



Comprehensive Strategy for Overstay Enforcement and Deterrence

July 17, 2020

Fiscal Year 2019 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Office of the Under Secretary for Management

July 17, 2020

I am pleased to present the following report, “Comprehensive Strategy for Overstay Enforcement and Deterrence” for Fiscal Year (FY) 2019, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

The report has been compiled pursuant to a provision in Senate Report 115-283, which accompanies the FY 2019 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6). DHS generated this report to provide information on initiatives associated with the identification, enforcement, and deterrence of visa overstays.

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries relating to this report may be directed to me at (202) 447-3400.

Sincerely,



R. D. Alles
Deputy Under Secretary for Management



Executive Summary

This report outlines DHS’s comprehensive strategy for overstay enforcement and deterrence as well as information on existing operations and planned improvements.

Each year, millions of nonimmigrants are admitted lawfully into the United States for an authorized period. The authorized period can be a fixed period or can be based on completion of a certain activity, such as a student attending school (duration of status). A nonimmigrant becomes an “overstay” when he or she remains in the United States beyond his or her authorized period of admission or violates the terms of his or her immigration status, such as when a student no longer attends school without proper authorization and prior to the completion of his or her program of study. According to DHS reporting over the last 4 years, approximately 1 percent of all nonimmigrant visa holders overstay their admission each year. Federal law establishes consequences for nonimmigrants who overstay their authorized periods of admission.¹

DHS conducts its overstay enforcement efforts using a risk-based prioritization framework focused on upholding national security and public safety. DHS’s overstay enforcement efforts are aligned along three general categories: identification initiatives, enforcement actions, and deterrence efforts. ICE is the lead DHS Component responsible for overstay enforcement within the United States. ICE holds primary responsibility for Suspected In-Country Overstay lead development, investigations, apprehensions, and removals. Other DHS Components, including U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS), as well as interagency partners, play critical roles in addressing visa overstay violations.

The overstay identification process collates arrival, departure, and immigration information in order to generate a complete travel history for individuals who traveled, and subsequently were admitted into the United States. It encompasses the creation of automated overstay leads, batch vetting against DHS Component databases, and the prioritization and development of investigative leads that incorporate relevant law enforcement and national security information from various U.S. Government and public sources. To initiate the process, CBP generates daily lists of automated leads, referring possible Out-of-Country overstay leads to offices within CBP, and Suspected In-Country overstays to ICE.

Overstay identification efforts are supported by various initiatives to address national security and public safety vulnerabilities within the overstay population. In FY 2019, these initiatives included, *inter alia*, the Visa Lifecycle Program, and visa-specific initiatives.

In FY 2019, ICE’s vetting and investigative efforts narrowed down more than 1,521,812 suspected In-Country Overstay leads. Of these, 506,317 (33.3 percent) were found to have departed the country, 23,752 (1.6 percent) had changed their immigration status lawfully, and 392,738 (25.8 percent) were determined viable for more in-depth vetting, investigation, and possible law enforcement action by ICE Homeland Security Investigations (HSI). The

¹ Immigration and Nationality Act (INA) §§ 212(a)(9)(B); 237(a)(1)(C)(i); 222(g).

remaining 599,005 (39.4 percent) leads did not meet the criteria for an HSI-led investigation and were sent to ICE's Enforcement and Removal Operations for further review and possible action.

As a result of the aforementioned identification processes, DHS Components can leverage various authorities against overstay violations. ICE serves as the lead Component executing overstay enforcement actions, including the initiation of removal proceedings, on violators within the United States.

- In FY 2019, HSI's Counterterrorism and Criminal Exploitation Unit sent 9,671 investigative leads to HSI field offices targeting overstay leads that could pose a national security or public safety concern.
- CBP is responsible for enforcement activities for overstay violators who since have departed the United States. For validated Out-of-Country Overstay Violations, CBP's Arrival and Departure Information System (ADIS) Vetting Unit (AVU) creates TECS records to inform officers at the U.S. Department of State (DOS), USCIS, CBP, and other entities of the overstay violation.
- This may result in CBP no longer recognizing a nonimmigrant visa as valid, and/or may result in a 3- or 10-year bar to a subsequent admission. To date, the work of the AVU has resulted in more than 72,000 actions taken of this kind.
- Finally, USCIS leverages delegated authority² to issue Form I-862, "Notice to Appear (NTA)," when it denies an application, petition, or benefit request and the individual is removable for any reason.³ This authority includes issuing NTAs to individuals who are not in a period of authorized stay upon unfavorable adjudication of their application, petition, or benefit request. In cases where the individual appears to be removable but USCIS is unable to issue an NTA, USCIS refers the individual to ICE via the Referral to ICE process. USCIS routinely shares information with ICE so that ICE readily can determine if or when the subject's status is due to expire at some fixed or future date. If a nonimmigrant is served an NTA by DHS, he or she is accused of violating U.S. immigration laws and must appear before an immigration judge. If found to be in violation of immigration laws, he or she will be removed unless granted some form of relief.

As part of its overstay enforcement efforts, ICE works with key interagency partners, including:

- the International Criminal Police Organization, in search of a fugitive or individual wanted for serious crimes;
- the U.S. Department of Defense, to identify instances in which highly trained military students become absent without leave;
- the Federal Bureau of Investigation, in support to the Joint Terrorism Task Force cases to identify overstays with counterterrorism concerns; and
- DOS, in support of the Visa Revocation Program to identify, locate, and remove individuals whose visas were revoked, yet who remain in the country.

² INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1

³ *Delegation to the Bureau of Citizenship and Immigration Services*, DHS Delegation Number 0150.1; Paragraph II(N).

DHS also has instituted various initiatives to deter and otherwise to prevent overstay violations. This occurs through direct notifications to nonimmigrants as well as through outreach and education programs. As part of these efforts, DHS currently is requiring Visa Waiver Program (VWP) countries with an overstay rate equal to or exceeding 2 percent to implement a public awareness campaign intended to educate their nationals on the importance of abiding by the terms of their admission into the United States. Additionally, CBP initiated a notification process for VWP overstays in FY 2019 and also has begun sending out notifications for VWP travelers 10 days in advance of the end date of their period of authorized admission.

