ZIGLAR. 6 months, correct.

Mr. GEKAS [continuing]. Is normally accorded a visitor's visa. Is that correct?

Commissioner ZIGLAR. Correct.

Mr. GEKAS. And then—and for certain it was for visitation, not for study, not for entry into any kind of school?

Commissioner ZIGLAR. Well, he entered under the—we assume, since he went through primary inspection, that he entered as a visitor with no declared intention to be a student. However, the—what we know after—I mean, what, the FBI investigation and that sort of thing, we know is that relatively shortly after he got into the United States, he and this other fellow, Al-Shehhi, started looking around for a flight school. I believe that he first looked in Oklahoma and then ended up in Florida at Huffman and started, actually started his flight training, I believe, in July of 2000, July 17 or July—

Mr. DEKKERS. He started at another flight school first.

Mr. GEKAS. You may yield to—

Commissioner ZIGLAR. Another flight school first.

Mr. DEKKERS. Excuse me.

Commissioner ZIGLAR. Then the next thing that I can recall on the litany is that, in September—and I believe it was September 19, 2000—he and Al-Shehhi applied for the change of status from the B to the M student status, and it was at that point in time where the I-530, I believe it is, and the I-20 were filed as part of the package of applying to have his status changed to an M status.

Mr. GEKAS. Did this follow the fact that they visited the center itself, the aviation center, and the process of application began then? Or do you say it began before that?

Commissioner ZIGLAR. Well, no, he actually—these two fellows actually started taking their training lessons before they had filed for the M change of status. Now, under our regulations at the time, that—and practices, that was acceptable. So Mr. Dekker didn't do anything wrong in terms of the way he did his business.

Mr. GEKAS. It was acceptable for them to switch to a student visa, you're saying, while here as a visitor?

Commissioner ZIGLAR. Well, it was actually worse than that, and that's what I was talking about changing, and that is that he could actually—or they actually started as students in July, before they had filed the application for a change of status. They subsequently filed the application of change of status which relates back, in effect. So, again, I want to make it clear Mr. Dekkers didn't do anything wrong in his business.

Mr. GEKAS. Well, according to our information, the inspector's notes for this circumstance showed that Atta's January 10, 2001, admission showed that he knew—the inspector knew that Atta had been in school for 5 to 6 months. Is that correct?

Commissioner ZIGLAR. Right.

Mr. GEKAS. That would mean that the INS knew that Atta had previously started going to school almost as soon as he entered the United States as a visitor. Isn't that so?

Commissioner ZIGLAR. Well, we would have known in September of 2000 that—September 19, 2000, or some date subsequent to that, because he filed for the change of status at that point in time. Otherwise, between June 3, I believe it is—and I'm doing this from

recollection. June 3 and September 19, 2000, we wouldn't have necessarily known that these fellows were in flight school. When they filed that change of status application—change of status application, at that point in time there was information about the fact that they were intending, at least, to go to school.

Mr. GEKAS. We did know on January 10, did we not?

Commissioner ZIGLAR. In January—now, we're talking about Atta here.

Mr. GEKAS. Yes. I'm specifically talking about Atta.

Commissioner ZIGLAR. Okay. The other guy is much more simple. On January 3, I believe it is, in 2001, Atta left and went to Madrid, I believe, he came back from Madrid on July—on January 10. He presented, apparently—and I have to say this, Mr. Chairman: We don't know all the facts, and we never will know. We've talked to the inspector down there at length. I mean, this guy has thousands of people come through. So he made some notes on the secondary inspection, so we don't know what questions were asked or what was done. So some of this is surmising.

When he came back in on January 10, the inspector was presented, as I understand it, with the B-1/B-2 visa, and also Atta showed him an I-20. I don't know exactly why, but he did. At that point, that triggered the inspector to put the—to put Atta into secondary inspection. The inspector did the right thing. He saw an I-20, and he saw a B, and he wasn't sure what the status of this guy was. So they put him into secondary, and the record that—the sort of cryptic record that the inspector created showed that Atta told him that he had been to school 5 or 6 months.

Now, it may be that Atta said to him at the time—I'm just surmising now—said to him at the time, well, I finished my—I finished my schooling, and I'm coming back in on a B-1/B-2 to clean up my affairs. We have no idea what the issue was.

Mr. GEKAS. What if he had said that? Would that have been permitted?

Commissioner ZIGLAR. Well, yes, because, at least—well, I don't know what the other grounds of inadmissibility might have been at that time, so it's hard for me to make a firm judgment. I wasn't there, I didn't ask the questions. I don't know what the inspector heard. But if he was coming back in on a B-1/B-2, he had a multiple-entry visa.

Now, there is a question that is raised by this because if you look at the time period between December—I'm sorry. Let's see. It was—December 2 was the last date of his admissibility under the first entry, and he actually left on January 3. You would have had—looking at that record, you would have had a 31-day or a 32-day overstay.

Now, the practice, at least in the past, with the INS was that if a status change application has been filed, that doesn't—I mean, that is treated as not making you in an illegally—an illegal situation. And it also doesn't trigger the withdrawing of your visa, as I understand it from the State Department. It's all very complicated regulations. I'm trying to figure them out.

So I would have to speculate—and this is speculation—that the inspector looked at the totality of the circumstances, okay, said, well, this guy had filed a status change, but he had finished his

schooling, and he actually did—our inspector, we know he queried the so-called CLAIMS system for—to figure out whether or not the guy had filed this. So he's finished that, and he's coming back—I assume the guy said to him, Atta said to him, I'm coming back for other business or—I have no idea what the guy said.

So the—it's clear that the inspector made a judgment that there were no grounds of inadmissibility. I can't say that the inspector made the right decision. I can't say he made the wrong decision. We just—it's speculation according to what—

Mr. GEKAS. You're taking that into account in how to improve the system?

Commissioner ZIGLAR. Oh, yes, sir.

Mr. GEKAS. We need to have specific recommendations as to how the inspector's murky decision making there would be erased so that we can have a predictability there. Don't you believe?

Commissioner ZIGLAR. Oh, absolutely. And we're doing a number of—we're doing a number of things here.

As I mentioned in my opening statement, and a little bit more in the testimony, several things we're contemplating here. One is to make sure that when students apply for a status change, that they can't start until they've actually gotten the status change. In other words, if they're going from a B to an M, you got to get your M before you can actually start in school. And I think that's important.

Now, one of the—let me just tell you that from my understanding about why it's been in the past that the INS has allowed students to start before they get their status change was because at one point it took sometimes a year to process these applications for the status change. So the INS said, well, that's not fair to bona fide students.

We have and are moving that—or requiring that that status change application be adjudicated within 30 days, and, in fact, as we sit here, because of the backlog reduction plan that's been—that we've been working on, we now are at two of our service centers at 30 days for processing those status changes. We're at 60 days on the other two, and we will be back to 30 days at the two that are at 60 days within a month. I think I got that right. So that's one.

The other issue that we're contemplating working on is a lot of people come into the United States—I don't know what the exact number, but a lot of folks come into the United States on these visitor visas, and then they turn around, just like Atta and Al-Shehhi did in this case, they turn around and apply for a change of status. Well, that makes it easier for them to get into the country and then apply for their change of status. That's got to change, and we are contemplating exactly how to execute the regulation in order to stop them from doing that.

Mr. GEKAS. The time of the Chair has expired, and expired and expired. The Chair yields 5 minutes to the lady from Texas. Or does the lady prefer I go to Mr. Conyers?

Ms. JACKSON LEE. I'd be happy to yield to Mr. Conyers.

Mr. GEKAS. We recognize the gentleman from Michigan for 5 minutes.

Mr. CONYERS. Chairman Ziglar, you've testified on this matter before in Congress, have you not?

Commissioner ZIGLAR. On this particular issue?

Mr. CONYERS. Yes, before the Appropriations Committee.

Commissioner ZIGLAR. Not on this particular situation.

Mr. CONYERS. You have not?

Commissioner ZIGLAR. No, sir. My appropriations testimony was before this occurred.

Mr. CONYERS. Are you planning to submit a chronology of these two entries and exits into the country as the Chairman requested?

Commissioner ZIGLAR. I believe it's in my testimony, and we've prepared some other material. I think we've sent a letter to the—sent a letter to Chairman Gekas on that. We're very happy to do that.

Mr. CONYERS. Prior to becoming a Commissioner, did you work on immigration policy?

Commissioner ZIGLAR. No, sir.

Mr. CONYERS. Were you an immigration lawyer?

Commissioner ZIGLAR. No, sir.

Mr. CONYERS. Have you ever supervised INS investigators or members of the Border Patrol?

Commissioner ZIGLAR. Prior to my job here now? No, sir.

Mr. CONYERS. Have you ever written or published articles on any aspect of immigration law—

Commissioner ZIGLAR. No, sir.

Mr. CONYERS [continuing]. Or the Immigration and Naturalization Service?

Commissioner ZIGLAR. No, sir.

Mr. CONYERS. Prior to your appointment, did you have any immigration experience at all?

Commissioner ZIGLAR. Well, I mean, I knew a lot of folks who were naturalized citizens and immigrants, but I—no experience.

Mr. CONYERS. Well—

Commissioner ZIGLAR. Congressman, if I could just make one point. That's not hidden from the record. I made that very clear during my confirmation. I made it very clear when I was approached about taking on this job. I don't pretend to be something that I'm not.

Mr. CONYERS. Well, I'm sure of that, and I'm happy that you're making it clear again here.

Now, are you willing to accept full responsibility for the INS actions and misdeeds over the last several months?

Commissioner ZIGLAR. Congressman, as the head of an agency, of course, I do.

Mr. CONYERS. Okay. And have you, in fact, submitted a plan to improve the agency in December of last year?

Commissioner ZIGLAR. Actually, it was in November. Yes, sir.

Mr. CONYERS. Okay. And that was joined in with you by the President of the United States and the Attorney General?

Commissioner ZIGLAR. Yes, sir. It was actually vetted through the White House, National Security Council, the Domestic Policy Council, the Homeland Security Council, and obviously the Attorney General's Office.

Mr. CONYERS. And after all of that and the vetting, last week the White House advised the Immigration and Naturalization Service that it was not going forward with the restructuring plan because of the proposal of the Chairman of this Subcommittee and the work that we were doing; is that not correct?

Commissioner ZIGLAR. If I've been advised so, I'm not aware of it.

Mr. CONYERS. You weren't aware that the President of the United States was working with the Chairman of the Immigration Subcommittee and its Members on a different plan?

Commissioner ZIGLAR. Congressman, I understand that we've been talking with the Congress about a number of iterations on the reforming of the INS. The—

Mr. CONYERS. Look, you either knew it or you didn't know it.

Commissioner ZIGLAR. Well, I knew we were up here working, but I was—did not—I didn't receive any orders to cease and desist on trying to restructure, if that's what—

Mr. CONYERS. Okay. So then we have two plans, it looks like.

Commissioner ZIGLAR. I'm not aware that the Administration has endorsed any legislation or endorsed anything other than the restructuring plan that we put out in November. The Administration—

Mr. CONYERS. Well, let me ask you this, Commissioner: Are you aware of the fact that yesterday or today there is another plan that has been put forward?

Commissioner ZIGLAR. Yes, sir, I'm aware of that.

Mr. CONYERS. You are. Okay. So what is it that we're doing here? How many—where are we now in terms of the restructuring as far as you can report to this Subcommittee?

Commissioner ZIGLAR. Congressman, the—what was in the press this morning with respect to a new configuration, as I understand it, is being presented to the President, and that certainly would change the dynamics of doing a restructuring.

My goal—and I think I can safely say that the Administration's goal at this point—is to at least start the process of unraveling the service and the enforcement side of this agency, because regardless of what happens, whether it's Chairman Sensenbrenner and Chairman Gekas' legislation or whether it's the Border Security Initiative that you saw in the paper this morning, whatever it is, it is clear under all of those scenarios that the service and the enforcement side of this agency needs to be unraveled, and there needs to be a change of command. And to the extent that we can start doing that, it will facilitate almost anything that the mind can imagine in terms of reform, and reform is—

Mr. CONYERS. I see. Okay—

Commissioner ZIGLAR [continuing]. What this Administration is trying to do.

