



# Comprehensive Strategy for Overstay Enforcement and Deterrence

*December 31, 2020*

Fiscal Year 2018 Report to Congress



Homeland  
Security

*Deputy Under Secretary for Management*

# Message from the Office of the Under Secretary for Management

December 31, 2020

I am pleased to present the following report, “Comprehensive Strategy for Overstay Enforcement and Deterrence” for Fiscal Year (FY) 2018, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

The report has been compiled pursuant to language in the Joint Explanatory Statement and House Report 115-239, which accompany the FY 2018 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-141). DHS generated this report to provide information on initiatives associated with the identification, enforcement, and deterrence of visa overstays.



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,

**RANDOLPH  
D ALLES** Digitally signed by  
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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 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 the admittance, such as a student no longer attending school. 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.<sup>1</sup>

DHS conducts its overstay enforcement efforts using a risk-based prioritization framework focused on upholding national security and public safety. The Department’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 to generate a complete travel history for nonimmigrants who have been 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 2018, these initiatives included, *inter alia*, the Visa Lifecycle Program, and visa-specific initiatives.

In FY 2018, ICE’s vetting and investigative efforts narrowed down more than 1.4 million suspected In-Country Overstay leads. Of these, 426,051 (29.8 percent) were found to have departed the country, 39,570 (2.8 percent) had changed their immigration status lawfully, and 366,735 (25.7 percent) were determined viable for more in-depth vetting, investigation, and possible law enforcement action by ICE Homeland Security Investigations (HSI). The

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

remaining 597,039 (41.8 percent) leads 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 against violators within the United States.

- In FY 2018, ICE HSI's Counterterrorism and Criminal Exploitation Unit sent 8,968 investigative leads to HSI field offices targeting overstay leads that could pose a national security or public safety concern.
- CBP is responsible for maintaining information on identifying overstay violators who since have departed the United States and for preventing future visa renewals or admissions to 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 prior overstay violation. This may result in DOS revoking a visa prior to a violator's attempt to reenter the United States, or in CBP canceling a nonimmigrant visa at a port of entry pursuant to its regulatory authority, 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 of these actions taken.
- Finally, USCIS leverages delegated authority<sup>2</sup> to issue a Form I-862, "Notice to Appear" (NTA), when it finds that a person is not eligible for the benefit sought and is removable for any reason.<sup>3</sup> USCIS has authority to issue NTAs to individuals who are not in a period of authorized stay upon unfavorable adjudication of their applications/petitions. Alternatively, USCIS creates a referral to ICE for other cases, for example, where a subject is not yet amenable to removal proceedings at the time of decision or where the subject's status is due to expire at some future date. If a nonimmigrant is served an NTA by any of the DHS immigration components, he or she will be charged with an administrative violation of U.S. immigration laws and must appear before an immigration judge. A nonimmigrant may be amenable to removal from the United States if a judge finds him or her to be in violation of immigration laws and not eligible for or deserving of any forms of relief for which he or she has applied.

As part of its overstay enforcement efforts, HSI 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 foreign military students become absent without leave;

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<sup>2</sup> INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1.

<sup>3</sup> DHS Delegation Number 0150.1, Delegation to the Bureau of Citizenship and Immigration Services (June 5, 2003).

- 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.

DHS also has instituted various initiatives to deter and otherwise 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 requires 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 2017 and also has begun sending notifications for VWP travelers 10 days in advance of their authorized admission's end date.

HSI Project Campus Sentinel (PCS) is an outreach program that builds a partnership between HSI Special Agents and Student and Exchange Visitor Program (SEVP)-certified educational 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 PCS initially was established to encourage communication between school officials and HSI Special Agents, the inclusion of the SEVP Field Representatives Unit and Campus Public Safety entities allows all stakeholders the opportunity to exchange information openly to improve the level of cooperation.

In FY 2018, HSI Special Agents and SEVP field representatives began conducting joint outreach visits to SEVP-certified schools to develop relationships and to encourage further communication between school officials and HSI Special Agents. Designated school officials can assist HSI in identifying students or school officials who may wish to harm the United States or its people and can assist HSI with its investigations of noncompliant schools and students.

Additionally, DHS is supplementing its ability to identify and locate potential 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, HSI is modernizing the Student and Exchange Visitor Information System to become a person-centric database that permits students to update their records for accuracy.

DHS continues to improve its efforts to collect, analyze, and report information affecting the overstay enforcement mission. By enhancing current capabilities and/or developing new methods, DHS is better equipped to track visa overstays accurately for enforcement action and otherwise 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 potentially violating their status.