HSI Project Campus Sentinel is an outreach program that builds a partnership between HSI Special Agents and Student and Exchange Visitor Program (SEVP)-certified institutions to detect and combat student visa exploitation proactively and to address possible national security vulnerabilities posed by certain foreign students and school officials. SEVP also leverages numerous outreach initiatives to review and educate both certified schools and nonimmigrant students to ensure compliance with all relevant immigration laws and to prevent potential visa status violations. Although Project Campus Sentinel initially was established to encourage communication between school officials and HSI, the inclusion of the SEVP Field Representative Unit and Campus Public Safety entities allows all stakeholders the opportunity to exchange information openly to improve the level of cooperation.

Additionally, DHS is supplementing its ability to identify and locate visa violators by improving and modernizing its information technology systems. CBP's ADIS modernization will enhance the accuracy of its algorithms and will reduce false overstay leads. Simultaneously, ICE is modernizing the Student and Exchange Visitor Information System to become a person-centric database and to permit students to update their records for accuracy.

Also, DHS is proposing to modify the period of authorized stay for certain categories of nonimmigrants traveling to the United States by eliminating the availability of duration of status and by providing a maximum period of authorized stay with options for extensions for each applicable visa category. Failure to provide certain categories of nonimmigrants with specific dates for their authorized periods of stay can cause confusion over how long they may remain lawfully in the United States and has complicated the efforts to reduce overstay rates and to enforce immigration laws effectively. As a result, DHS is evaluating the duration of status framework for certain nonimmigrant programs.

DHS continues to improve its efforts to collect, analyze, and report information affecting the overstay enforcement mission. By enhancing current capabilities and/or by developing new methods, DHS is equipped better to track visa overstays accurately for enforcement action and to deter violations. This report details several steps that DHS has taken to expand its collaboration with interagency partners in its efforts to locate and remove overstay violators, as well as to improve its capabilities to communicate entry/exit information to prioritize leads and to prevent nonimmigrant visa holders from violating their status.



FY 2019 Comprehensive Strategy for Overstay Enforcement and Deterrence

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I. Legislative Language

This document responds to language in Senate Report 115-283 that accompanies the Fiscal Year (FY) 2019 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6). Senate Report 115-283 states:

As previously required in the explanatory statement accompanying Public Law 115–141, the Department shall submit an updated report outlining its comprehensive strategy for overstay enforcement and deterrence not later than 180 days after the date of enactment of this act. The report shall detail the steps being taken to identify aliens who have overstayed their visas, including those necessary to improve the capabilities to report such information; notify aliens of their required departure dates in advance; track such overstays for enforcement action; refuse or revoke current and future visas and travel authorization; and otherwise deter violations or take enforcement action. The report shall also outline the conditions under which an alien is admitted to the United States for “duration of status” and assess changes to such admission, since the required departure requirement is vague and complicates enforcement.

II. Background

An “overstay” is a nonimmigrant who is admitted lawfully to the United States for an authorized period but who has stayed in the United States beyond his or her lawful admission period. Nonimmigrants admitted for duration of status who fail to maintain their status also may be considered overstays. Duration of status is a term used for aliens who are admitted for the duration of a specific program or activity, which may be variable, instead of a set timeframe. The authorized admission period ends when the alien has accomplished the purpose for which he or she was admitted or no longer is engaged in authorized activities pertaining to that purpose. For example, a student who enters the United States for a program that runs for 4 years must leave within 60 days after the program is completed or go on to pursue practical training or another program of study, but the admission period does not specify 4 years. DHS identifies two types of overstays: 1) Individuals for whom no departure has been recorded (i.e., Suspected In-Country overstays), and 2) Individuals whose departure was recorded after their lawful period of admission expired (i.e., Out-of-Country overstays). In FYs 2015–2019, the DHS Entry/Exit Overstay report indicated that just more than 1 percent of all nonimmigrants overstayed their admission.

DHS conducts its overstay enforcement and deterrence efforts using a risk-based prioritization framework, which is focused on national security and public safety. The mission is executed through an integrated partnership among DHS Components, in collaboration with other U.S. Government agencies. The existing overstay enforcement model was built on the findings of *The 9/11 Commission Report* and the 9/11 Commission staff report, which noted that two of the 19 hijackers implicated in the September 11th attacks were visa overstays,⁴ and recommended that the government ensure that all visitors to the United States were tracked upon entry and exit.⁵ Other terrorism-related incidents, upon investigation, also have been linked to, or perpetrated by, nonimmigrant overstays. Consequently, it is critical for DHS to prioritize its enforcement and deterrence efforts to target those overstays who pose the highest risk to national security and public safety.

DHS’s overstay efforts are aligned along the following general parameters:

- **Identification:** Involves the use of information technology, data analysis, and investigative programs to develop and report on potential leads of individuals who have violated the terms and conditions of their nonimmigrant visa status. This includes initiatives to prioritize the identification of those who support terrorism, violent extremism, and acts of violence toward any group or class of people within the United States, or who present a threat of harm to public safety or national security subsequent to their entry.

⁴ National Commission on Terrorist Attacks upon the United States, *9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks upon the United States*, Washington, D.C., National Commission on Terrorist Attacks upon the United States, 2004, p. 389.

⁵ *Id.*, pp. 134, 139.

- **Enforcement:** Encompasses law enforcement actions to locate and verify removability of a possible overstay violator to investigate possible national security or public safety concerns and to apply penalties where applicable.
- **Deterrence:** Incorporates initiatives to prevent, educate, and notify aliens of the possibility of violating their nonimmigrant visa status. This also includes proactive efforts with institutional actors (e.g., schools enrolling nonimmigrant students) to ensure that nonimmigrants are informed of the terms and requirements of their admission to the United States.

Within DHS, the primary operational Components engaged in the overstay enforcement mission include U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). These entities engage and consult with various DHS Headquarters offices on policy, privacy, legal, and acquisition-related issues, as required.