Mr. CONYERS. Thank you. Let me ask you finally, sir, did your plan contemplate the merger of INS, the Border Patrol, and Customs Service into a new agency?

Commissioner ZIGLAR. No, sir, not at that time.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. GEKAS. The Chair thanks the gentleman and turns to the lady from Texas for a period of 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me indicate a philosophy that I always start every hearing with. I think there are two expanded: one, we are a Nation of immigrants and laws, and I think it's very appropriate now to add another admonition that we are recognizing or that we recognize that immigration does not equate to terrorism.

I say that because I'm going to make a rather somber statement, and that is, to be grateful that the egregious error that has occurred occurred with two dead terrorists and not two living terrorists. And I think that speaks to the seriousness of both this hearing and our attempt to get answers.

Commissioner, would you give me a status report of your internal administrative changes that you proposed and mentioned that were proposed in November of 2001? Where are you? You came and did not have an opportunity to make a presentation before this Committee, but you had an internal structure that I understood was in collaboration, cooperation, of course, with the White House. Where is that? What's the status of those changes?

Commissioner ZIGLAR. Congresswoman, we submitted those—that plan to the Hill for its concurrence, the Appropriations Committees on both sides of the Hill. And we have received as of a couple of—I guess a couple of weeks ago, concurrence by the Senate Appropriations Subcommittee on Commerce, Justice, and State with respect to three elements: creating a chief information officer, creating a chief financial officer, and creating an Office of Juvenile Affairs. We—

Ms. JACKSON LEE. But these were—let me, because of my time, these were the administrative changes even though it would be in comment and collaboration with, what you say, the Senate Appropriations Committee.

Commissioner ZIGLAR. Right.

Ms. JACKSON LEE. Did you have anything in your proposal that bifurcated the two entities, enforcement and services?

Commissioner ZIGLAR. Oh, absolutely. Well, the whole proposal is quite comprehensive in dividing it. We had—

Ms. JACKSON LEE. With a singular titular head, someone who would be over both entities?

Commissioner ZIGLAR. With a Commissioner. With a Commissioner, right.

I might also mention that we received yesterday from the House a concurrence on the full restructuring plan, and for that I am intensely grateful because it gives—if we can now get the Senate to do the same, we can start making some big changes there. And, particularly, I—let me just tell you that if—at the very outset, what I want to do is change the chain of command in several different areas. Number one, I want to change the chain of command for the Border Patrol because, as it is now, the sector chiefs actually don't report, believe it or not, to the Border Patrol chief directly. They report through the regional structure.

Our detention and removal folks don't report directly to—or the facilities don't report directly to headquarters, and—

Ms. JACKSON LEE. Commissioner, I have—

Commissioner ZIGLAR [continuing]. Adjudications don't either.

Ms. JACKSON LEE. I have the gist. I have a series of questions, and I appreciate it. I'm trying to delineate where the administrative process is, where the legislative process. Now, when I started these hearings, I said to you that I believe that there are partisan handprints over all of these problems that we have in the INS over a long period of years. And that is the inertia of Congress and the inertia of the Administration.

Let me add to that by saying that it would be very important for the Administration to get a consistent posture. They have none. One, they've allowed you to administratively offer some suggestions pursuant to, I guess, inquiries made by the Appropriations Committee. Now in the last 24 hours, they're talking about the merger of a perfectly free-standing agency that's under Treasury, Customs, along with some sort of semblance of organizing Border Patrol. And I don't know how that responds to our concern.

So let me just pose some questions here that I think are important.

First, to Mr. Cutler, I want to say to him thank you very much, and I may not have a lot of questions for you because I want the INS employees to know how much I appreciate them. But what Mr. Ziglar should be hearing is that there is no connectedness—and I hear that from the private sector and the governmental sector. The head doesn't know what the tail is doing, and the tail is very arrogant. You're satellite officers, franchisers are very arrogant, do not listen to what's going on that needs to be changed. You need to deal with professional development on this staff and morale.

But I want to know, in terms of Mr. Atta, from the inspection that was done on that day, Mr. Atta had a basis upon not being let in in terms of his own financial credentials. The other thing that I want to hear about is that there was a passport—and I understand when we asked the question—there was a question raised in a letter that I wrote, whether or not you kept the data for the passport, meaning is there an ability to microfilm the passport so that if we wanted to go back on the day of his entry and look at his passport, we might be able to do so? My understanding that that does not occur.

Commissioner ZIGLAR. Congresswoman, that's correct. Unless someone is put into secondary inspection and there is a contemplated enforcement action, they do not take a copy of the passport. There are an awful lot of people that go through, and they don't do that.

Ms. JACKSON LEE. And I would like to see with the sophisticated technology that we have today, that I believe that is extremely important. Do you recall what Mr. Atta's passport was, from where?

Commissioner ZIGLAR. It was an Egyptian passport, I believe. It was an Egyptian passport—

Ms. JACKSON LEE. And let me say that the Egyptians obviously have been allies of ours, but we have a disparate foreign policy that we treat people differently one way versus someone else. I understand Cuba has been asking us to assist them or collaborate with them on a drug policy. We refuse to do that. It's common sense to me. But we don't ask the hard questions when we believe politically we don't need to do so. So I believe that's a problem as well.

Mr. Chairman, I'd like to ask for an additional 1 minute in keeping up with your time for a moment. I need to follow this line of questioning here for a moment.

Mr. GEKAS. Somehow I knew that would happen. [Laughter.]

Ms. JACKSON LEE. I thank the Chairman for his indulgence.

Let me also go on to say that I understand that you're talking about changing this whole process of someone coming in on a B-2 visa, a visitor's visa, and all of a sudden trying to be in school. For example, Mr. Hanora—if I have his name right—went in to learn English in California and wound up taking flying lessons in Arizona. It's an outrage, an absolute outrage. I'm just going to finish here quickly.

To Mr. Blodgett, I understand that you're really the custodian of these documents, and there's a certain point when you return the microfilm back over to the INS. Is that correct?

Mr. BLODGETT. That's correct.

Ms. JACKSON LEE. I'm not going to ask you too many questions. What I need to know from Mr. Ziglar, when that data comes over, do you not have a supervisory relationship to review that data that is sent back from the contractor?

Commissioner ZIGLAR. Well, that data is basically in a closed file that's part of a microfilm segment, or whatever you call it.

Ms. JACKSON LEE. That goes into storage—

Commissioner ZIGLAR. It goes to our National Records Center.

Ms. JACKSON LEE. I would suggest to you that we find some way in these new times to be more concerned about that data. It may be helpful to us in determining and tracking individuals that are here to do no good.

To Mr. Dekkers, let me thank you for your humbleness, but you highlight some of the problems that we have in this country, and I am certainly an advocate of the free flow of information, access, and education. You should have been particularly sensitive to the fact that Mr. Atta was there on a crazy visa, visitor's visa, and he's in your school for flight training. And I believe there should have been some red flag that you should have raised to reach out to law enforcement officials at that time. And I say that to you with all due respect to the responsibilities that you have. But we're going to have to address our friends in the institutions of higher learning, that it's not about \$12 billion that they get in tuition and fees. It's about the safety of this country and the people who live here.

And so I would argue that it would be important that we begin to look at processes, Mr. Commissioner Ziglar, on these issues dealing with our schools, trade schools in particular, that there should be additional criteria of which they should be able to access, whether it be on a computer or not, to be able to have red flags for them to be able to denote when they should make a phone call, because I think it would have been appropriate for those two students and the students that have gone around this country at these flight schools for them to have made a phone call on this.

May I just have a response from you, Commissioner?

Commissioner ZIGLAR. Congresswoman, the change that I was talking about a little bit earlier where no one can start in any training unless and until they have gotten their M visa, it's actu-

ally confirmed, will materially fix that situation. And I'm sure that Mr. Dekkers probably would welcome that kind of change.

Ms. JACKSON LEE. Is that in place now?

Commissioner ZIGLAR. Pardon me?

Ms. JACKSON LEE. Is that in place now, or are you writing the regulation?

Commissioner ZIGLAR. It is in—regulations are in the drafting approval process.

Ms. JACKSON LEE. And how long? At the 60-day notice time frame?

Commissioner ZIGLAR. Well, of course, we can promulgate interim regs that go into effect immediately.

Ms. JACKSON LEE. Will you do that?

Commissioner ZIGLAR. Oh, yeah.

Ms. JACKSON LEE. I thank the Chairman very much.

Mr. GEKAS. We thank the lady.

We turn to the gentleman from Arizona, Mr. Flake, for a period of 5 minutes.

Mr. FLAKE. Thank you, Mr. Chairman. I want to go very quickly here. I have a number of questions.

Mr. Ziglar, looking at the chronology and taking your statement from earlier about the problem of the interconnectivity between FBI documents and your own, it seems here that this was all INS. It seems that in the fall of 2000, you were aware, the INS was aware that this was a visa overstay situation for Mr. Atta. And on January 4, when—I'm sorry, January 11, when Mr. Atta re-entered the country, 2001, after leaving the country a week prior, this was not documents from the FBI, documents over here that didn't ever mesh. This was all INS. You knew that there was a visa overstay. Yet when Mr. Atta came back in the country—and this is not, well, we had to mail something. Here's a guy standing at the border, I'm here, I've overstayed my visa before. This man should have been carrying a red flag. Why didn't you catch him?

Commissioner ZIGLAR. Congressman, he didn't become in overstay status until December 2, not in the early fall. What we learned in early fall was that—what we should have learned, September 19, 2000, when he filed the application for change of status, was that he was going to be trying to be a student. That's what we learned from that. His stay was until December 2. He left January 3, came back on January 10.

At that point, as I mentioned earlier, there's no way for us to get into the mind of the inspector. But what is there is the fact that the inspector did put him in the secondary because he knew he had this I-20. The inspector then looked at the claim system, which said, yeah, this guy had filed for a change of status.

Now, what that—and our practice is—before, that has been—it's not—you're not deemed as here in illegal status if you have changed—if you file for a change of status. I'm not justifying it. I'm just telling you what the rules were at the time. So the inspector could have—and I surmise, could have said, well, okay, he wasn't out of status, and then the guy may have said to him, it's possible he said to him, look, I've finished my schooling, I'm coming back on my B visa to finish up my affairs and go home. I have no idea

what the fellow said. But it's no way of knowing whether the inspector made the right judgment or the wrong judgment.

Mr. FLAKE. Well, the truth remains you knew he was in visa overstay, and he came back in, having been in visa overstay a month after you knew he was a visa overstay. Is a month not long enough to get something into the system? Does somebody—is that all they need to do is exit the country for a month and come right back in and get another 6 months to play?

Commissioner ZIGLAR. Putting aside the issue of whether or not his change of status application had sort of waived all of this stuff, your point is extremely well taken, and that's what this entry/exit system is all about.

We don't have an effective system to track the entry and exit. Now, when the guy left on—

Mr. FLAKE. Let me just stop you there. Is that system in place right now?

Commissioner ZIGLAR. It's—no. Look, there is an entry/exit system that we have now, and the fact is—

Mr. FLAKE. Is it in place right now?

Commissioner ZIGLAR. No, sir. It's—it's a system that the President talked about the—in the State of the Union. It's a system that we're developing.

Mr. FLAKE. Let me move on very quickly. The USA PATRIOT Act required full implementation of the student visa tracking system by 2003. On March 7, you indicated that that deadline will be met. We're hearing from other people in your agency that that may not be—that may not happen. Can you assure us that that is going to happen?

Commissioner ZIGLAR. This system—

Mr. FLAKE. Will that deadline be met?

Commissioner ZIGLAR. This system will be fully operational by the end of the year.

Mr. FLAKE. By the end of the year.

Commissioner ZIGLAR. Yes, sir.

Mr. FLAKE. So we should disregard—

Commissioner ZIGLAR. Now, maybe—

Mr. FLAKE [continuing]. Anything else?

Commissioner ZIGLAR [continuing]. The issue—I'm not sure what—I'm not sure what you're hearing. The issue of whether or not all the schools are going to be able to join up at that point because of their own interconnectivity with the system is a different question. But we will be mandating a date for all schools to come online.