# Comprehensive Strategy for Overstay Enforcement and Deterrence Fiscal Year 2018

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# I. Legislative Language

This document responds to language in the Joint Explanatory Statement<sup>4</sup> and House Report 115-239, which accompany the Fiscal Year (FY) 2018 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-141).<sup>5</sup>

The Joint Explanatory Statement states:

The Department of Homeland Security is further directed to develop and publish a comprehensive in-country alien overstay enforcement and deterrence strategy not later than 240 days after the date of enactment of this Act. This strategy shall, at a minimum, establish a target and range of options for reducing the overstay population and detail the resources and assets that would be required to implement the strategy.

House Report 115-239 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.

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<sup>4</sup> 164 Cong. Rec. H2045 (daily ed. Mar. 22, 2018), at H2545.

<sup>5</sup> Consolidated Appropriations Act, 2018, P.L. 115-141, div. F, 132 Stat. 348.

## II. Background

An “overstay” is a nonimmigrant visa holder 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. Nonimmigrant visa holders who are admitted for duration of status but who fail to maintain their status may also be considered overstays. Duration of status is a term used for aliens who are admitted to the United States 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 of study that runs for 4 years generally must leave within 60 days after the program is completed, or, if the individual wishes to remain in the United States as a student, must go on to pursue another program of study with DHS’s authorization. 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, 2016, 2017, and 2018, 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 11<sup>th</sup> attacks were visa overstays,<sup>6</sup> and recommended that the government ensure that all visitors to the United States be tracked upon entry and exit.<sup>7</sup> 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 to 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 and acts of violence toward any group or class of people within the United States, or who present a threat to public safety or national security after their entry.

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<sup>6</sup> 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.

<sup>7</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission report: Final 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, pp. 134, 139.



- **Enforcement:** Encompasses law enforcement actions to locate and verify the 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 foreign visitors of the possibility of violating their nonimmigrant visa status. This also includes proactive efforts with institutional sponsors (e.g., schools accepting 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 Homeland Security Investigations (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 also serves as the lead Component for maintaining information related to Out-of-Country Overstays.
- **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 (RTI), for investigation and may include subjects who are potential overstays and who meet other referral criteria.

### III. Existing Enforcement Operations

#### A. Overstay Identification

The overstay identification process is conducted utilizing arrival, departure, and immigration information, which is consolidated to generate a complete travel history for individuals who traveled and who 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. 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, have become lawful permanent residents, or otherwise have remained legally beyond their original admit until date. 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 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 from various DHS databases on more than 1 million potential visa status violators each year, 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 subsequently had departed the United States, changed to a different lawful 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 (NCATC), 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 2018, CTCEU reviewed 1,429,395 potential overstay leads, of which 426,051 (29.8 percent) were found to have departed the country, 39,570 (2.8 percent) had adjusted their immigration status and were deemed to be legally present within the United States, and 366,735 (25.7 percent) were determined viable for more in-depth vetting and possible law enforcement action by HSI. Of these 1.4 million leads, 597,039 (41.8 percent) of the leads did not meet CTCEU's criteria for an 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 bulleted summaries outline key initiatives in place in FY 2018:

- **Visa Lifecycle Program:** In 2016, HSI developed the Visa Lifecycle Program to integrate vetting processes more fully from the time that an alien applies for a nonimmigrant visa to the time that he or she departs from the United States, or until he or she is identified as an overstay or otherwise fails to comply with his or her terms of admission (i.e., becomes "out-of-status"). The initiative focuses on nonimmigrants seeking visitor for business or pleasure visas (i.e., B1 or B2) or student/exchange visitor visas (i.e., F, J, and M) 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 by the Department of State (DOS).

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; to nominate the individual for inclusion on the appropriate watchlist, if applicable; to notify the appropriate HSI Attaché office; and to inform 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 to vet

continuously and to identify any derogatory information that may arise during a nonimmigrant's authorized period of admission, or until such a person violates his or her visa status. In instances where visa violations are identified (e.g., unlawfully working or not maintaining an active 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 Domestic Mantis and 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 SEVP, the program that certifies schools to accept 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 or if the visa requirement is waived. 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, and/or removal from the United States) may be taken when appropriate.
  
  - *H-2 Visas:* The H-2 nonimmigrant visa program allows employers to hire foreign workers for temporary services or labor. DHS regulations<sup>8</sup> require that an employer of temporary H-2 workers notify USCIS within 2 business days in the following four scenarios:

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<sup>8</sup> 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 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 residence. If the system checks indicate that the H-2 worker has not left the country, is not in a valid immigration status, and/or otherwise is not 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 agency's enforcement actions or visa adjudication. As of June 2018, USCIS was 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 authority<sup>9</sup> to issue NTAs when it unfavorably adjudicates an application or petition and the subject is amenable to removable 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.

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<sup>9</sup> Immigration and Nationality Act §§ 103(a), 239; 8 CFR §§ 2.1, 239.1.