- **ICE:** Serves as the lead on immigration enforcement operations within the United States, and is responsible for nonimmigrant identification, prioritization, and enforcement actions on aliens who have overstayed their period of admission or otherwise have violated the terms of their admission and are believed to be in the United States. ICE conducts in-depth analyses, locates targets, and initiates field investigations by referring high-priority information to HSI special agents or Enforcement and Removal Operations (ERO) officers nationwide.
- **CBP:** Collects biographic and biometric information to document arrival and departure information on individuals arriving to the United States at ports of entry. CBP officers also determine admissibility into the United States and determine the authorized period of admission (also known as an “admit until date”), by which time the individual must leave the country. CBP serves as the lead Component for enforcement activities related to overstay violators who since have departed the United States (also referred to as Out-of-Country overstays). When an overstay is confirmed, CBP creates a “lookout” based on the specific type of violation.
- **USCIS:** Administers the Nation’s lawful immigration system, which includes processing and adjudicating requests for immigration benefits. Among other things, during the adjudication of certain applications and petitions, USCIS determines whether applicants and beneficiaries of certain immigration benefit requests are inadmissible because of unlawful presence. Furthermore, under many circumstances USCIS may issue a Form I-862, “Notice to Appear” (NTA), when a subject’s status-granting application or petition is denied, and the subject is currently removable. USCIS also shares requested information with ICE via Referrals to ICE for investigation and may include subjects who are potential overstays and who meet other referral criteria.

III. Existing Operations

A. Overstay Identification

The overstay identification process is conducted by utilizing arrival, departure, and immigration information, which is consolidated to generate a complete travel history for individuals who traveled and were admitted to the United States. It also incorporates relevant law enforcement and national security information from various U.S. Government and public sources to vet and prioritize overstay leads for enforcement action.

To initiate the overstay identification process, CBP collects biographic and biometric data on nonimmigrants at U.S. ports of entry. CBP also collects this information from passenger manifests for arrivals to and departures from the United States via commercial sea and air carriers, private aircraft, and data received from Canada on third-country nationals entering Canada from the United States at land ports of entry. CBP, through the Arrival and Departure Information System (ADIS), matches the departure data against arrival data to determine who has complied with the terms of admission and who possibly may have overstayed their nonimmigrant stay. This system also receives other DHS data relevant to whether a person is present lawfully, and consolidates border-crossing information, immigration status and extension updates, foreign student and exchange visitor updates, and biometric-related identifiers. These data are used to create a person-centric consolidated travel and immigration history, which then is used to generate an initial determination on overstay status.

ADIS leads are prioritized and batch-vetted against CBP's Automated Targeting System-Passenger, and USCIS' Computer Linked Application Immigration Management System 3, reducing the overall list by identifying persons who have departed the United States, have changed their status to another nonimmigrant category, or have become lawful permanent residents. CBP subsequently disseminates a daily list of Suspected In-Country overstays to ICE and the list of Out-of-Country overstays to the CBP ADIS Vetting Unit (AVU) for further vetting.

Within ICE, the HSI Counterterrorism and Criminal Exploitation Unit (CTCEU) oversees the national program dedicated to In-Country overstay enforcement and is the first point of intake for Suspected In-Country overstay leads from CBP's ADIS platform. On average, CTCEU analyzes data on more than 1 million potential visa status violators each year from various DHS databases, including CBP's ADIS and HSI's Student and Exchange Visitor Information System (SEVIS), as well as from other investigative databases. Upon receiving the system-generated leads, CTCEU conducts both batch and manual vetting against government databases, open source analysis, and public indices. The information and vetting process helps to identify nonimmigrants who entered the United States through an established immigration entry process and who may have failed to comply with immigration statutes and regulations. This vetting process also helps to determine if an individual who overstayed his or her authorized period of admission subsequently had departed the United States, had changed to a different lawful immigration status, or would be appropriate for enforcement action.

To manage investigative resources better, CTCEU relies on a prioritization framework for these leads established in consultation with interagency partners within the national intelligence and federal law enforcement communities. CTCEU prioritizes rapid identification and enforcement toward overstay violators who may pose a national security and/or public safety concern. As part of its overstay enforcement mission, CTCEU proactively scrutinizes known or suspected terrorists and their associates, identifies terrorists and criminal enterprises, and prevents terrorists and other criminals from exploiting the Nation's immigration system.

Nonimmigrant visa violators who do not meet CTCEU's criteria for investigative leads are identified and referred to the ICE ERO National Criminal Analysis and Targeting Center, which works in close coordination with CTCEU on additional vetting and lead development. When appropriate, leads are forwarded to the ERO field office with jurisdiction for enforcement action.

Throughout FY 2019, CTCEU reviewed 1,512,812 potential overstay leads, of which 506,317 (33.3 percent) were found to have departed the country; 23,752 (1.6 percent) had adjusted their immigration status, were granted asylum, had changed nonimmigrant status, had extended nonimmigrant status, or otherwise were deemed to be legally present within the United States; and 392,738 (25.8 percent) were determined viable for more in-depth vetting and possible law enforcement action by HSI. Of the 1.5 million potential overstay leads, 599,005 (39.4 percent) of the leads did not meet CTCEU's criteria for HSI-led investigation and were sent to ERO for further review and possible action.

As part of the identification process, DHS Components have developed various initiatives to address national security and public safety vulnerabilities within the overstay population. The following outlines key initiatives in place in FY 2019:

- **Visa Lifecycle Program:** In 2016, HSI developed the Visa Lifecycle Program to integrate vetting processes more fully from the time that a nonimmigrant files a visa application to the time that he or she departs from the United States, or until the individual is identified as an overstay or otherwise fails to comply with the terms of his or her admission (i.e., becomes "out-of-status"). The initiative focuses on nonimmigrants seeking business or tourist (i.e., B1 or B2) or student (i.e., F, J, and M) visas from select U.S. visa-issuing posts. Working in tandem, CTCEU and HSI's Visa Security Program analysts vet information on these visa applicants and perform vetting throughout the lifecycle of the visa's validity for those visas that were approved and issued.