Mr. FLAKE. Okay. So you'll be mandating it, but it won't be up.

Commissioner ZIGLAR. No, the system will be absolutely operational. Absolutely.

Mr. FLAKE. 245(i) extension, it was passed by the House, may be signed into law here soon. With that will be a number, hundreds of thousands, likely, of petitions for people to change their status or to extend.

Do you know how many petitions? Any guess?

Commissioner ZIGLAR. I don't.

Mr. FLAKE. Is the INS capable of dealing with this? We passed this law out—of the House, at least. The legislation's gone. Is the INS capable of handling this?

Commissioner ZIGLAR. Honestly, it's going to be a burden.

Mr. FLAKE. Does that mean no?

Commissioner ZIGLAR. Pardon me?

Mr. FLAKE. Does that mean no?

Commissioner ZIGLAR. I wouldn't say no. I'd just say that what will happen here is that we will have to reprioritize our processing so that the backlog reduction plan that we've got in place here will probably not—we probably won't meet the goals that we had set for ourselves because we will have to put more resources toward doing that. So, I mean, it clearly will be—it clearly will be a work effort.

Mr. FLAKE. Thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman.

We will turn to the lady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

As the Commissioner knows, I am—have long felt that the problems facing the agency are multiple. Primarily, they are a management problem and also a lack of technology problem, and they're problems of long standing, I mean, over the decades, frankly. I first ran into the Immigration Service in 1971. It was in terrible shape then, and it's declined.

As I listened to the testimony today, I'm thinking back to a day in November, November 15, when the Commissioner came before this Subcommittee to try and tell us about his proposed reorganization, and the testimony was late. Obviously we don't like that, but that is quite a routine thing. I mean, the Justice Department under Janet Reno used to hand out the testimony at the hearings, but we never cancelled a hearing in my years on the Judiciary Committee until that day and refused to allow your testimony to be offered.

So I guess the question I have—we haven't rescheduled it until today, 4 months later. Are you proceeding with the reorganization that you were trying to tell us about on November 15?

Commissioner ZIGLAR. Congresswoman, as I mentioned a few minutes ago, we just got approval yesterday from the House for the full restructuring—not approval, concurrence.

Ms. LOFGREN. So it's been the 4 months it's just been holding fire?

Commissioner ZIGLAR. But we got—but the Senate has not given us the full concurrence yet, and so what I have been doing in the interim is making program changes and other things, and particularly dealing with post-September 11 enforcement issues.

Ms. LOFGREN. All right.

Commissioner ZIGLAR. But the fundamental changes I have not been able to start.

Ms. LOFGREN. As the Chairman knows, because I made the letter part of the record in October, I suggested in early October of last year that we give you some additional tools, that we make sure you have additional flexibility to remove management personnel in the agency and replace them as you see fit; that we allow for the outsourcing of management services, including technology consulting; and that we ease procurement rules so that you could acquire technology quickly.

Unfortunately, I don't believe any of those things have occurred. Can you tell me whether you've gotten any of those additional tools?

Commissioner ZIGLAR. No, I haven't.

Ms. LOFGREN. All right. I'd just like to say that I think we're digging a deeper hole for ourselves here. When I heard the comment—and I'm not faulting the contractor. I'm sure you're doing exactly what you were asked to do. But we're creating a microfilm? You know, how—at the visa entry, if someone has applied for another visa, that gives doubt to their qualifications for the visa that they're holding. And I'll bet you anything that the inspector had no way of knowing that the visa, the M visa, had been applied for and, therefore, didn't have the question raised in his or her mind because it was on a piece of microfilm someplace in a contracting agency.

You know, we're still using DOS systems. We're creating paper files. We are never going to be able to protect ourselves from bad guys unless we have the information at hand.

One question I have—and I do have some concerns, Commissioner, about some of your proposals about the adjustment of status, because I'm not sure how they're going to make us safe.

The terrorists known that we're on the lookout now for students. They can watch CNN. They read the newspaper as well. Making it harder to adjust your status from a B-1 to anything else, how is that going to make us safer when the real issue is how did the—who is that B-1 guy who's coming in here?

The question I have is: Do we have computer linkages that work between the databases that are being created by the FBI, the intelligence agencies, the consular staff, and INS offices around the United States right now? Is that electronically done?

Commissioner ZIGLAR. Congresswoman, I can say this about it: It is a whole lot better than it was on September 11. We are making some real progress in linking or mining databases from the different agencies and then bringing them into one place.

For example, one of the efforts, the Foreign Terrorist Tracking Task Force has been pretty successful in doing some of that. We've got a long way to go. I've got a long way to go both internally at INS and also—

Ms. LOFGREN. I know you do.

Commissioner ZIGLAR [continuing]. Externally. But I can say this on the enforcement side of INS, this ENFORCE system, which is a platform to mine those different databases, those modules are going down really quickly, and it's beginning to show some real results.

Ms. LOFGREN. So if you're at liberty to say in an unsecure hearing, are your visa—are your inspectors connected with the databases being created by our intelligence agencies?

Commissioner ZIGLAR. That's—if we could talk about that—

Ms. LOFGREN. That would be fine, if it's not an appropriate answer to give in a public hearing, but I would like to explore that in an appropriate forum. And I would like to suggest, Mr. Chairman, that it would be a good idea, in my judgment, for this Committee to go out to the INS and do a little field hearing, to tromp through the computer systems and to take a good look at what's

available. I think you would be shocked at what you would find. The DOS systems are alive and well, not only in the INS but in other parts of the Federal Government. That is a ridiculous situation, but it's also a dangerous situation.

And I know, Commissioner, that this poorly managed agency was one you've only had 6 months, and I think it's your job as a manager to clean house and clean it up. I think that we would be better off supporting you in that effort than trying to re-create seven different styles of reorganization and create two dysfunctional agencies. It's a management problem. You need to fire the incompetents. You need to hire competent people. You need to upgrade your computer systems. You need to create databases that actually communicate with each other and with law enforcement agencies. And I think adjusting status issues are really not the key. The key is making sure that we are well informed about who is trying to come into our country.

Commissioner ZIGLAR. Congresswoman, I couldn't agree more that information readily available real time, based upon good intelligence-gathering techniques, absolutely is the first line of defense. Everything else falls in behind that. Everything else has got to be fixed, but—and I'm talking about beyond INS. I'm talking about Government. I agree with you.

Mr. GEKAS. The Chair thanks the lady for her questioning, and now the Chair recognizes the gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Mr. Commissioner, when we send out invitations for witnesses to come before this Committee, there's a requirement written right in the invitation that all witnesses present their written testimony to the Committee 48 hours prior to the hearing. Mr. Cutler, Mr. Dekkers, Mr. Blodgett all came in on time. I'm waiting to see the testimony of the Commissioner in particular, but as been the history of every hearing that I've been involved in since you've been Commissioner, with all due respect, Mr. Ziglar, we have never got the written testimony as required 48 hours before, 24 hours before, 12 hours before, 2 hours before. It was about 47 minutes today for us.

Is this an indication of incompetence or arrogance?

Commissioner ZIGLAR. Congressman, I don't—I hope it's not an indication of either. In this particular situation, we got the notice of the hearing last Thursday night. We have a process that we have to go through to clear at the Justice Department and at OMB. We were still doing a lot of fact gathering to put into the testimony. But I can tell you that there was no stone left unturned to get this in as fast as we could, but with the clearance processes—no excuses. No excuses. But—

Mr. GALLEGLY. Mr. Ziglar, with all due respect, I could be a lot more understanding if this was the first or second time this has happened. This is business as usual.

Commissioner ZIGLAR. Congressman, I've only been before the Committee twice, as I recall. And, unfortunately, the—

Mr. GALLEGLY. Well, maybe other Committees as well, because you have testified before other Committees other than this Committee and the full Committee.

In any event, when you got—and the reason I—there is a reason for getting that in ahead of time, because when you hit the word “reorganization,” it rang a bell with me. I was sitting here before this Committee about 5 or 6 years ago when Doris Meissner was sitting down there talking almost verbatim. In fact, if my eyes were closed and I heard a different voice, I couldn’t have told the difference between the two testimonies and the reasons why we needed reorganization and so on.

Specifically on the issues we’re dealing with today, I understand that Mr. Atta and Mr. Al-Shehhi’s student visas were approved on July 17. That was prior to the terrorist attack on September 11. However, it is my understanding—and I think it’s in your testimony—that while their visas were approved on July 17, the agency did not send it to the contractor until September 20, clearly well over a week after the attack. So based on that, I guess it’s fair to assess that INS actually sent approved visas of known terrorists to be processed after the attack. Is that correct?

Commissioner ZIGLAR. They were not being sent to be processed. They were being sent to just have the data entry into our general file.

Mr. GALLEGLY. In other words, they here still being sent out as though they were approved, as known terrorists after the attack?

Commissioner ZIGLAR. What—as far as I know, what occurred there was that the—we put these things in a box, and when there’s a boxful, they are sent out to the contractor to data entry into the databases so that that information is there. They’re not—they’ve already been approved.

Mr. GALLEGLY. It’s a pretty big box, Mr. Ziglar?

Commissioner ZIGLAR. I don’t know what size the box is.

Mr. GALLEGLY. Mr. Ziglar, that’s history. Today, have you ordered all paperwork to stop on individuals on the FBI’s list of suspected terrorists along with all of their known aliases?

Commissioner ZIGLAR. Congressman, I have actually instructed that all of those I–20’s out there be stopped and examined for that very purpose.

Mr. GALLEGLY. One last question, and this is difficult because of the time constraints. But I can’t resist identifying myself with 245(i) that passed the House last week, and I might add, without my support, even though I am a great supporter of our President. I walked precincts for him. I’ll walk precincts for him again. But we respectfully disagree on this. But when you testified that it’s going to be a very difficult task, are you aware that we have extended 245(i) on four different occasions before we’ve extended again? What are we going to do when it expires this time, Mr. Commissioner?

Commissioner ZIGLAR. Congressman, I don’t know. That’s—that’s a good question.

Mr. GALLEGLY. Thank you for your testimony.

Mr. FLAKE. [Presiding.] The Chair recognizes the gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you. I appreciate your being here today, Mr. Ziglar. This is a difficult time, a difficult issue, and you haven’t been here very long. And you’ve had a lot of people talking at you. I would like to pick up where the gentlelady from California left

off in discussing the two or three issues that she put on the table, and to refresh your memory, they are: Should we give you the authority to fire senior people? Do you need some money for technology systems? And do you need some more political appointees to help enforce your will at the agency?

There are a lot of angry people here. I will say that I am deeply disappointed in the INS. I have been for a very long period of time, and we have a different world today. I think the INS may have been able to keep up with technology a little better—in fact, a whole lot better. But we now know a lot more about how to adopt technology into an agency. I suspect and hope that this has been a matter of concern for you, and I'd like to hear your thoughts on those three things: political appointees to help enforce your will, the ability to fire people so that those who don't get fired are likely to be more helpful and less obstructionist, and the ability to pay for technology and to outsource that technology so that the INS can come into the new age and a year and a half from now or 2 years from now we won't have to be looking at some of the problems and errors that have been caused by the agency's lack of capability.

So let me turn the time over to you to address those three things.

Commissioner ZIGLAR. Let me address the so-called political appointees first. I prefer not to call them "political appointees." I prefer to call them "non-career employees," people that are—I can hire and fire.

Mr. CANNON. If I can just interject, I don't think the Democrats about this because, in fact, the idea has come from them in large part, and Ms. Lofgren is one of them.

Commissioner ZIGLAR. You know, I consider—

Mr. CANNON. What I want is people who can respond to you and who will enforce your will and the President's will in an organization that is obstreperous.

Commissioner ZIGLAR. Congressman, I absolutely agree that if I had more people that I could hire and go outside the system and go find people that would work for me out of the private sector—in fact, I've had a heck of a time finding—and Congressman Lofgren has been very helpful to me. I've had a heck of a time trying to find a chief information officer because I have had my eye on two or three really qualified folks. I can't pay them enough to get them to leave the jobs they're in. It's a tough business.

