

Written Testimony
Of
Leon Rodriguez
Partner, Seyfarth Shaw, LLP
Former Director, U.S. Citizenship and Immigration Services

Hearing of Immigration Subcommittee of the U.S. Senate Judiciary Committee
“Student Visa Integrity: Protecting Educational Opportunity and National Security.”
June 6, 2018

Chairman Cornyn, Ranking Member Durbin, Members of the Subcommittee:

Thank you for inviting me to testify before this Subcommittee this afternoon. As the former director of U.S. Citizenship and Immigration Services, a former state and federal prosecutor, and now an immigration lawyer representing a broad range of businesses, I know this hearing is tackling particularly weighty issues that involve a delicate balance of important interests for Americans and American institutions.

As this hearing is examining possible intelligence gathering and other infiltration on behalf of the Chinese government in our colleges and universities, I have been asked, based on my particular experience and knowledge, to describe the existing tools our government has to combat such foreign threats and their effectiveness in doing so. I will also address the importance of tailoring the use of such tools to maximize protection of the American people while safeguarding other important interests. Finally, I will underscore the importance of common sense prioritization of the use of such tools to combat serious and likely threats as opposed to activities that do not pose any harm to the American people.

I have spent the majority of my nearly thirty career as a lawyer in prosecutorial and public safety roles, including several leadership assignments. I note several posts of particular relevance to the analysis I offer today:

- Director, U.S. Citizenship and Immigration Services, Department of Homeland Security (2014 - 2017)
- Deputy Assistant Attorney General, Chief of Staff, U.S. Department of Justice, Civil Rights Division (2010 - 2011)
- County Attorney, Montgomery County, MD (2007 - 2010)
- Assistant U.S. Attorney, Western District of Pennsylvania (1997 - 2001)
 - First Assistant U.S. Attorney (1999 - 2001)
 - Chief, White Collar Crimes Section (1998 - 1999)

- Trial Attorney, U.S. Department of Justice, Civil Rights Division, Criminal Section (1994 - 1997)
- Assistant District Attorney, Brooklyn, NY (1988-1994) --
 - Official Corruption Division (1993 - 1994)
 - Organized Crime Bureau (1991 - 1993)

As director of USCIS, and to a lesser degree during my time as a prosecutor, I have been a frequent consumer of intelligence assessments and have made prosecutorial, adjudicative and operational decisions based on that product.

One of the most fundamental and immutable responsibilities of a national government is the protection of its people. One of the truly defining traits of American society is its openness and among its fundamental values are freedom of expression, academic freedom and a commitment to free enterprise. Protecting the nation's people means not just safeguarding their physical well-being, but also protecting their ability to live by these values.

Recognizing this responsibility, during my time as director of USCIS, we implemented a number of enhancements to ensure that the immigration system was not used as a pathway to harm the American people. Most significantly, we began the use of recurrent vetting of certain populations deemed to present higher risk. Our security checks through the "Interagency Check" (IAC) involved recurrent queries of a comprehensive set of intelligence and law enforcement databases prior to and even after the arrival of the individual, improvements made in the years after the disruption of the Bowling Green conspiracy. This ensured that relevant USCIS, Customs and Border Protection (CBP) and State Department officials had such information in real-time and could take appropriate action based on that information at any point in the process. Additionally, we commenced the use of social media review for certain populations, examining content on Instagram, Facebook and Twitter for possible evidence suggesting threats to our national security. Finally, we implemented pre-review of certain cases to provide interviewing officers with targeted questions to elicit information about possible national security issues.

These enhancements joined an already extremely thorough regime of vetting for travelers to the United States. Beginning in the years following the attacks of September 11, 2001, the screening process developed into a robust and multi-layered system of individualized vetting procedures to screen immigrants for potential admission. Using information from the State Department, DHS, the National Counterterrorism Center, the FBI, the Defense Department, and local and international partners, the vetting system comprehensively investigates each visa and refugee applicant through a series of interview-based, biographical, and biometric checks that can extend over many months, even after an applicant's admission.

At interview, consular officers, or in the refugee context, USCIS officers, investigate case-relevant information regarding the applicant's identity, qualifications for the particular visa category, and possible ineligibilities due to criminal history, prior visa applications, or travel to the United States, and potential security threats. A visa applicant's data is also reviewed through specific electronic databases set up by the State Department, which contain tens of millions of

visa records, in order to detect and respond to any derogatory information regarding the applicant.

Nearly all visa applicants submit to a 10-print fingerprint scan that is screened against two primary databases: (1) DHS's IDENT database, which contains available fingerprints of known and suspected terrorists, wanted persons, and those who have committed immigration violations, and (2) the FBI's Next Generation Identification ("NGI") system, which contains more than 75.5 million criminal history records. All visa photos are also compared to a gallery of photos of known or suspected terrorists obtained from the FBI as well as the State Department's repository of all visa applicant photos.