If CTCEU uncovers derogatory information during batch vetting, CTCEU analysts will review the lead manually. If the individual has not entered the United States yet, CTCEU will place a record in the Integrated Case Management System to identify the individual for other government partners (such as CBP); to nominate the individual for inclusion on the appropriate watch list, if applicable; to notify the appropriate HSI Attaché office; and to inform the Department of State (DOS) of the derogatory information so that DOS may revoke the visa, if deemed appropriate. If the individual has entered the United States, CTCEU analysts will initiate a collateral investigative request, which will be forwarded to the appropriate HSI field office for further investigation. The Visa Lifecycle Program

also allows CTCEU continuously to vet and identify any derogatory information that may arise during a nonimmigrant's authorized period of admission, or until such a person violates his or her immigration status. In instances where visa violations are identified (e.g., unlawfully working or not maintaining lawful student status), appropriate enforcement actions will be initiated.

- **CTCEU Open Source Analysis:** CTCEU created the Open Source Team (OST) in 2014 to capture and analyze an expanding share of unclassified information available through various open sources. CTCEU uses publicly available information consistent with the privacy settings that the applicant has set for those platforms and in accordance with DHS and ICE policies. The OST utilizes open source information to expand upon the various government and law enforcement databases currently used during investigations of nonimmigrant visa violators. CTCEU uses open source research techniques to resolve cold cases by determining valid locations for individuals not previously located. CTCEU has expanded its open source capabilities to various other initiatives, including the Visa Lifecycle Program, to identify derogatory information related to national security or public safety concerns.
- **Visa-Specific Initiatives:**
 - *F, M, and J Visas – SEVIS:* HSI leverages SEVIS as part of the overstay identification process. SEVIS is managed by Student and Exchange Visitor Program (SEVP), the program that certifies schools to enroll foreign students. If accepted by a SEVP-certified school, foreign students may be admitted to the United States with a valid F or M nonimmigrant visa, or without a nonimmigrant visa if determined to be from a visa-exempt country. The F nonimmigrant classification generally authorizes study in academic programs; such students typically are admitted for duration of status. The M nonimmigrant classification authorizes study in vocational programs; these students are admitted for a fixed period of admission for up to 1 year. Individuals may be admitted to the United States in J exchange visitor nonimmigrant status if accepted for participation in a DOS-verified exchange visitor program. Records of these F, M, and J nonimmigrant admissions, and continued participation in these programs, are tracked and monitored in SEVIS, which facilitates proper reporting and recordkeeping by schools and exchange visitor programs, thereby supporting data relevancy and integrity. SEVIS also provides a mechanism for student and exchange visitor status violators to be identified so that appropriate enforcement action (e.g., denial of admission, denial of benefits, removal from the United States) may be taken when appropriate.
 - *H-2 Visas:* The H-2 visa nonimmigrant program allows employers to hire foreign workers for temporary services or labor. DHS regulations⁶ require that an employer of temporary H-2 workers notify USCIS within 2 business days in the following four scenarios:

⁶ 8 CFR § 214.2(h)(5)(vi)(B), (h)(6)(i)(F). The regulatory provisions are slightly different for H-2A agricultural workers than for H-2B nonagricultural temporary or seasonal workers.

- No-show: An H-2 worker fails to report to work within 5 workdays of the employment start date on the petition or within 5 workdays of the start date established by the employer, whichever is later;
- Absconder: An H-2 worker fails to report to work for a period of 5 consecutive workdays without the consent of the employer;
- Termination: An H-2 worker is terminated prior to the completion of H-2 labor or services for which he or she was hired; or
- Early Completion: An H-2 worker completes the labor or services for which he or she was hired more than 30 days earlier than the employment end date stated on the H-2 petition.

These employer notifications assist DHS in identifying individuals who may have violated the terms and conditions of their H-2A or H-2B nonimmigrant status. USCIS reviews each employer notification to assess if there is a potential violation of the terms and conditions of the alien's H-2 status. To make this assessment, USCIS checks several DHS systems to determine whether the H-2 worker has departed the United States, has changed his or her status to another valid nonimmigrant status, or has adjusted his or her status to lawful permanent resident. If the system checks indicate that the H-2 worker has not left the country, is not in a valid immigration status, and/or is not otherwise authorized to remain in the United States, then USCIS will create a record in TECS, an internal DHS case and records management system. The purpose of the TECS record is to flag the individual for CBP, ICE, and DOS in case he or she is encountered as part of the above agencies' enforcement actions or visa adjudication. As of June 2018, USCIS is sending directly to CTCEU, as a potential lead for further assessment, a list of H-2 potential absconders and no-shows that resulted in a TECS record.

B. Overstay Enforcement Activities

Visa overstay enforcement safeguards the integrity of the U.S. immigration system and U.S. immigration laws. DHS has three primary operational Components that can leverage their authorities in support of the overstay enforcement mission. ICE serves as the lead DHS Component investigating and executing visa overstay enforcement actions, including the initiation of removal proceeding on violators within the United States. USCIS assesses eligibility for immigration benefits and has been delegated the authority⁷ to issue NTAs when it unfavorably adjudicates an application or petition and the subject is amenable to removal proceedings. Each DHS Component has access to the full array of DHS information in executing an enforcement action within the Component's purview and coordinates or deconflicts as necessary with other government agencies.

The following outlines enforcement activities of each Component:

ICE: As ICE executes its overstay enforcement mission, those nonimmigrants identified as posing a potential national security or public safety concern are prioritized and referred to ICE field offices for investigation and removal. To accomplish this, ICE conducts specialized

⁷ INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1.

research and analysis to confirm the nonimmigrant status violation and to locate the subject of interest, leverages partner agencies' resources to identify any potential threats, and executes targeted operations and special initiatives throughout the various U.S.-based field offices. The pursuit of these violators provides significant support to the "disrupt and deter" counterterrorism strategy of the United States.