But I have—in fact, I am just now—or will be bringing on in the next week or so a fellow that I finally talked about—talked to about leaving the private sector to come work for me, and he's a real CFO manager type. I need a lot of those kinds of folks, and I need to be able not just to have them in headquarters. I need to be able to have folks out in the field.

I've forgotten who made the point about having accountability out in the field, but that's important that I have somebody out there, or any Commissioner has somebody out there that they can—that's responsible to them, that they're connected to, that they can hold responsible for overseeing what's going on out in the field.

So, yes, I could definitely—I believe in that, and I—I definitely believe that.

With respect to the issue of firing, I came out of the private sector. There were two things that I do as a manager in the private sector. I could cut their income or I could fire them. That is an incredibly good power to focus the mind. It really does focus one on what they're doing, is to have that kind of—have that kind of authority. Now, you can't do it arbitrarily and capriciously. But the ability to create a bottom line is important.

Obviously the Government's a different place than Wall Street was, and I understand that. But I do think there needs to be more flexibility in being able to take actions so that you can get people's attention.

On the technology issue, as you know, in the 2002 budget we have gotten a substantial amount of money for some technologies, and, frankly, right now I think—you know, you can only spend so much money. You can't solve this technology issue overnight, and—but we are clearly working hard at the entry/exit system, and that's going to be in the—that's in the 2003 budget request. But we're also—the SEVIS system and the other, ENFORCE, IDENT, and all of those other systems, we have gotten, I think, some good money both from the 2002 and from the counterterrorism supplement. So I—

Mr. CANNON. Let me just interject here because my time expires, and say I think Republicans, generally speaking, are better managers. I want the INS to be reformed. It happens to be on a Republican watch. I hope we can take credit for that. I am going to push very, very hard in this institution to get you tools that will allow you to do what I think you need to do. And I really hope that we get to a point where we can solve some of these problems.

Let me just point out about the problem with affording people that are capable. When we talk about money for technology, it seems to me that we need to give you contracting authority so that you can get people who understand how to implement technology in a complex organization, and that's more than Government pay scales can allow. But I think that we can allow you, through legislation, to hire companies to implement technologies through those kinds of contracts, because I don't think you're ever going to get anybody unless he's somebody who wants to work essentially pro bono to come into Washington and work for the INS, whereas you may be able to hire a company that has done this with other complex organizations and is able to put—help you put your house in order.

Thank you. I yield back.

Commissioner ZIGLAR. Congressman, if I could just make one comment, I didn't take this job, as you know, for my health or wealth. So the only thing I can take away from this job is that I've done a good job, and reforming the INS is the only way that I will walk away from this thing with any sense of satisfaction. So we're—I think I'm in sync with everybody on this Committee. I mean, I want to reform this place and make it work.

Mr. CANNON. Thank heaven, Jim, there are people in America who are willing to take on tough challenges. We wish you the best and are going to be as much support as we can from this side.

Commissioner ZIGLAR. Thank you.

Mr. FLAKE. The Chair thanks the gentleman from Utah and recognizes the gentlewoman from Pennsylvania, Ms. Hart, for 5 minutes.

Ms. HART. Thank you, Mr. Chairman.

First I want to thank all the witnesses for appearing today. I know that we are spending a lot more time with Mr. Ziglar, basically because, I think, the concerns we have center on the INS. But I do want to commend you, especially Mr. Dekkers, for basically paying attention to the record and informing us when there were problems.

Mr. Ziglar, I have a question actually dealing with a little bit more of the detail of the rules of the INS and the things that are supposed to sort of trigger other things at the INS. One is that I am under the impression, at least, that the rule says if an alien has applied for a change of status and then leaves the United States, that that is sort of de facto abandonment of that application for a change of status. Is that correct?

Commissioner ZIGLAR. That's correct.

Ms. HART. Okay. So when Atta first left the United States in January of 2001, after he had applied for his change in status, then he—that was a de facto, then, sort of abandonment of that application for a change—

Commissioner ZIGLAR. Well, it wasn't de facto, Congresswoman. He—under our rules, he abandoned his status. Let me explain to you, I think, what happened here, and it's something that has been changed as a result of my finding this out.

Ms. HART. Just recently or—

Commissioner ZIGLAR. Recently, as a result of my inquiries on how this all happened.

Ms. HART. Okay. This whole event, okay.

Commissioner ZIGLAR. It's something that following the trail, I found something that I was a little incredulous about, and that is that when you've got an adjudication of a change of status, we have a system called NIIS, Non-Immigrant Information System, that records these goings and comings. And up until a couple days ago, we didn't routinely—the adjudicators didn't routinely check NIIS when they were adjudicating a status. And so that's changed.

Ms. HART. So what was the purpose of NIIS if nobody looked at it?

Commissioner ZIGLAR. Well, it's an entry—you know, it's an entry/exit system. It's not a very good entry/exit system, but it is, in effect, an entry/exit system. And I—

Ms. HART. So all the information was there at their fingertips, even with the system that you have now, which we all agree needs to be improved. It just wasn't being—

Commissioner ZIGLAR. That information was not being—on a regular basis being accessed. I was—I have to tell you, I was incredulous, and I can tell you the moment I found out, that policy was changed within literally minutes.

Ms. HART. So can you tell me now what they'll do that's different?

Commissioner ZIGLAR. On every adjudication of status change—adjudication of change of status, the NIIS system, as well as others, will be—you know, the other databases, will be queried to

make sure that there's no information there that would cause us to do an abandonment or anything else.

Ms. HART. Okay. Thanks. I just want to mention also, I understand that you haven't been on the job that long, but—and I haven't either. I've only been here since a year ago January, and I serve on the Committee because I have a great interest in these issues. I think a lot of us would agree that as actually the gentleman from Texas said earlier, this is a Nation of immigrants. We don't want to change that. But we'll have to change that if we can't make this system work better, because I think if we don't, we'll place people in jeopardy in this Nation. So I want to make the system work.

Commissioner ZIGLAR. Congresswoman, one of the reasons I want to make this place effective is so that we don't have to limit immigration into this country of legitimate people who want to make a change and want to be part of this country. But if we don't have a way of figuring out who the bad guys are, I think you're right. And that's why it's so critical that we have an agency that can identify these problems, and it's more than just INS. There are a lot of folks that have to participate in identifying these. But we've got to do that in order to preserve a tradition that made this country great.

Ms. HART. Have you as a result of some of these things actually tested the system by having sort of like a dummy person be put through the system just to test it yourself so that you can actually watch one, or even taking somebody who's real coming in and watch where they go with the paperwork to find out where your glitches are and that sort of thing?

Commissioner ZIGLAR. I have in pieces. I haven't started from the very beginning, but I've been trying to system by system—you know, that's one of the problems that we've got. We've got so darn many systems and so darn many databases that capture information that is as—the word “stovepiped” that you have to sort of look at it system to system, in fact, doing a bottom-up review of programs or whatever you want to call it, in order to see, you know, the steps, do they make sense; you know, are we doing something here that makes no sense; or in the case of like ACS, I mean, we literally had a contract with the prior contractor who said you wouldn't mail the I-20 until after 6 months. Now, go figure. I don't know.

Ms. HART. Okay—

Ms. LOFGREN. Would the gentlelady yield?

Ms. HART. Actually, I will in a moment. I have one more question. Is it on this?

Ms. LOFGREN. Yeah, I just wanted to say, why we're mailing, you know, snail mail notifications is just unbelievable, anyhow. But I thank the gentlelady for—

Ms. HART. Sure, no problem.

Commissioner ZIGLAR. That's what the SEVIS system we hope will—we know will take care of.

Ms. HART. Okay. One of the issues that obviously we're looking at is how much money is needed and what your plans actually are. From what you're sort of alluding to, then you have actually worked together with those in charge of the different areas of INS

then to determine what exactly you need to make sure that these systems can work together or if you need new systems.

Commissioner ZIGLAR. Well, yes. We are—I mentioned, I think to Congressman Cannon, that we have gotten, I think, a very—we've gotten very good support in the House and the Senate for appropriations to help us move along this technology upgrade so that—pardon me, so that we can integrate our systems so that we know—the right hand knows what the left hand is doing.

Ms. HART. As far as the integration, do you expect also—and one of the things that we're concerned about—that the INS will be integrated also together with other agencies?

Commissioner ZIGLAR. Oh, absolutely.

Ms. HART. Okay. What do you think are the most important ones that you'd be integrated with?

Commissioner ZIGLAR. FBI, CIA, Customs, Department of State, Consular Affairs in particular, and the PRM, which is the refugee-migrants group. I know I'm missing somebody else. I can't think—oh, Department of Agriculture. There are a lot of agencies that have information that is relevant to us. I mean, you say Department of Agriculture, you know, why is that? Well, Department of Agriculture actually has a connection to the so-called J visas, which are visas for people that are here to be doctors, for example, in rural areas. So, I mean, it's—it's an—the information around and about the Government, there's a lot of it, and it needs to be connected better.

Ms. HART. It certainly does. That's one of the issues actually we're dealing with as well with the budget. Obviously the budget numbers are going to be extremely important. What exactly needs to be integrated, if we need any enabling legislation to allow them to share information?

Commissioner ZIGLAR. The PATRIOT Act does that. In fact, it does a little better than that. It mandates it.

Ms. HART. Right and—

Commissioner ZIGLAR. And I can tell you the President—I can tell you the President is—as they say down in Mississippi where I come from, he's hell-bent to Christmas to get this done.

Ms. HART. That was clear after, I think, his public statement last week. Well, thank you, Mr. Ziglar.

Commissioner ZIGLAR. Thank you.

Ms. HART. And I yield back. Thank you, Mr. Chairman.

Mr. FLAKE. The Chair thanks the gentlewoman from Pennsylvania.

We have time for a second round of questioning. When Mr. Issa gets here, we'll go to him next, but in the meantime, we'll go to the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much. I appreciated the line of questioning from my colleagues. I would offer one recharacterization of the importance of restructuring the agency. I think we should all commit to restructuring the agency on America's clock because I think that—

Commissioner ZIGLAR. I'm sorry, Congresswoman—

Ms. JACKSON LEE. On America's clock, and Americans are Independents and Republicans and Democrats, and so I think we owe them the commitment to change the INS—

Commissioner ZIGLAR. Absolutely. Absolutely.

Ms. JACKSON LEE. And I've heard some mention of the word "angry," and I want to let you know that I have no anger. I have anguish, because I recognize the good will, good faith, and the good intentions that you have brought to this position. And I would like to see us move more swiftly than we've been able to move in the past, helping you out.

I want to probe Mr. Cutler because I don't know if you noted—I believe he said 1971. Here is an individual who has stayed with the agency, who is obviously commended himself well because of his dedication. And I think it's important when we begin to talk about changing rules, to change employees, that we have to balance that with the fact that there are probably some darn good folk out there working for you, Mr. Ziglar.

Commissioner ZIGLAR. Congresswoman, if I didn't—if I didn't make it clear—I've made this clear a number of times. We've got a lot—I mean, a lot of great people that work very hard and are very dedicated. And, frankly, what I was talking about with Congressman Cannon was the ability in a very limited way to remove some very senior people so that we get accountability. But I've got to tell you, the people at INS—I know that they get a bum rap, but they're out there and they're working hard and they want to work hard, and they've got lousy systems and they've got lousy processes, and they don't have necessarily the right leadership in the right places.

But the employees are great people, and I tell you, Mr. Cutler in the last part of his statement made a darn good point—

Ms. JACKSON LEE. Absolutely.

Commissioner ZIGLAR [continuing]. And that is the whole business about the attrition and the morale and all that sort of things. And we've got some real challenges in that area, and some of it is because our pay scales are different than other law enforcement, and there are other issues. But we're bleeding right now in the Border Patrol, for example. We are on a track, if we keep going where we are now, we're on a track to have a 20 percent attrition rate in the Border Patrol this year. It's at about 13 percent now. Our inspectors are at about 10 percent in this fiscal year. And it has to do with the fact that other Federal law enforcement offer better situations. The drain level—

Ms. JACKSON LEE. Once you train them—once you train them, then they're recruited away.