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 research and analysis to confirm the nonimmigrant visa 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 an administrative arrest and/or a criminal arrest, for removal proceedings or criminal prosecution. In cases where an HSI Special Agent is unable to locate the target of an 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 fail to 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 2018, CTCEU sent 8,968 leads to HSI field offices, which resulted in 1,808 arrests, 117 indictments, and 57 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, missing or stolen works of art, criminals' *modus operandi*, and terrorists who are subject to United Nations sanctions. 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, 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 the FBI, and its immigration authorities, expertise, and information are key among the various contributions to support the counterterrorism mission. In the event that 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, DOS 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 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 NCATC, which is responsible for investigating and further developing cases pertaining to suspected visa overstays lacking derogatory information.

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, 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, NCATC reviewed more than 1 million NIVV cases.

On the basis of current resource levels and the overstay information received from the CTCEU, 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 it currently provides, 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 interagency and/or contractual support.

**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 currently is 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 that 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 an RTI 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 charges of removability, 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 prevent overstay violations. This is accomplished through direct notifications to nonimmigrant visitors, outreach, and education programs.

**Project Campus Sentinel:** Project Campus Sentinel is an outreach initiative that began in 2011 and is 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 Representatives Unit (FRU) 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, faculty, and the institution. Beginning in 2018, HSI and the FRU have conducted joint visits, which allows the ability for both entities collaboratively to target higher-risk or more problematic schools. This may serve as a deterrent against schools that engage in visa fraud or lax SEVIS reporting. This exchange enables HSI to detect, to combat student visa exploitation proactively, and to address inherent national security vulnerabilities within the school's foreign student population and with designated school officials (DSO).

**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 that its "Study in the States" website leverages blogs, articles, and social media content to educate nonimmigrant students and exchange visitors and DSOs 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 can call or email their questions.

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 and reporting 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 to prevent any possible visa status violations.

**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 website to find information on his or her status within the Traveler Compliance Check tab. The website provides the number of days overstayed and the 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 Form I-94 website. These notifications provide both transparency and deterrence of a potential overstay. This also allows for redress to transpire prior to an individual overstaying his or her visa.

**VWP Outreach:** DHS currently requires 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 for admission into the United States.

## IV. Overstay Reduction Efforts

**ICE:** ICE aims to employ a targeted communications strategy to students and schools to prevent overstays. This aggressive communications plan would build upon existing communications infrastructure within SEVIS, the SEVP website, Study in the States, and ICE.gov, with minimal cost and a high probability of success by using 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 to students and also would identify possible risks to schools of losing 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 SEVIS-certified school DSOs when logging in during those peak periods of registration/enrollment.

HSI strives 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.

**CBP:** Currently, ADIS notifies VWP travelers and several other classes of nonimmigrant visa holders by email prior to their admission expiring as well as after they have departed as an overstay. A long-term goal of ADIS is to expand proactive notifications to most nonimmigrant travelers (i.e., excluding specific categories such as diplomats) about their status, both before and after an overstay occurs.

**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 the 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 2020.

USCIS creates TECS records to flag an 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 the CTCEU as a potential lead for further assessment.

## V. Conclusion

Identifying overstays is essential for national security, public safety, and immigration enforcement. DHS has improved significantly the data collection processes in the entry/exit environment, 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 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, and cruise lines), are ongoing and will continue to improve the process for combating visa overstays.

DHS has made significant progress in its ability to report overstay data accurately, which was made possible by the congressional realignment of Department resources to centralize the overall mission of identifying overstays. Although data integrity is only one element necessary for combating NIVVs, 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 to improve different phases of the overstay enforcement and deterrence strategy.

## Appendix – Abbreviations

|          |   |
|----------|---|
| 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      | Department of Homeland Security                 |
| DOS      | Department of State                             |
| DSO      | Designated School Official                      |
| ERO      | Enforcement and Removal Operations              |
| FBI      | Federal Bureau of Investigation                 |
| FRU      | Field Representatives Unit                      |
| FY       | Fiscal Year                                     |
| HSI      | Homeland Security Investigations                |
| ICE      | U.S. Immigration and Customs Enforcement        |
| INA      | Immigration and Nationality Act                 |
| INTERPOL | International Criminal Police Organization      |
| JTTF     | Joint Terrorism Task Force                      |
| NCATC    | National Criminal Analysis and Targeting Center |
| NIVV     | Nonimmigrant Visa Violator                      |
| NTA      | Notice to Appear                                |
| OST      | Open Source Team                                |
| PCS      | HSI Project Campus Sentinel                     |
| RTI      | Referral to ICE                                 |
| SEVIS    | Student and Exchange Visitor Information System |
| SEVP     | Student and Exchange Visitor Program            |
| USCIS    | U.S. Citizenship and Immigration Services       |
| VWP      | Visa Waiver Program                             |