Following the aforementioned vetting process, CTCEU sends verified overstay leads to HSI field offices for further investigation. HSI Special Agents conduct additional database queries, review all available documentation, coordinate with local authorities, and conduct a full investigation to locate an individual identified as a potential overstay. After locating the subject, HSI Special Agents conduct a detailed field interview, review any new documentation provided by the subject, and verify the individual's immigration status. If the subject is determined to be out of status, HSI Special Agents take appropriate actions, including executing a criminal arrest and/or an administrative arrest for further criminal or removal proceedings. In cases where an HSI Special Agent is unable to locate the target of investigation, he or she will proceed through a recommended list of investigative measures to ensure that full attention has been given to the investigation. If those measures do not result in locating the visa violator, HSI Special Agents report that "all leads have been exhausted," and the lead is returned to CTCEU for placement into the continuous monitoring cycle until new actionable information (e.g., an address, claim for benefit, departure, or subsequent arrival) is identified. In FY 2019, CTCEU sent 9,671 leads to HSI field offices, which resulted in 1,819 arrests, 123 indictments, and 83 convictions.

In addition to the field-based investigations, HSI CTCEU also has leveraged partnerships with key agencies in the National Capital Region to support the overstay enforcement mission.

- *Partnership with the International Criminal Police Organization (INTERPOL):* INTERPOL issues notices for fugitives and individuals wanted for serious crimes, missing persons, unidentified bodies, possible threats to public safety, and terrorists who are subject to United Nations sanctions. Foreign fugitives wanted by INTERPOL who are believed to be in the United States are referred to CTCEU for further action. When CTCEU identifies an individual with an INTERPOL notice, the individual is vetted through various government databases, open source websites, and Intelligence Community holdings to identify immigration status, location information, and/or any derogatory information. CTCEU deconflicts all known information with HSI's liaison to INTERPOL prior to referring actionable leads to HSI field offices.
- *Deportation Liaison Officers:* ICE ERO recently augmented its nonimmigrant violator enforcement mission by adding a deportation liaison officer as the head of desk for the Americas at the INTERPOL General Secretariat in Lyon, France. In addition, ERO has deportation liaison officers assigned to INTERPOL Washington, D.C., the U.S. National Central Bureau, and Europol at The Hague, The Netherlands. These officers provide immigration enforcement subject-matter expertise to our partners to increase ICE's intelligence and investigative leads on fugitives, immigration fraud, and other unknown public safety threats through identity, criminal, and travel information exchange.

- *Absent Without Leave (AWOL) Program:* CTCEU also has partnered with the U.S. Department of Defense to address instances when International Military Students (IMS), who come to the United States on diplomatic visas, become AWOL and therefore violate the terms of their visa status. Because these subjects are highly trained, usually in special operations, intelligence, or other disciplines, it is imperative that HSI resources are directed toward locating and placing them in removal proceedings as soon as possible.
- *Coordination on Joint Terrorism Task Force (JTTF) Cases:* CTCEU supports HSI's efforts within the Federal Bureau of Investigation's (FBI) JTTFs. HSI is the largest federal contributor to the JTTF outside of the FBI, and its immigration authorities, expertise, and information are key among the various contributions to support the counterterrorism mission. If a subject of interest is an overstay, student, or other nonimmigrant visa violator, CTCEU facilitates an expedited lead referral to the appropriate field office for possible action and for consideration of disruption options in furtherance of the JTTF investigation.
- *Visa Revocation Partnership (DOS, ICE HSI CTCEU):* The Visa Revocation Program is run by the DOS Visa Office and, as such, may revoke the visa of an individual who already possesses a U.S. visa. CTCEU is tasked with leading HSI's investigative efforts related to visa revocation cases and has implemented standard operating procedures to ensure the timely and comprehensive investigation of all national security-related revocation cases, in coordination with DOS. If CTCEU identifies an individual who has had his or her visa revoked and is currently in the United States, CTCEU analysts forward a collateral investigative request to the appropriate HSI field office for further investigation. Through this partnership with DOS, CTCEU seeks to ensure that all nonimmigrants in the United States who have had their visas revoked are investigated thoroughly and removed from the United States, if appropriate.
- *Nonimmigrant Visa Violator (NIVV) Vetting:* Since 2009, ERO's National Criminal Analysis and Tracking Center (NCATC) (within the Targeting Operations Division) has partnered with CTCEU on the NIVV enforcement strategy. The CTCEU vets known or suspected terrorists, their associates, and those suspected of providing financial support to terrorist organizations. Once the CTCEU has completed its internal vetting process, cases that fall outside of HSI's targeting parameters are forwarded to the NCATC, which is responsible for further developing cases pertaining to suspected visa overstays lacking derogatory information.

The NCATC works in close coordination with CTCEU to provide additional analytics and targeting information on visa overstay violators who pose a public safety threat, in furtherance of facilitating appropriate enforcement action. Upon receiving prevetted case records from the CTCEU, the NCATC employs both automated and manual review processes that analyze a wide range of person-centric information from several DHS systems to identify individuals who pose a public safety or national security risk. In FY 2018, the NCATC reviewed more than 1 million NIVV cases.

On the basis of current resource levels and the overstay information received from the CTCEU, the NCATC prioritizes the NIVV workload to target at-large aliens with criminal records, including sex offenders, drug traffickers, gang members, violent felons, and significant public safety and national security threats.

Should additional or enhanced NCATC targeting support be requested beyond what they currently provide, a commensurate level of additional funding/personnel would be required to ensure the efficiency and effectiveness of collaborative NIVV enforcement efforts. Required personnel resources would include officers, criminal targeting specialists, and/or contractual support.

CBP: For validated Out-of-Country overstay violations, CBP's AVU creates records in TECS to inform officers at DOS, USCIS, CBP, and other entities of the overstay violation. If these reviews confirm that the traveler has overstayed, that traveler may lose the ability to participate in the VWP program, may have his or her nonimmigrant visa no longer recognized by CBP as valid, and/or may have a 3- or 10-year bar placed on any subsequent admission. To date, the work of the AVU has resulted in more than 13,518 Visa Waiver Overstay lookouts, 5,334 3-year bars, and 25,728 10-year bars.

The AVU currently only vets and validates Out-of-Country overstays of certain classes because of resource limitations; however, it intends to expand its operations to vet all nonimmigrant classes of admission. The sanctions imposed on Out-of-Country overstays incentivize compliance and minimize the risk of additional interior enforcement requirements from repeat offenders.

USCIS: USCIS maintains initiatives that are applicable to the enforcement of visa overstays, including referring cases to ICE for investigation and issuing NTAs when a subject's application or petition is denied, and the subject is currently removable. USCIS adheres to DHS's overall removal priorities while ensuring that its policies promote national security and the integrity of the Nation's lawful immigration system.