Commissioner ZIGLAR. And the Border Patrol is really—I mean, these are well-trained people that—that are really attractive to other law enforcement agencies. I'm going to tell you, I—it's real expensive when you start having an attrition rate like that.

Ms. JACKSON LEE. Well, you may be aware that a number of us, including myself, have offered legislation almost every year to increase the ranking, if you will, the GS level of the Border Patrol and compensation. These are things that I think we can begin to work with collaboratively. And forgive me for repeating this. This is my angst with the Administration for not having a consistent policy of what we're doing. And I hope this hearing will generate consistency. First, we were administrative-level restructuring, and

then we were talking about now some 24-hour proposal of combining the Customs with the INS.

I want to work with you, and I believe we can do this together. I think it's important that we have an open book to the Members of Congress so that we can move more swiftly. What I started out with saying, I think there are very, very negative handprints over all of this. We have talked and talked and talked. So I would hope that we could do this in a more swift manner.

Let me just go to Mr. Blodgett, and I did not, and I want to go to Mr. Cutler. Mr. Blodgett, you have basically an administrative contract, if you will. You receive the documents in bulk, as I understand it. You then microfilm them. You hold them for a period of time, and you return them. Is that accurate?

Mr. BLODGETT. That's right. We also perform some data entry in the middle of that process.

Ms. JACKSON LEE. That assists the INS?

Mr. BLODGETT. Yes.

Ms. JACKSON LEE. What I would offer to say to the Commissioner and Mr. Blodgett, I'm not sure what the supervisory relationship is, but I would think that you would not be offended by greater oversight by the INS for what you do?

Mr. BLODGETT. Of course not.

Ms. JACKSON LEE. And so if your contract is not drafted in that format now, you would not be opposed to a restructuring of your contract if there was a greater linkage, if you will, between the INS and their oversight?

Mr. BLODGETT. We would not. We would appreciate that.

Ms. JACKSON LEE. I say that, Commissioner, because one of the glitches, I realize that you just send bulk materials over. They're finished through your process, and I understood very clearly that he makes no selection determination, and when they come over, that's not a pronouncement. You've already done your vetting. You've already done your checking.

The question is: When they come back to you as microfilm, and then they are then sent out by Mr. Blodgett just automatically—that's how Mr. Dekkers got his notification—where can you intervene so that you don't have that kind of snafu? Technology, oversight, restructuring the contract, how can we avoid that?

Commissioner ZIGLAR. Technology is being able to get to it and do it—let me say something about Mr. Blodgett and his company. We have—and they have welcomed this. We have deployed some people down to their facility to look at this whole issue of how we get better, you know, flow of information out of these contractors, not just Mr. Blodgett, but he is—they have welcomed us in with open arms to work with them. And so I commend him because he could under the contract say, hey, you know, stay away from us, you—

Ms. JACKSON LEE. Well, he appears open-minded, and I appreciate that. And you appear that you're willing to engage more to have an intervention so that we don't have these things occurring.

Let me just post the question to Mr. Cutler. You have heard all of our suggestions: two entities, the administrative restructuring versus congressional. You are on the front lines, and something that grabbed me so much because I am out in the front lines, lis-

tening to various advocates as well as people who are engaged day to day in the INS, and that is the disconnectedness, the free spirit of these franchised various centers, like the Texas center. If you could just narrowly focus on what we can do to enhance the employee collaboration and to get some of the technical aspects, the technical glitches from your perspective as a man on the front line to assist the INS.

Mr. CUTLER. Well, in addition to somehow dealing with this unwieldy system where everything seems so far-flung, I think we have to look at another issue, quite frankly, and it's the way that we even evaluate the effectiveness of the employees of the INS. When you get evaluated, at least in my job, when I was evaluated, a lot of it had to do with how many errors and corrections you needed.

Now, if you go to work in the morning and your biggest concern is that you don't want to make mistakes because that's where you're going to get dinged, so to speak, then you've got the mindset that you don't want to attain greatness; you want to keep your head low and not attract any attention to yourself.

Ms. JACKSON LEE. Under the radar screen.

Mr. CUTLER. I mean, you know, Barbara Walters interviewed David Geffen a long time ago, asked him how he made all his money. He said he hired the best people, paid them as much as he could, and gave them the room and encouragement to be wrong and make mistakes. And she said, "Well, you mean, you want them to mess up?" He said, "Hell, no, but if when someone goes to work their biggest concern is that if they make an error it can cost them on their job or even cost them their job itself, then their biggest concern is going to be to not make mistakes. But, of course, then they won't do anything worth doing in the first place."

You know, we talked about the attrition rate. Nobody, to my knowledge, ever gets exit interviewed to determine why they leave. If it's the issue of money, I've never heard of anybody saying we're from the INS, we're going to Appropriations, and let's make our pay grade equal. If that's what you really believe is what's happening, why wasn't it done?

You see, I think it's a lot more than that. I think that you need to look at the management at the local offices, because in the end the ultimate job isn't done by Mr. Ziglar. I know he's taking a lot of heat today. He didn't admit the aliens. He didn't send the letters. Those jobs are done by the front-line people.

So we can do whatever we want to do here in Washington, and Mr. Ziglar can do, with all due respect to him, everything that he wants to do. But if the job doesn't get done by that agent at 6 o'clock morning banging on a door with a warrant in his hand, then the job isn't going to get done.

So we need to look at what's wrong with management at the local level, and, boy, we could go on forever about it.

Mr. FLAKE. The Chair thanks the gentle—

Ms. JACKSON LEE. Thank you. I thank the Chairman.

Commissioner ZIGLAR. Mr. Chairman, could I just make one comment? You know, I ought to send Mr. Cutler up here to testify for me because he is absolutely right. This business about being risk-averse—

Ms. JACKSON LEE. I dug deep to find this gentleman, I'll tell you that.

Commissioner ZIGLAR. I have been preaching about not being risk-averse, and I think you can talk to all of the folks that I deal with around the INS, that you've got to take risks and you've got to be able to make change. And certainly the environment I came from on Wall Street, I mean, we took risks, you know, every minute of every day. And, you know, it's hard for me to understand a culture that is risk-averse. But, boy, he nailed it. I mean, that's absolutely right from the very—the GS-3 or whatever the number one is, lowest level, to the top. We've got a problem about being bold.

Mr. FLAKE. The Chairman assures the Commissioner nobody will ever accuse the INS of not making mistakes. [Laughter.]

Ms. JACKSON LEE. But at the same time, we thank the Commissioner for his willingness to acknowledge them, and we're going to try and fix them. Are we not?

Mr. FLAKE. The Chairman recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Ziglar, perhaps I'll start by asking, it seems like one of your concern is your ability to relieve for what you believe is cause, but may not be cause according to the book of INS rules and reasons, for relieving people. If we simply gave you absolutely the same set of rules for eliminating senior management that you believe are not performing as the FBI, would that meet your requirement? It might exceed it, but would it meet your requirement?

Commissioner ZIGLAR. Well, as you know, in the past that has been in appropriations legislation—bills, conference reports. And that's a fairly limited authority, as you know, to—

Mr. ISSA. Actually, in the previous conference bills, it was less than the FBI. It actually said that the employee in Immigration and Naturalization who violates policies and procedures set forth by the Department of Justice relative to granting citizenship or willfully deceives Congress or the Department leadership. I'm actually asking you, if we take all of that gobbledygook out and simply say you can fire the same as we would the FBI, a no less but probably no more important service—

Commissioner ZIGLAR. Well, the FBI is an excepted service, and they have a lot more flexibility to deal with employees than I do. If we were an excepted service, of course, that would make a big difference.

The IG—not the IG. The Attorney General sent a letter up to Congressman Wolf the other day, I believe it was—I'm not sure—asking him to give us that authority, and he actually—if you read his letter, it asks for more than that what you just read to us. So the answer is, yes, that would be helpful.

Mr. ISSA. Okay. Well, I intend to do everything I can to see that you get at least that much authority. I certainly believe with the more than a few mistakes made, that there must be some people who are mistake-prone within the organization.

Maybe since Mr. Dekkers doesn't get enough exercise for all of his effort of coming here, let me just use you in a question form

to help demonstrate something. You're, in addition to an instructor, you're also a pilot. Is that right?

Mr. DEKKERS. I'm not an instructor. I'm just the owner and pilot.

Mr. ISSA. You're just the owner, but you are a pilot?

Mr. DEKKERS. I'm a pilot. Yes, sir.

Mr. ISSA. And what level aircraft would be the highest level that you fly?

Mr. DEKKERS. Up to 12,500 pounds, like a King Air——

Mr. ISSA. A King Air being a little less under 10, but something just over the 10 threshold?

Mr. DEKKERS. That's correct, yeah.

Mr. ISSA. So you fly some pretty sophisticated aircraft?

Mr. DEKKERS. I do, yes.

Mr. ISSA. And you're a little younger than I am, but you've been flying for how many years?

Mr. DEKKERS. Twenty-one years.

Mr. ISSA. Twenty-one years. So when you began flying in that Cessna 150 or some other aircraft, what did it have, eight different devices to look at, not including circuit breakers?

Mr. DEKKERS. Yeah. There's not much in a 150 or 152.

Mr. ISSA. Is the record of a Cessna 150 to take off and land extremely good?

Mr. DEKKERS. I don't understand your question.

Mr. ISSA. Cessna 150's do not crash and kill people every day, do they?

Mr. DEKKERS. No, they don't.

Mr. ISSA. They have a very good safety record.

Mr. DEKKERS. They do.

Mr. ISSA. Assuming that personnel do their job right, they take off, they land safely, and they do the job very well of transporting people at altogether slow speed.

Mr. DEKKERS. That's correct.

Mr. ISSA. Now, you're familiar with, for example, the Airbus.

Mr. DEKKERS. Yes, I am.

Mr. ISSA. And if I'm correct, it has more gadgets and gauges than you can count, right?

Mr. DEKKERS. That's correct.

Mr. ISSA. But the people who fly them, roughly, how many do they look at? Or let's just take a 757 for a better illustration. How many gauges do they really look at on a regular basis?

Mr. DEKKERS. Well, on a regular basis, they scan. A regular basis, they look at five, six, seven instruments, and 50 of them you have to check every now and then. But basically flying is done on a few instruments.

Mr. ISSA. So the basic rules of flying safely an aircraft were the same 21 years ago, maybe even 20 years before that, as they are today, and the instruments you more or less look at in a VFR condition are about the same?

Mr. DEKKERS. That's correct.

Mr. ISSA. So all those other gadgets and data—or all those other gadgets are mostly technology supplying data that you may choose to use.

Mr. DEKKERS. That is correct.

Mr. ISSA. So it's fair to say that knowledge and data are not necessarily one and the same, wouldn't you say so?

Mr. DEKKERS. That is correct. Everybody can fly a plane, they fly a 150, they can fly a bigger plane, except they need to know a little bit about steering.

Mr. ISSA. Well, switching then, perhaps—thank you, Mr. Dekkers—to you, Mr. Ziglar, it seems like you're constantly asking for technology so you can get more data. And I'm going to say here today that, although I would be happy to appropriate all the dollars necessary to do the job right, that your agency, which was dysfunctional 30 years ago and is dysfunctional today, that in 1986 led to 6 million people who came here illegally being granted permanent status and eventually citizenship and now has 6 to 12 million new undocumented workers and/or visitors in this country, has more data but doesn't have any more knowledge. And I've got to tell you, I'm very concerned here today that a little bit like an aircraft that kept falling out of the sky 30 years ago, you have an aircraft with a lot more gauges and a lot more dollars, and, Mr. Blodgett—I'm sorry to mess up your name—you're providing data and you're working with data, and you're moving it back and forth. But you're not in the knowledge business. You're in the data-transfer-back-and-forth business, and you do it seemingly quite well.

I don't think you've come before this Committee now, in the past, and I'm concerned you may not come in the future with a plan to do a better job with the knowledge. You seem to keep coming and asking us for more data. Today—and this is my closing question. Today there are 6 to 12 million undocumented residents in this country. They're either citizens—they're either workers or they're in some other way visiting here, and they're not accounted for. You don't know where they are, which means your system doesn't even begin to cope with 6 to 12 million people that are off the radar screens.