Visa applicants are further vetted through various interagency systems using pooled data from law enforcement and intelligence sources - the interagency check (IAC) referenced earlier. DHS's Pre-adjudicated Threat Recognition and Intelligence Operations Team ("PATRIOT") and Visa Security Program ("VSP") provide another level of review of visa applications at overseas locations. Using resources from DHS Immigration and Customs Enforcement ("ICE"), CBP, and the State Department, PATRIOT reviews applications to identify national security, public safety, and other eligibility concerns before a visa is granted. Part of this review consists of manual vetting by a team of agents, officers, and analysts from ICE and CBP if an application presents potential derogatory information. Similarly, the VSP deploys DHS officers to diplomatic posts to provide additional visa security services in order to identify terrorists, criminals, and others who are ineligible for visas before they apply for admission or travel to the United States.

As a use case demonstrating the effectiveness of these procedures, the populations believed by many to present the highest risk were refugees from Syria and Iraq. As USCIS Director, I appeared before this committee to address concerns, at times even alarm, at the prospect of admission of refugees from those countries. To date, not a single such refugee has engaged or attempted to engage in an act of terrorist violence on U.S. soil, notwithstanding the admission of tens of thousands of people from those two countries. Hundreds have been denied; thousands have had their cases placed on hold.

Simply stated, the vetting framework applied to those populations worked. That framework and the top-notch professionals that operate it can be trusted to do the same with newly identified threats.

Experience has taught that there is always room for improvement in vetting procedures. However, as the government considers new procedures to prevent espionage and other harms by foreign powers, we should carefully consider whether those procedures will indeed prevent the feared harms. We should also be mindful of the collateral harm to the national interest that may result from the procedures themselves.

The warnings given by Director Wray about possible use of the Confucius Institutes as vehicles for non-traditional intelligence gathering and other activities which may undermine open academic discourse deserve to be taken very seriously and appropriate government action taken in response. Any efforts to address Chinese intrusion in the higher education environment must take into account that our vetting procedures are already extremely effective and that the menu of

restrictions and burdens being placed on just about every category of legal traveler and immigrant to the United States grows almost daily.

To the extent that new restrictions are being considered to curtail the activities of foreign students in the U.S., we should take into account the growingly restrictive immigration environment since last January. Chinese graduate students can only get one-year visas if they are majoring in robotics, high-tech manufacturing, or aviation, corresponding to the areas that the Chinese government designated as national priorities in its Made in China 2025 strategic plans. Of greatest impact is the move by the Administration to grant shorter visa durations for Chinese students, who make up a substantial portion of our foreign student population especially at the graduate level. Across all immigration categories, foreign visitors and immigrants have been experiencing growing difficulty in coming to and remaining in the U.S. In the specific case of foreign students, the federal government has issued policies preventing students engaged in STEM Optional Practical Training employment from working at third-party sites, as well as other measures that increase the risk that foreign students will fall into periods of unlawful presence, often unaware that they have done so. Many fear that even greater restrictions on STEM Optional Practical Training are under consideration.

This growth in burdensome immigration restrictions is seen just about everywhere. Numerous new obstacles have been placed in the way of companies seeking to petition for visas, such as H-1B specialty occupation, to secure the availability of talented foreign workers. All applicants for employment-based adjustment of status must now undergo field office interviews, notwithstanding the absence of any history of activity threatening to the national security in this category of immigrants.

Of course, the issue before the subcommittee is but a very small one as compared to those facing Congress when it comes to overhauling our immigration system in general. This is obvious from even a cursory review of S. 744, which the Senate passed on a broad bipartisan basis just a few years ago. I know it is not now popular to talk about immigration reform in the sense of quote comprehensive unquote, but I still believe it is worthwhile raising a few issues here as I close out my testimony.

One thing that is clear is that we will need to marshal resources, even within existing structures to address the threat that is the subject of today's hearing. As we do that, we should make smart judgments about those places where enforcement resources are applied or may be applied, where in fact they really are not needed. In particular, I am speaking about our continued inaction to resolve the plight of Dreamers. The young people who either now, or on the past, received deferred action under the Deferred Action for Childhood Arrivals (DACA) program were brought here as children through no volition of their own. They now find themselves at risk of being deported back to countries of origin they barely know. The federal government's rescission of the DACA policy without any action taken to replace it has heightened the potential for misallocation of resources. Congress has the ability, right now, to eliminate that misallocation and make sure that resources are used where they are needed.

Similarly, the termination of Temporary Protected Status (TPS) for nearly 300,000 people without any transition plan seems destined to distract enforcement and removal resources toward

people who are now fully and productively a part of American society; another problem this Congress could solve right now.

And as I mentioned earlier, the travel bans, to which the federal government must now dedicate considerable resources to enforce and defend, add nothing in light of the pre-existing measures I cited earlier under which literally tens of thousands of Iraqis and thousands of Syrians have come to the U.S., without a single one having committed an act of terrorist violence.

All the resources dedicated to these unnecessary and harmful efforts could readily be redirected within existing processes and enforcement frameworks to protect us from genuine foreign intelligence threats. Now would seem to be the time to do exactly that.