USCIS issued updated NTA guidance in June 2018, which provides for NTA issuance in cases where an applicant or petitioner is not lawfully present following the issuance of an unfavorable decision. Previously, some of this population was not subject to NTA issuance because these individuals were not considered enforcement priorities. This guidance is being implemented in a phased approach to allow sufficient time for training and attention to logistical needs.

Once the updated NTA guidance is implemented fully, USCIS will issue NTAs for a much broader group of removable nonimmigrants who receive adverse decisions on status-affecting applications or petitions than those NTAs that USCIS issued historically. USCIS also has the authority to issue an NTA while a case is pending. Alternatively, USCIS can create a Referral to ICE for cases involving certain criminal activity, where a subject is not removable at the time of decision, or where the subject's status is due to expire at a fixed, future date.

If an individual receives an NTA issued by any DHS Component, he or she has been accused of violating U.S. law and must appear before an immigration judge. If the immigration judge

sustains the allegations, and the individual is not eligible for relief from removal, the alien would be ordered removed.

C. Deterrence, Outreach, and Prevention

DHS also has instituted various initiatives to deter and otherwise to prevent overstay violations. This is accomplished through direct notifications to nonimmigrant visitors, outreach, and education programs.

HSI Project Campus Sentinel: Project Campus Sentinel, initiated in 2011, is an outreach initiative directed toward academic institutions approved by HSI SEVP to enroll nonimmigrant students. This program builds a mutual partnership between local HSI Special Agents and SEVP-certified institutions by collaborating to prevent both the criminal exploitation and radicalization of students on U.S. campuses. The SEVP Field Representative Unit and Campus Public Safety entities often perform joint visits to schools to ensure better communication with all school-related stakeholders, with the aim of increasing the exchange of information leading to an increased level of safety and security of the students, the faculty, and the institution. This exchange enables HSI to detect and proactively combat student visa exploitation and to address inherent national security vulnerabilities within schools' foreign student populations and school officials.

SEVP Outreach - Students, Exchange Visitors, and Schools: HSI's SEVP also plays an important role in compliance-related efforts. To support overstay deterrence, SEVP ensures its "Study in the States" website leverages blogs, articles, and social media content to educate nonimmigrant students and exchange visitors on compliance requirements, including the need to depart the United States following program completion. SEVP also maintains a contact center where schools, students, and other stakeholders may call or email their questions.

Tracking and Monitoring: Through SEVP's I-515 Adjudication Processing, students coming into the country without proper documentation are given conditional admission into the country for a period of 30 days. They must meet the terms of their admission to be given duration of status for the remainder of the program of study in which they are enrolled. Utilizing the SharePoint Prototype I-515A Tracking System 2 case management database, they are vetted in various systems to determine proper immigration status. Those students who do not comply within 30 days are sent notifications of possible terminations; their information then is forwarded to CTCEU for overstay vetting. This ensures that their records are reviewed and could be sent as possible leads to the field for violating the terms of the students' admission. Approximately 0.5 percent of the student population traveling between their home countries and the United States either fail to present proper documentation or experience another issue with their documentation.

Additionally, along with biannual recertifications, SEVP regularly reviews schools prior to their certification expiration date through out-of-cycle reviews to ensure that schools remain eligible for SEVP certification and are compliant with all recordkeeping, reporting, and other requirements under U.S. immigration laws and federal regulations. Through its certification and review process, as well as its nationwide field representative engagement program, SEVP can

monitor schools, can conduct site visits, and can identify potential issues early on to help prevent any possible visa status violations.

SEVP – Increasing Inspections of Employers and Oversight of Practical Training:

Increasing oversight of practical training for employers, and working with other ICE components to ensure that entities that employ nonimmigrant students are reviewed, will reduce the potential for students to abuse the practical training program and thus may reduce overstays. This will include increased data analytics to identify employers and schools potentially abusing the program; increased site visits to science, technology, engineering, and mathematics (STEM) Optional Practical Training (OPT)⁸ employers; and increased scrutiny of Form I-983, the training plan form developed in conjunction with STEM OPT.

SEVP – Increasing Functionality of SEVIS: SEVP has improved SEVIS functionality in several ways in recent years, from initiating the SEVIS Portal to facilitate reporting to improving the reliability of certain data, such as calculating the accrual of unemployment days for nonimmigrant students. An unemployment calculator can calculate if a nonimmigrant student has exceeded the permissible number of days of unemployment while on OPT or STEM OPT. Prioritizing the arrest and initiation of removal proceedings against any student who has exceeded the permissible period of unemployment may help to reduce overstays.

CBP Notifications: In FY 2017, CBP initiated a notification process for VWP travelers who overstayed their period of admission in the United States, emailing them regarding their noncompliance and informing them of the ramifications of their violation. The email directs the individual to visit the I-94 public website (<https://i94.cbp.dhs.gov>), to find information on the status of his or her admission period within the Traveler Compliance Check tab. The website provides the number of days overstayed and next steps.

More recently, CBP also began sending out notifications to VWP travelers 10 days in advance of the end date of their period of authorized admission. The email notifications indicate that the traveler has 10 days remaining and refers the traveler to the I-94 public website for more information.

VWP Outreach: DHS currently is requiring VWP countries with an overstay rate equal to or exceeding 2 percent to implement a public awareness campaign intended to educate their nationals on the importance of abiding by the terms of admission into the United States.

D. Proposed Recommendations to Reduce Overstay Rates

ICE: ICE proposes to employ a targeted communications strategy to students and schools to prevent overstays. This aggressive communications plan would build upon the existing

⁸ OPT is a form of temporary employment available to eligible F-1 students that directly relates to a student's major area of study in the United States. A student may apply for 12 months of OPT at each education level (e.g., one 12-month OPT period at the bachelor's level and another 12-month period at the master's level). STEM OPT is a 24-month extension of the OPT period for certain F-1 students who have earned DHS-approved STEM degrees and participate in practical training opportunities with employers that meet certain requirements. A student may be authorized two lifetime STEM OPT extensions at two different education levels.

communications infrastructure within SEVIS, the SEVP website Study in the States, and ICE.gov, with minimal cost and a high probability of success by utilizing innovative messaging media such as a Twitter feed and directed alerts. Messages to students would emphasize the negative consequences of overstaying, to include possible enforcement actions and subsequent bars to reentry.