What is it going to take if we were to tackle that with the President's initiative for a guest worker program? You're so far behind now. These 6 to 12 million people got here illegally, and they're staying here illegally. What are you going to need not just to have data on them but to have real knowledge of 12 million more people who would be here if the President's initiative passed as guest workers?

Commissioner ZIGLAR. Congressman, you make an extraordinarily good point. At this hearing I have been talking about processes and technology and kind of related to this and some other things that are a part of our process. Information not analyzed and not used is worthless. So if you start all the way, way out there in some far reach of the Earth and the consular officer doesn't have information—or even if they have information about somebody who's trying to get a visa, if they don't know what they got in front of them, they're not going to make the right decision. But you've got to have that person there to make something out of that information.

As you come closer to the United States and inside the information—inside the United States, all the information in the world is going to do us no good if we can't take it and leverage it into something else.

The problem that you identified with respect to the number of folks in the country that are in illegal status or undocumented or whatever, whatever the politically correct term is at the moment—

Mr. ISSA. We change the terms, but we don't change who they are.

Commissioner ZIGLAR [continuing]. Is a daunting task. And it's clear that the INS with 2,000 investigators is not—cannot manage that big a thing, that big a problem. We either have to at some point in the future have a much different-looking INS, which we will, I suppose, or we're going to have to leverage the whole law enforcement structure in this country to deal with this problem.

You know, it's like the CIA when they decided that technology was going to be the answer to their lack of human intelligence, and look what's happened over the years. I mean, we've used—well, you've got a lot of great things that we can spy with, but if you don't take that information and turn it into something you can leverage on, it's worthless to you. So your point—I knew where you were going in a couple of minutes there, and you're dead right.

Mr. ISSA. Well, I appreciate that, and I appreciate your understanding here today. My challenge in my district is that a huge part of those 6 to 12 million people reside there. They're an integral part of the workforce. I need them to be documented. America needs to know where very person is who has come here from another country, for obvious reasons, after September 11. And I want to get past what we're doing here today, and I want to help build that good aircraft. But I'm also concerned—and Mr. Dekkers did a great job of helping me with that—that we have to have knowledgeable pilots who would be just as safe with one-quarter of the information. Obviously, better technology allows them to do more with less people. But we have to somehow invest in that brain trust, and I hope to work together with you.

Commissioner ZIGLAR. Thank you, sir.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. GEKAS. [Presiding.] The time of the gentleman has expired. Does the lady from California desire a second round?

Ms. LOFGREN. Yes, I do, Mr. Chairman.

Mr. GEKAS. The Chair recognizes the lady.

Ms. LOFGREN. Thank you.

Commissioner, in your testimony you say that you have moved forward on key elements of the agency's enterprise architecture plan. And I'm interested if you can share to us exactly what you mean by that. Where are we on the architecture plan?

Commissioner ZIGLAR. Well, let me talk about the architecture plan for a second, and then tell you what that means in the—

Ms. LOFGREN. I know what that means.

Commissioner ZIGLAR. I mean in specific terms.

We continue to build this enterprise architecture structure, and I think it's worth noting here that one of the things that shocked me when I first got to this job was I met with the GAO, who is actually overseeing our process here, and we're the first pilot, I guess, that they're using in the Federal Government. And I found out from the GAO that in many ways the INS is further along in

developing an enterprise architecture plan than most other Federal agencies—

Ms. LOFGREN. That's frightening.

Commissioner ZIGLAR [continuing]. Which I found rather disturbing.

What we have done since I've got there is to say, okay, we know some fundamentals about what we're going to do in terms of our overall enterprise architecture structure. We need to plug in some pieces of that now in order to be able to move along and address the priority issues. So things like the ENFORCE system as one of those elements of—

Ms. LOFGREN. But we haven't completed the entire architecture plan.

Commissioner ZIGLAR. No, it—

Ms. LOFGREN. I'm not suggesting you're wrong to implement pieces, but we don't have the whole plan in—

Commissioner ZIGLAR. No, it's not completed yet. We're on double time.

Ms. LOFGREN. All right. What role are biometrics playing in your planning? I mean, theoretically, you would have—a visa applicant would attend the consular officer, we would know who that individual is by the use of biometrics that would be available to the inspector at the port of entry, that would be available in a database that actually is accessible to everybody who's processing a benefits claim or the adjustment of status matter, and all of which would be available in real time instead—how many—how many databases do you have, something like 37 different databases that don't actually work on the same platform?

Commissioner ZIGLAR. Actually, I understand that we have about a hundred.

Ms. LOFGREN. It's a hundred?

Commissioner ZIGLAR. But that doesn't mean that they're not integrated. A lot of them are now integrated. For example, you mentioned the visas that we have—visa information we have access to from the State Department. Actually, that does not have a biometric, unless you consider a photo, a digital photo, as a biometric. And that's not—

Ms. LOFGREN. No, I don't.

Commissioner ZIGLAR. That's not.

Ms. LOFGREN. An iris scan or a fingerprint.

Commissioner ZIGLAR. We actually—I know it's hard to believe, but we actually have been out based on all the sort of things that have been said about us, we actually are out ahead of the curve in some ways on the biometric. For example, the Border Crossing Cards down in the Southwest border—we've issued about 5 million of them now—all have a fingerprint in them. The irony of it is that we're now deploying them. We had all these nice cards with fingerprints in them and no readers. We're deploying the readers now.

We have the IDENT system, which is a two-print system that has been extremely effective, once we got it moving, to identify people using biometrics, i.e., fingerprints.

The fact is that we are—and I say "we." This is beyond INS. The Federal Government through the Homeland Security Council are working on trying to identify a common biometric identifier that we

can use, and we have an agreement with the Canadians that we will try to develop something in a common sense, and I suspect we will have something along that lines with the Mexicans. But using—and my guess is it'll be fingerprint, but I don't know that. But we need to have those in passports and visas and all of those sorts of things so that we have two things: number one, we identify that the person in front of us is actually the person that they say they are; and, secondly, that we have a way of accessing databases that tell us—

Ms. LOFGREN. I mean, that's off the shelf. That's available today off the shelf, and we don't need to design it. My time is almost up, so I just want to make a comment, because I think it's important that we focus in on the things that are going to be essential not just important, and that we streamline what we're doing so that we don't get bogged down in hoping to solve new problems that we've created. For example, I was thinking as you were talking about adjustment of status issues from B-2 visitors about my old law professor I just saw yesterday at a reception, his—a girl he met when he was in Bali came over on a visitor's visa, and they got married and she adjusted her status, 28 years ago and 3 children later.

Now, if we don't allow for that to occur, there's going to be problems. People are going to be fighting about trying to get their wife or husband a visa. And you're going to be diverted from your main mission, and also you're not going to make us a darn bit safer by preventing husbands and wives from staying together.

A 30-day visitor's visa, I don't think that's going to make us safer. The main issue is: Can someone get in at all who's a bad guy? I'm just hopeful that we don't start doing things that then we're going to have to create still more headaches and problems unwinding what we've done. I would say that creating still another reorganization falls in that bailiwick. There could be three or four perfect reorganizations, but it's important that we go with management right now and not be diverted for the next 6 months on how many angels are on the top of this pin. We need to get the technology. We need to give you the tools. We need to have systems in place. We need to have databases that communicate, and we need to keep the bad guys away from our country. And I think we need to support you in doing that, and if you can't do it, then we need to tell the President to find somebody who can do it.

But I think that's where we are right now, and I pledge to you whatever support I can give as you solve this—I hope solve this important task that is essential for our country.

Commissioner ZIGLAR. Thank you, Congresswoman, and I just want to say I've appreciated your support and your friendship in all of this.

Mr. GEKAS. The time of the lady has expired. All time has expired except for two quick questions that the Chair wishes to pose. We agree, do we not, that when Atta left the country in January of 2001, that he forfeited his then-current status; is that correct?

Commissioner ZIGLAR. He abandoned his application for a change of status.

Mr. GEKAS. Okay. So that means then, does it not—is it logical for us to conclude that he should never have gotten that new status?

Commissioner ZIGLAR. That's—that is correct.

Mr. GEKAS. That was the big flaw in this whole melodrama—

Commissioner ZIGLAR. Well, except that even if he had abandoned that status, he still had a valid visa, so he still could come into the country on a B. So even if you had abandoned—even if it had been adjudicated abandoned, it did not stop him from coming into the country. So we'd still—assuming all else was equal, the same, we'd still be sitting here and we would still have been looking at September 11, because he did—he still had a valid visa on which he could enter.

Mr. GEKAS. Well, but if we would have stopped him as a student in this particular case, it would have been the end of the ball game.

Commissioner ZIGLAR. The problem with it is that he had already finished his course of study, and that's—see, that's what I was addressing earlier. That's why we shouldn't be allowing people to start a course of study until they've got their adjustment of status. That's why we're—

Mr. GEKAS. Was it a strange circumstance that the gentleman, Mr. Dekkers, found them at his doorstep to apply for the student visas? Was that strange?

Commissioner ZIGLAR. No, he didn't apply for a student visa through Huffman. All that Mr. Dekkers was did was fill out an I-20 for these folks, which was part of an application that they made for us to change—

Mr. GEKAS. I understand, but—

Commissioner ZIGLAR [continuing]. The statute.

Mr. GEKAS. Is that a normal situation where they go and fill out an I-20 at the school?

Commissioner ZIGLAR. Sure. Anytime that somebody's in the country in a legal non-immigrant status, they can always file for a change of status, and that's the way you do it.

Mr. GEKAS. That's correct. But I understood from Mr. Dekkers that he was surprised to find them at his doorstep. Is that correct?

Mr. DEKKERS. That is correct, Mr. Chairman. Normally what happens, as I stated, is that the students are overseas. We send the application overseas. This is the first time for us as a flight school that we filled out the forms here. But Mr. Ziglar is correct. There are many schools, universities who fill them out here, too. We never did that before, except in these two circumstances. There's—can I say something, Mr. Chairman? Can I say—

Mr. GEKAS. Yes, quickly.

Mr. DEKKERS. I heard Mr. Ziglar saying about 2 hours ago that he would stop letting students come into the country to fly professional flight courses on a tourist visa. We applaud that in the industry. We think that our pilot industry—we are 70—80 percent down. A lot of us are going to bankrupt right now. I think that we would like to work together with the Government. We are also helping with protection. If we got somebody at our doorstep, we followed up the M-1. But 80 percent of the flight schools are non-approved flight schools. They have never heard about an M-1. So we as an industry would like to work with the Government and to see how we can help each other.

Mr. GEKAS. The time of the Chair has expired. Does the lady wish to be recognized for some—

Ms. JACKSON LEE. I do. I do. Let me just say this: First of all, let me applaud Mr. Dekkers, because I was very concerned about the approach taken by schools, as you note in my questioning. I may not have time to get the answers, but I would like them in writing, to find out how Mr. Atta paid for his training, as well—if it's in your testimony, then I will review it again—how he paid for his training, whether that is typical of payment from other students, and how much the training is, if you could get that.

And, Mr. Chairman, I'd also like to put into the record, because I think, Commissioner Ziglar, we need to look at—to be fair and to be equitable and not to impact negatively on change of status process, we need to look at it because I'd like to submit into the record a copy of Mr. Atta's inspection results when he came into Miami that indicate that he came in on January 10, 2001, with a temporary visitor for pleasure. And that is clearly—I think that we can have people having relationships and other things, but we need to look at in a fair manner how to address that.

Mr. GEKAS. Without objection.

Ms. JACKSON LEE. Thank you. My final point, Mr. Chairman, is just to clarify 245(i) so that you won't be burdened by comparing what happened with Mr. Atta, 245(i) appeals—or deals with individuals who have established relationships, employment and/or family. It's a reunification of family. That is not an open-door for terrorists. And so I hope we'll see that legislation passed and help you out utilizing it.

Mr. GEKAS. The Chair thanks the lady.

Ms. JACKSON LEE. Thank you.

Mr. GEKAS. We draw this hearing to a close with the abundant thanks that we offer to each of the witnesses, and all of you are subject to written interrogatories. I hope that you will accommodate us as that occurs.

Commissioner ZIGLAR. Thank you, Mr. Chairman. Appreciate it.

Mr. GEKAS. Thank you very much.

[Whereupon, at 6:42 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Mohammed Atta's Entries and Exits	
Date/Place	Event
5/18/00, Berlin	State Dept. issues visitor's visa to Mohammed Atta.
6/3/00, Newark	Atta enters as visitor using Egyptian passport.
7/18/00, Florida	Atta, along with Al-Shehhi, begin flight training at Huffman Aviation.
9/19/00	Atta and Al-Shehhi apply for change of status to M-1 student.
1/4/01	Atta flies from Miami to Madrid.
1/10/01, Miami	Atta re-enters as visitor.
7/8/01	Atta flies from Miami to Madrid.
7/17/01	Atta's change of status application to M-1 student is approved.
7/19/01, Atlanta	Atta re-enters as visitor.

Marwan Al-Shehhi's Entries and Exits

Date/Place	Event
1/18/00, Dubai	State Dept. issues visitor's visa to Marwan Al-Shehhi.
5/29/00, Newark	Al-Shehhi enters as visitor using United Arab Emirates passport.
7/18/00, Florida	Al-Shehhi, along with Atta, begin flight training at Huffman Aviation.
9/19/00	Al-Shehhi and Atta apply for change of status to M-1 student.
1/11/01	Al-Shehhi departs New York.
1/18/01, New York	Al-Shehhi re-enters as visitor.
4/18/01	Al-Shehhi flies from Miami to Amsterdam.
5/2/01, Miami	Al-Shehhi re-enters as visitor.
8/9/01	Al-Shehhi's change of status application to M-1 student is approved.

Chronology of Mohammed Atta's Document Processing

Date	Event
9/19/00	Atta applies for change of status from visitor (B-2) to a student (M-1).
7/17/01	Atta's change of status application approved; approval notice and student copy of I-20 form mailed to Atta. School copy of I-20 held for batch mailing and sent to data processing contractor.
9/24/01	I-20 received by contractor. The contract required that the forms I-20 be returned to the school after 180 days.
10/5/01	Contractor enters into database the information from I-20 forms for Atta and Al-Shehhi. I-20 forms microfilmed and set aside for mailing to school at end of 180 day period.
3/02	I-20 forms mailed to Huffman Aviation.

Chronology of Marwan Al-Shehhi's Document Processing

Date	Event
9/19/00	Al-Shehhi applies for change of status from visitor (B-2) to a student (M-1).
8/9/01	Al-Shehhi's change of status application approved; approval notice and student copy of I-20 form mailed to Al-Shehhi. School copy of I-20 held for batch mailing and sent to data processing contractor.
9/24/01	I-20 received by contractor. The contract required that the forms I-20 be returned to the school after 180 days.
10/5/01	Contractor enters into database the information from I-20 forms for Atta and Al-Shehhi. I-20 forms microfilmed and set aside for mailing to school at end of 180 day period.
3/02	I-20 forms mailed to Huffman Aviation.



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

CO 703.1192
425 I Street NW
Washington, DC 20536

MAR 18 2002

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your February 28, 2002, letter requesting information regarding published reports about Mohammed Atta's admission to the United States at Miami International Airport in January 20, 2001.

Please find the responses to your request for information below:

1. A description of Mohammed Atta's admission into the United States through Miami International Airport on January 10, 2001.

Answer: Given the sheer volume of inspections, the amount of time that has passed, and the fact that the inspection did not result in the initiation of removal proceedings, the Inspectors who spoke to Mohammed Atta on January 10, 2001, do not remember the specific inspection. The only record that exists of the inspection are the Inspectors' notes, which are extremely limited and not comprehensive. A copy of the notes is attached for your review. According to that record, Mohammed Atta arrived at Miami International Airport via American Airlines flight 69 from Madrid. Upon inspection, Atta presented Egyptian passport number 1617066. The notes from the primary Inspector indicate that Atta had in his possession a Form I-20, which is the form issued to foreign students by schools authorized to accept such students. They also reflect that Atta had indicated to the Inspector that he had been attending flight school for five or six months. Current rules permit nonimmigrants with change of status applications pending to attend school while awaiting adjudication of the application. The INS plans to change these regulations to prohibit an alien from attending school until after the change of status application is approved. Also, as part of the overall effort to reduce processing times, we plan to reduce to less than 30 days the average processing time for applications to change status from visitor to student.

The Honorable George W. Gekas
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In light of the information given to the primary Inspector, and the fact that Atta was carrying an unexpired B-1/B-2 visa, Atta was referred to secondary inspection to determine admissibility. The notes from the secondary inspection indicate that a query to the CLAIMS system (INS' benefits processing database) was made, which confirmed that Atta had previously submitted an application to change status to M-1. The notes also indicate that no grounds for removal were found.

While the reasoning behind the ultimate decision to admit Atta under the B-2 classification is not clear from the record, it is clear that the Inspector made all appropriate queries and encountered no information indicating that Atta was a terrorist. Upon completion of those queries, Atta was admitted in visitor's status.

2. Copies of Atta's passport (if you have it) and all supporting documentation that he submitted to INS Inspections when he arrived at Miami International Airport on January 10, 2001.

Answer: In light of the vast volume of inspections conducted each day, copies of documents presented are rarely retained if the INS does not initiate removal proceedings. Atta was admitted, and therefore such copies were not made. However, as discussed in #1 above, enclosed is a copy of the record of the Inspectors' notes.

3. An explanation of whether Atta should have been admitted to the United States on January 10, 2001, along with a description of all grounds on which he may have been inadmissible on that date.

Answer: An immigration officer has broad discretion to determine the admissibility of aliens applying for admission to the United States taking into account the documents presented, the alien's representations, information contained in automated systems, and other factors.

As a general rule, an applicant for admission who is attending flight training full-time is required to present a student visa, and can be found inadmissible under INA section 212(a)(7)(B)(i)(II) if the individual is not in possession of an appropriate nonimmigrant visa.

However, admission of a prospective student with a visitor visa is allowed under certain circumstances. While the regulations do not explicitly address this question, the Inspectors Field Manual, which contains instructions to field officers, states in part: "For prospective students...occasionally you may encounter an applicant who, in good faith, presents a B-2 visa but intends to attend school. Before denying admission, consider all circumstances surrounding the case, such as the reasons for not getting a student visa abroad, financial ability, and any possibly fraudulent activity on the part of the alien. If you are satisfied that the alien is otherwise

The Honorable George W. Gekas
Page 3

bona fide, defer inspection to allow the alien to obtain an I-20 and any other documentation and apply for a visa waiver."

Also, B-2 visitors are permitted to engage in a short course of study incident to their primary visitor for pleasure purpose. While the current regulations do not explicitly address this question, the INS plans to propose a change to the regulations on this issue. The Inspectors Field Manual, states in part: "If otherwise admissible, admit...as B-2...an alien coming primarily for tourism who also incidentally will engage in a short course of study." As stated in #1 above, the INS is drafting a change to the regulations and will also change the Inspectors Field Manual to ensure that an alien in this situation will not be admitted to the United States.

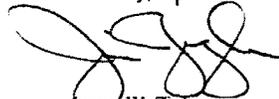
The record indicates that, at the time of the January 10 admission, the Inspector was aware that Atta had applied for a change of status to M-1 student. He also was aware that Atta was not at that time the subject of any lookout or watch list. The full content of the entire interview with Atta is not known for the reasons discussed in #1 and #2 above. If Atta's inspection presented issues that needed additional information or further scrutiny that should have caused the inspector to defer the inspection or deny admission to Atta. But, we cannot know today all of the information that was then before the Inspector. Therefore, a fair judgment would be that one cannot determine in hindsight that the Inspector's decision was not the correct one based on the information available to him at that time. But we do know that the Inspector conducted a thorough inspection and had no information that Atta was a potential terrorist. Certainly, Atta would not have been admitted had such intelligence information been available to the Inspector.

4. A copy of the memorandum referred to in the October 28, 2001 Washington Post article is requested.

Answer: Enclosed is a copy of the referenced memorandum.

I trust this information is useful to you. If I may be of further assistance, please do not hesitate to call me.

Sincerely,



James W. Ziglar
COMMISSIONER

Enclosures

cc: The Honorable Sheila Jackson Lee
Ranking Member, Subcommittee on Immigration and Claims

INS INSPECTION RESULTS 113001 I2MRM903
TID=D1MN A524 MIAMI, AIRPORT CONCOURSE E T2PRM906
FLIGHT#: AA 69 AMERICAN AIRLINES
DOC TYPE: P #: 1617066 CENTRY: EG EGYPT SEX: M
DNAME (LAST): ATTA FRST: MOHAMED DOB: 090168
RFRD BY: ██████████-TRAINEE INSPECTOR-B DTE: 01102001 TME: 1703
REASON:
PAX TURNED IN A I20AB BUT HAS HAD A RESPONSE, MEANWHILE HE'S ATTENDING FLIGHT
TRAINING SCHOOL, ALREADY WAS IN SCHOOL FOR 5/6 MONTHS, PLEASE VERIFY
SNAME (LAST): FRST: DOB:
NATIONALITY: EG EGYPT
DISPOSITION: B2 TEMPORARY VISITOR FOR PLEASURE
CHARGE (CODED):
DEFERRED TO POE: LOOKOUT MATCH? (Y/N)
SECONDARY OFFICER: ██████████-INS INSPECTOR-B 01/10/2001 18:00
COMMENTS: REFERRAL CODE:
SUBJ APPLIED FOR M-1. I.S. ADJUSTED STATUS. NO OVERSTAY/ NO REMOVAL GROUNDS PCU
ND.

(PF1=HELP) (PF2=FLD HELP) (PF3=MAIN MENU) (PF4=PREV MENU) (PF9=VIEW ACCESS)
(PF14=LINKLIST) (PF15=PREV LINKLIST) (PF16=PRINT) (PF17=HOME BASE)



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.9
425 I Street NW
Washington, DC 20536

June 18, 2001

MEMORANDUM FOR: All Service Center Directors
All District Directors
All Officers-in-Charge

FROM: Thomas Cook /s/
Acting Assistant Commissioner,
Office of Programs

SUBJECT: Travel After Filing a Request for a Change of Nonimmigrant Status

The purpose of this memorandum is to correct an article published in the March 26, 2001 issue of Interpreter Releases. Quoting a statement by a Service officer, the article advises that an alien on whose behalf a request for a change of nonimmigrant status has been filed may travel outside of the United States and the request for a change of status would not be considered abandoned. This is not an accurate interpretation of current Service policy.

Service officers are reminded that an alien on whose behalf a change of nonimmigrant status has been filed and who travels outside the United States before the request is adjudicated is considered to have abandoned the request for a change of nonimmigrant status. This has been, and remains, the Service's long-standing policy. The Office of Adjudications has described this particular policy in numerous letters and correspondence with the public and the legal community.

If at any time it comes to the attention of the Service that an alien on whose behalf a request for a change of nonimmigrant status has been filed has travel outside of the United States during the pendency of the request for a change of status, the application or petition should be denied pursuant to 8 CFR 248.3(g).

Attached for your information is a copy of the article from the March 26, 2001 issue of Interpreter Releases. Please note that the reference contained in the article to a October 20, 1999 letter written by Thomas Simmons is not germane to this issue because it relates to the filing of an extension of temporary stay, not a request for a change of nonimmigrant status. Current Service policy does not preclude an alien from traveling outside of the United States while a request for an extension of temporary stay is pending with the Service.

For additional information regarding this issue, contact Adjudications Officer John W. Brown at 202-616-7435.

Attachment

decision to step down, praising him as "an exemplary leader during a time of dynamic change and tremendous progress at the Board."