Messages to schools would emphasize their role in communicating the consequences of overstaying lawful admission periods to students and also would identify possible risks to maintaining their SEVP certification with an emphasis on student retention and recruitment.

This communication messaging plan would be deployed at optimal timing around new semester periods (such as January and September) through logging in at the student portal for those with registered accounts and for all SEVP-approved, designated school officials (DSO) when logging in during those peak periods of registration/enrollment.

HSI anticipates an increase in overstay leads sent to the field for FY 2020 and strives continually to increase the quality of leads sent to the field. Overstay leads sent to the field will keep pace year to year with the annual trends of nonimmigrant visa overstays sent to HSI field offices.

Other proposals under consideration include implementing:

- a visa fee scale with fees increasing for countries with the highest overstay violator rates. This fee can be incorporated into the current program by which DOS collects SEVIS fees on behalf of DHS. Countries without reciprocal removal policies should have premium fees.
- an admission bond system to improve compliance. The bond should be based upon a country's overstay rate. A penalty can be instituted on countries that fail to take steps to improve compliance with departure requirements.

CBP: A long-term goal of the ADIS and I-94 Branch is to notify proactively most nonimmigrant travelers (i.e., excluding specific categories such as diplomats) about their status, both before and after an overstay occurs. Additionally, ADIS and I-94 Branch plans to enforce the law with respect to all relevant nonimmigrants who departed the United States after exceeding their lawful period of admission.

USCIS: USCIS provides information on its website about how employers of H-2A and H-2B workers can notify USCIS about H-2 workers who failed to report to work within 5 days of their start date or who left without notice and failed to return for 5 consecutive workdays. The website lists the information that must be provided when notifying USCIS. Currently, employers can provide notification to USCIS either by email or mail. USCIS is developing a form to improve the collection of accurate and complete information from employers about H-2 workers. The form will enhance USCIS' ability to identify an H-2 worker and to assess whether he or she is still in the United States, has a valid immigration status, or otherwise is authorized to remain in the United States. USCIS expects to finalize and publish the new form in FY 2020.

USCIS creates TECS records to flag the H-2 worker's potential violation in the event that CBP, ICE, or DOS encounters him or her. Additionally, as of June 2018, USCIS proactively sends a list of potential H-2 nonimmigrant absconders and no-shows that resulted in a TECS record to CTCEU as a potential lead for further assessment.

IV. Ongoing Enhancements and Improvements

DHS continues to improve its efforts to collect, analyze, and report information affecting the overstay enforcement mission. By enhancing current capabilities and developing new methods, DHS is equipped better to track visa overstays accurately for enforcement action and otherwise to deter violations. The following highlights current initiatives under development.

A. Information Technology Modernization Efforts

In FY 2019, as part of the ADIS Modernization efforts, CBP implemented enhancements to integrate more accurately data updates from USCIS and ICE systems about immigration and student-related changes in status at the person-centric level. ADIS also was reengineered with modernized logic to identify overstays more accurately and to rematch the entire ADIS database with current name-matching algorithms. These steps improved ADIS' ability to identify accurately and automatically the status of a given traveler. The aim of the above efforts is to refine and reduce the number of false system-generated overstay leads. CBP also is exploring methods to capture and store nonimmigrant visitor e-mail addresses in existing systems and applications, such as the Electronic System for Travel Authorization, which determines a traveler's eligibility to utilize the VWP, and the Electronic Visa Update System, which allows certain nonimmigrant visa holders to update their biographic information periodically to facilitate their travel to the United States. This will allow CBP to expand its public notifications to travelers regarding overstay status.

Concurrently, ICE is modernizing SEVIS to make the database person-centric, enabling better tracking of students and avoiding duplication of active records. The modernization will improve student reporting and information updates because it will enable students to report changes to their studies or personal information rather than relying solely on DSOs for making such updates. In addition, the modernization will improve user interfaces and provide additional training and resources for school officials, reducing data entry and record-matching errors.

B. Bolstering Enforcement and Deterrence Initiatives

ICE continues to pursue initiatives to identify, locate, and remove high-risk overstay violators more efficiently. As one initiative, SEVP and CTCEU established a partnership, embedded within the SEVP Analysis and Operations Center, to enhance their respective programs' collaboration and coordination on criminal and administrative investigations. This partnership provides a more coherent and focused effort on investigations by HSI field offices of F and M nonimmigrant students, DSOs, and SEVP-certified schools. As a separate initiative, CTCEU also launched an outreach program, "Project About-Face," to help to address situations involving foreign military students who have absconded or gone AWOL. IMSs who have come to the United States on A-2 visas have a high level of training, usually in fields such as special operations or intelligence; therefore, it is imperative to deter the possibility of these individuals going AWOL. Project About-Face focuses on educating the military and other stakeholders to improve understanding of the IMS AWOL process and the steps necessary to ensure a successful

investigation. It also raises awareness of the AWOL program and the unique requirements of an IMS AWOL investigation, aids in facilitating accurate reporting procedures, and fully explains the authorities that HSI possesses in these investigations.

V. Admission for Duration of Status

Duration of status is a term used for aliens who are admitted for the duration of a specific program or activity, which may be variable, instead of for a certain period of time. For example, duration of status for F nonimmigrants is defined as “the time during which an F student is pursuing a full course of study at an [approved] educational institution...or engaging in authorized practical training.”⁹ The authorized period of admission ends when the alien has accomplished the purpose of his or her travel to the United States or no longer is engaged in authorized activities pertaining to that purpose. F nonimmigrants who enroll in academic programs generally are admitted for duration of status. For example, if an F-1 nonimmigrant student enrolls in a program of study at a U.S. university, his or her authorized period of stay generally ends upon the completion of a course of study and any authorized practical training. Such F-1 nonimmigrant students also are allotted a 60-day grace period thereafter either to prepare for departure and to leave the United States, or to enroll in another program of study, to change their nonimmigrant status, or to seek some other immigration benefit or means to remain lawfully in the United States. By contrast, M nonimmigrants enrolled in vocational programs generally are admitted for a fixed period of time up to 1 year. Nonimmigrant students admitted in the M classification may be authorized for a limited amount of practical training after the completion of their vocational studies. Some additional nonimmigrant visa categories that authorize duration of status admission include certain exchange visitors (J visas) and representatives of foreign media (I visas). Nonimmigrants admitted for duration of status who violate or fail to maintain their status generally are violating the terms and conditions of their admission. Such nonimmigrants may accrue unlawful presence and be subject to removal from the United States.