Chairman Schmidt fostered a number of initiatives to improve case processing and customer service during his term as Chairman. The Board expanded during that time from five to 21 Members, and decided over 130,000 cases, including nearly 200 precedent decisions. The Board also created a new management structure under Chairman Schmidt's leadership, established the first unified Clerk's Office to support the direct filing of appeals, developed a "more efficient and productive" en banc deliberative process, held oral arguments outside the Washington, D.C., area for the first time, issued the *Board of Immigration Appeals Practice Manual and Questions and Answers*, created a virtual law library on the EOIR's website, and instituted the first Pro Bono Appeals Pilot Program. The Board is also piloting a streamlined appeals system, the preliminary results of which show a more than 20 percent increase in case completions, according to the EOIR. ■

11. State Dept. Rule Allows Certain Int'l Broadcasting Employees to Receive Special Immigrant Visas

The State Department's Bureau of Consular Affairs has published an interim rule amending its regulation at 22 CFR § 42.32 to accord fourth preference employment-based special immigrant classification to certain international broadcasters, pursuant to recently enacted legislation. The interim rule, which was published in 66 Fed. Reg. 15349-50 (Mar. 19, 2001), is reproduced in Appendix V of this Release. It takes effect on April 18, 2001, and comments are due by May 18, 2001.

Pub. L. No 106-536, signed by President Bill Clinton on November 22, 2000, amended INA § 101(a)(27) to provide special immigrant status under INA § 203(b)(4) for aliens (and accompanying spouses and children) who seek to enter the U.S. to work as broadcasters for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of that Board. The new law provides 100 such visas per fiscal year, excluding those made available to spouses and children.²⁹

The interim rule adds a new paragraph (d)(8) to 22 CFR § 42.32. ■

²⁹ For previous reports on Pub. L. No 106-536 (S. 3239), see 78 Interpreter Releases 10 (Jan. 3, 2001); 77 Interpreter Releases 1562, 1565 (Nov. 6, 2000).

12. INS Clarifies Effect of Travel Abroad on Change of Status Request from H-4 to H-1B

In recent e-mail correspondence, the INS clarified the effect of travel abroad on a change of status request from H-4 to H-1B, when the alien would re-enter the U.S. on the H-4 visa because the H-1B would not be approved until after her return. The INS made the clarification in response to an inquiry e-mailed on December 7, 2000, by attorney Michele Buchanan, of Pacific Palisades, California.

Specifically, Ms. Buchanan's firm recently filed an H-1B visa petition requesting a change of status to H-1B for an H-4 visa holder. The client would be traveling abroad for the holidays, and would re-enter the U.S. on the H-4 visa because her H-1B would probably not be approved until after her return to the U.S. in H-4 status. Ms. Buchanan asked whether, if the H-1B petition/change of status application were adjudicated after her return to the U.S. in H-4 status, she would need to leave the U.S. and re-enter in H-1B status in order to "activate" the approved H-1B petition, or whether she could rely on the approved I-129 petition with an I-94 indicating that her status has been changed to H-1B.

Ms. Buchanan also recalled a "similar, yet slightly different situation," in which Thomas W. Simmons, then-Branch Chief for the INS's Business and Trade Services Branch, issued a letter dated October 20, 1999, addressed to Norman Plotkin. Mr. Plotkin described a scenario in which an H-1B alien was employed by "Company A" with both an H-1B visa petition and an H-1B visa stamp valid until December 31, 2000. "Company B" then extended a job offer to the alien and filed a subsequent "change of employer" H-1B petition, and requested an extension of stay on behalf of the alien. While Company B's petition was pending, the alien traveled outside the U.S., reentered using the still-valid visa from Company A, and resumed employment with that company. Upon reentering, she was issued a new I-94 valid until December 31, 2000, consistent with the initial petition filed by Company A. Thereafter, the INS approved the petition filed by Company B with a validity date until December 27, 2001. Mr. Plotkin asked which validity date was controlling: that of the first petition filed by Company A and the I-94 issued thereunder, or that of the second petition filed by Company B and the new I-94 issued therewith? Mr. Simmons replied that the alien could remain in the U.S. until December 27, 2001, as an H-1B nonimmigrant. He added that the alien's departure and readmission to the U.S. would have no bearing on the validity period of the petition filed by Company B.³⁰

In reply to Ms. Buchanan's inquiry, Linda Dodd-Major,

³⁰ See 76 Interpreter Releases 1723 (Dec. 3, 1999).

Director of the INS's Office of Business Liaison, said that if the H-1B petitioner for the H-4 beneficiary requested a change of status from H-4 to H-1B, then she did not see any problem. "The only problem would come if she re-entered the U.S. under H-4 after INS has already approved the change of status to H-1B, leaving her with two I-94's: one received at admission endorsed as H-4 and one dated earlier endorsed H-1B (attached to the approval notice)." She said she believed that Mr. Simmons meant to say that "the alien could rely on the earlier-issued I-94 (reflecting H-1B) and continue to use it without having to leave and re-enter the U.S."

Ms. Buchanan told Interpreter Releases that she found both Mr. Simmons's and Ms. Dodd-Major's clarifications surprising because they seem "to represent a departure from what was a commonly held understanding of the effect of an individual leaving the U.S. while an application for change/extension of stay was pending—that the change/extension aspect of the matter was deemed abandoned."

13. EOIR Issues Revised Forms Reminder

The Justice Department's Executive Office for Immigration Review (EOIR) issued the following reminder on February 9, 2001:

Practitioners Reminded to Use Revised Forms EOIR-27 and EOIR-28 When Filing Notices to Appear Before the Board of Immigration Appeals and Immigration Court

The [EOIR] reminds attorneys and other representatives (practitioners) who practice or wish to practice before the Board of Immigration Appeals (BIA or Board) or the Immigration Courts that they must use the EOIR-27 and EOIR-28 forms that were revised in 1999. The updated forms are marked by the date "August 99" in the lower right corner on the front. The Board and the courts may reject any older forms that are submitted.

EOIR announced the requirements for using the revised forms in a news release and fact sheet dated June 27, 2000, on the amended Rules of Professional Conduct for Immigration Practitioners. The fact sheet advised practitioners to start using the revised forms immediately and noted that old forms would not be accepted after January 1, 2001. Both the news release and fact sheet are posted on EOIR's Web site at <http://www.usdoj.gov/eoir/press.htm>. The revised forms are also available on EOIR's Web site at

<http://www.usdoj.gov/eoir/formalist.htm> as well as from the Clerk's Office at the Board and any Immigration Court.

Practitioners representing matters before the Board must file the revised Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals. Practitioners representing matters before an Immigration Court must file the revised Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

Each of these forms is necessary to determine whether or not a practitioner is authorized under the regulations to represent aliens before the respective tribunals; to provide the represented alien an opportunity to expressly consent to the practitioner's representation and to the release of EOIR records to the practitioner where required by law; and to formally notify the INS and EOIR of such representation. It also provides information regarding appearances and representation before the Board and the court, including the manner in which a practitioner may properly withdraw from a proceeding.

14. HHS Seeks Proposals for Torture Victim Services

The Administration for Children and Families, of the Department of Health and Human Services (HHS)'s Office of Refugee Resettlement, has published a request for applications for services to victims of torture. Covered services include medical, psychological, legal, and social services, as well as research and training for health care providers outside treatment centers to enable the provision of services to victims of torture.

The HHS estimates that four to six new "Treatment and Services for Torture Survivors" grants can be awarded during fiscal year 2001, for a total of about \$2 million. Applications may be for project periods of up to three years, with funding for a one-year budget period provided by the initial grant and further funds provided by continuation grants for subsequent years. The HHS encourages proposals that will address a range of services for torture victims in the project's specified geographic area, and applications may include several organizations in collaboration.

The closing date for submission of applications is May 7, 2001. The notice, which was published in 66 Fed. Reg. 13771-76 (Mar. 7, 2001), is not reproduced in this issue of Interpreter Releases for space reasons. For more information

Lawyers Say Terrorist's Entry Into U.S. Could Have Been Barred

George Lardner Jr. Washington Post Staff Writer
October 28, 2001; Page A8

The Immigration and Naturalization Service should have sent terrorist ringleader Mohamed Atta back to Germany last January instead of permitting him to reenter the United States to continue his flight training, immigration lawyers and specialists say.

Under the law, they add, INS inspectors could have canceled Atta's visa when he landed Jan. 10 at Miami International Airport on a flight from Madrid. He was admitted as a tourist on a "B" visa even though INS officials say he told the inspectors that he was taking flying lessons in the United States, a step that called for "M-1" status as a student.

"Nine times out of 10, they would have told him to go back and file [for that status] overseas," said Jeannette Butterfield, executive director of the American Immigration Lawyers Association. "You're not supposed to come in as a visitor for pleasure and go to work or school."

INS officials defend the decision to let Atta back into the country as perfectly proper. They say he had a valid "B" or tourist visa and had formally applied months earlier to change his status from tourist to student.

Atta "had a valid, pending, legal request to change status from a visitor to a student," the INS said in a statement when the issue first arose this month. "He was admissible with a visitor's visa under these circumstances."

Immigration experts outside the agency dispute the INS position vigorously. Under long-standing INS policy, they point out, Atta had "abandoned" his change of status request by leaving the country. The rule was reemphasized last June in a memo that was sent to INS officials throughout the country to eliminate any doubts.

"INS officers are reminded that an alien on whose behalf a change of nonimmigrant status has been filed and who travels outside the United States before the request is adjudicated is considered to have abandoned the request for a change of nonimmigrant status," Acting INS Assistant Commissioner Thomas Cook said in the memo. "This has been, and remains, the INS's long-standing policy."

Had Atta been sent back to Germany, where he obtained a multiple-entry tourist visa in 2000, experts said, U.S. consular officials in Berlin would have taken a close look at his application for a student visa, especially because there would have been a notation in his record that he had been turned away at Miami. They would at least have asked him why he did not apply as a student to begin with, because he began pilot training little more than a month after he first arrived in the United States.

"It's very hard to predict what would have happened," said Washington immigration lawyer Lynda Zengerle, who said Atta's quick conversion from tourist to student smacked of "visa fraud." Had Atta's tourist visa been canceled in Miami last January, "that would have been a giveaway" to officials in Berlin. Atta, she said, was "obviously very determined, but the effort might have thrown him off his timetable."

"INS denies entry to thousands of visitors to the U.S. each year on valid tourist visas when it appears that they are living or studying in the U.S.," said Michael Guignard, a retired foreign service officer and chairman of the National Capital Area Paralegal Association's Immigration Network. "INS dropped the ball on this one."

Atta obtained his tourist visa from U.S. consular officials in Berlin and first entered the United States on June 3, 2000. He and fellow hijacker Marwan Al-Shehhi started shopping around for a flight school and began pilot training in Venice, Fla., on July 6. Atta applied for a change of status to student in September.

The INS had authorized him to stay in the United States until Dec. 2, but INS spokesman Russell Bergeron said Atta's request for a change of status extended his visit until a decision was made on the request.

Bergeron called suggestions that Atta's was a clear case of visa fraud "ludicrous," because INS would have had to prove beyond a reasonable doubt that he intended to go to flight school when he got his tourist visa in Berlin. The INS spokesman said Atta's candor in admitting he was going to flight school on return from Madrid on Jan. 10 was a factor in his favor.

It is not known what Atta did on his six-day trip to Europe that month, but Czech officials confirmed Friday that Atta had contact with an Iraqi intelligence officer on a trip to the Czech Republic this year.

Despite the Cook memo, Bergeron said, "we don't necessarily agree" that Atta abandoned his change of status request by leaving the country Jan. 4. But Stephen Yale-Loehr, co-author of a 20-volume treatise on immigration law, said, "It's been clear for a very long time" that such applications are "deemed abandoned."

Zengerle said: "They just don't want to tell you they blew it. They should just admit they made a mistake."



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

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APR 5 2002

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to correct an aspect of Commissioner Ziglar's written testimony submitted to the Committee for the hearing on March 19, 2002.

The testimony stated, at page 8, that "[a]ll applications filed at Service Centers, including student status applications, are now checked against the Interagency Border Inspection System (IBIS)."

The statement should have read, "All change of status applications filed at Service Centers, including student status applications, are now checked against the Interagency Border Inspection System (IBIS)."

I appreciate the opportunity to clarify this matter.

Sincerely,

FOR THE COMMISSIONER

A handwritten signature in black ink that reads "Joseph Karpinski". The signature is written in a cursive style with a large, sweeping initial "J".

Joseph Karpinski
Director
Congressional Relations and Public Affairs

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