As with all other overstay leads, the initial automated identification of a person admitted for duration of status as a possible overstay is based upon ADIS entry and exit information. For F and J visas, ADIS matches the entry information against the last date of valid status as reflected by SEVIS (i.e., the date that the F or J nonimmigrant’s program is due to end or, for M nonimmigrants, the specific date noted on the admission document, plus any applicable grace period). The end date for a program may vary from that established at the time of initial entry for a variety of reasons including changes in programs of study, transfers, and authorization for practical training. When such a change occurs, SEVIS is updated by the DSO. In this way, SEVIS is able to track the last date of valid status. For example, when an F student completes a program of study, his or her status is marked as “completed” by the DSO, and, by regulation, he or she is afforded 60 days to leave the United States.¹⁰ If a student falls out of status for any reason, the student’s record is marked as “terminated” in SEVIS and he or she generally must leave the country immediately or seek reinstatement through USCIS (or DOS, in the case of J nonimmigrant exchange visitors). In all cases, the last date of valid status is based on the relevant regulations and the authorized activities for each nonimmigrant.

⁹ 8 C.F.R. § 214.2(f)(5)(i).

¹⁰ 8 C.F.R. § 214.2(f)(5)(iv).

Although SEVIS tracks the immigration status of F, J, and M¹¹ nonimmigrants, the J exchange visitor program is administered by DOS, not by DHS. SEVIS transmits the F, J, or M status expiration date to CBP through an automated process. CBP uses these data to cross-reference the information with the nonimmigrant visitor's travel records and any available updates to his or her immigration status.

As noted previously, the resulting Suspected In-Country Overstay leads are sent to ICE to assess and initiate removal proceedings in appropriate cases, and Out-of-Country overstay leads are sent to CBP for vetting and any appropriate enforcement, should the individual attempt to reenter the United States.

Concerns have been expressed that admission for duration of status can complicate the use of certain enforcement tools, such as applying unlawful presence (3- or 10-year) bars to individuals seeking admission if they previously have overstayed their period of lawful admission.¹² This is because, in general, individuals admitted for duration of status are able to avoid the accrual of unlawful presence even after a status violation until the day after a formal finding of a status violation.¹³

Currently, DHS is considering changes to duration of status admissions for F, J, and I nonimmigrants. As part of that policy review, DHS is seeking to revise existing regulations to establish a fixed period of admission for F, J, and I nonimmigrants and to require individuals in these categories who wish to remain in the United States beyond their fixed period of admission to apply for an extension of stay with USCIS or to depart the country and to apply for admission at a CBP port of entry.

¹¹ M visa nonimmigrants are "admitted for a fixed time period, which is the period necessary to complete the [vocational] course of study indicated on the Form I-20." 8 C.F.R. § 214.2(m)(5). A specific end date is identified on the nonimmigrant's admission document, and, therefore, it is not a duration of status admission.

¹² 8 U.S.C. § 1182(a)(9)(B)(i).

¹³ USCIS Adjudicator's Field Manual (AFM) Chapter 40.9.2: Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(b)(i) and 212(a)(9)(c)(i)(I) of the Act; issued May 6, 2009. This policy currently remains in place because the U.S. District Court for the Middle District of North Carolina has issued a nationwide injunction regarding USCIS's August 2018 policy memorandum titled, "Accrual of Unlawful Presence and F, J, and M Nonimmigrants."

VI. Conclusion

Identifying overstays is essential for national security, public safety, and immigration enforcement. DHS has improved data collection processes in the entry/exit environment significantly, which include: the collection of data on all admissions to the United States by aliens; devoting greater resources to the enforcement of visa overstays; and effectuating preventive measures to deter future visa violators.

Despite the different infrastructural, operational, and logistical challenges presented in the overstay environment, DHS has resolved many of the issues regarding the collection of departure information for aliens through the reallocation of resources and interagency and intra-agency partnerships to improve the identification, enforcement, and deterrence of visa overstays. Further efforts, including partnerships with other governments and the private sector (e.g., airlines, airports, cruise lines), are ongoing and will continue to improve the process for combating visa overstays.

DHS has made significant progress in terms of the ability to report data on overstays accurately, which was made possible by the congressional realignment of Department resources to centralize the overall mission in identifying overstays. Although data integrity is only one element necessary for combating nonimmigrant visa violators, it is an important aspect for the development of a comprehensive visa overstay strategy.

DHS will continue to develop and test its current programs and initiatives while continuing to identify vulnerabilities and while improving different phases of the overstay enforcement and deterrence strategy.

Appendix – Abbreviations

Abbreviation	Definition
ADIS	Arrival and Departure Information System
AVU	ADIS Vetting Unit
AWOL	Absent Without Leave
CBP	U.S. Customs and Border Protection
CTCEU	Counterterrorism and Criminal Exploitation Unit
DHS	U.S. Department of Homeland Security
DOS	U.S. Department of State
DSO	Designated School Official
ERO	Enforcement and Removal Operations
FBI	Federal Bureau of Investigation
FY	Fiscal Year
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
IMS	International Military Student
INA	Immigration and Nationality Act
INTERPOL	International Criminal Police Organization
JTTF	Joint Terrorism Task Force
NCATC	National Criminal Analysis and Tracking Center
NIVV	Nonimmigrant Visa Violator
NTA	Notice to Appear
OPT	Optional Practical Training
OST	Open Source Team
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
STEM	Science, Technology, Engineering, and Mathematics
USCIS	U.S. Citizenship and Immigration Services
VWP	Visa Waiver Program