



Testimony

Before the Subcommittees on Border Security, Facilitation, and Operations, and Intelligence and Counterterrorism, Committee on Homeland Security, House of Representatives

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BORDER SECURITY

U.S. Government Efforts to Strengthen Nonimmigrant Visa Security and Address High-Risk Air Travelers

Statement of Rebecca Gambler, Director, Homeland Security and Justice

Highlights of [GAO-19-477T](#), a testimony before the Subcommittees on Border Security, Facilitation, and Operations, and Intelligence and Counterterrorism, Committee on Homeland Security, House of Representatives

Why GAO Did This Study

Previous attempted and successful terrorist attacks against the United States have raised questions about the security of the U.S. government's screening and vetting processes for NIVs. State manages the visa adjudication process. DHS seeks to identify and interdict travelers who are potential security threats to the United States, such as foreign fighters and potential terrorists, human traffickers, drug smugglers and otherwise inadmissible persons, at the earliest possible point in time. DHS also has certain responsibilities for strengthening the security of the visa process. In 2017, the President issued executive actions directing agencies to improve visa screening and vetting, and establishing nationality-based visa entry restrictions, which the Supreme Court upheld in June 2018.

This statement addresses (1) data and information on NIV adjudications and (2) CBP programs aimed at preventing high-risk travelers from boarding U.S.-bound flights. This statement is based on prior products GAO issued in January 2017 and August 2018, along with selected updates conducted in December 2018 to obtain information from DHS on actions it has taken to address a prior GAO recommendation.

What GAO Recommends

GAO previously recommended that CBP evaluate the effectiveness of its predeparture programs. DHS agreed with GAO's recommendation and CBP has actions under way to address it.

View [GAO-19-477T](#). For more information, contact Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov.

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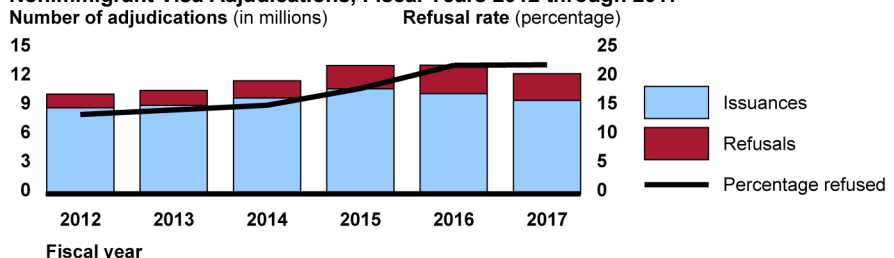
BORDER SECURITY

U.S. Government Efforts to Strengthen Nonimmigrant Visa Security and Address High-Risk Air Travelers

What GAO Found

In August 2018, GAO reported that the total number of nonimmigrant visa (NIV) applications that Department of State (State) consular officers adjudicated annually increased from fiscal years 2012 through 2016, but decreased in fiscal year 2017 (the most recent data available at the time of GAO's report). NIVs are issued to foreign nationals, such as tourists, business visitors, and students, seeking temporary admission into the United States. The number of adjudications peaked at about 13.4 million in fiscal year 2016, and decreased by about 880,000 adjudications in fiscal year 2017. State refused about 18 percent of adjudicated applications during this time period, of which more than 90 percent were because the applicant did not qualify for the visa sought and 0.05 percent were due to terrorism and security-related concerns. In 2017, two executive orders and a proclamation issued by the President required, among other actions, visa entry restrictions for nationals of certain listed countries of concern. GAO's analysis indicates that, out of the nearly 2.8 million NIV applications refused in fiscal year 2017, 1,338 applications were refused specifically due to visa entry restrictions implemented per the executive actions.

Nonimmigrant Visa Adjudications, Fiscal Years 2012 through 2017



Source: GAO analysis of Department of State data. | [GAO-19-477T](#)

In January 2017, GAO reported that the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) operates predeparture programs to help identify and interdict high-risk travelers before they board U.S.-bound flights. CBP officers inspect all U.S.-bound travelers on those flights that are precleared at the 15 Preclearance locations at foreign airports—which serve as U.S. ports of entry—and, if deemed inadmissible, a traveler will not be permitted to board the aircraft. CBP also operates nine Immigration Advisory Program and two Joint Security Program locations, as well as three Regional Carrier Liaison Groups, through which CBP may recommend that air carriers not permit identified high-risk travelers to board U.S.-bound flights. CBP data showed that it identified and interdicted over 22,000 high-risk air travelers through these programs in fiscal year 2015 (the most recent data available at the time of GAO's report). While CBP tracked some data, such as the number of travelers deemed inadmissible, it had not fully evaluated the overall effectiveness of these programs. GAO recommended that CBP develop a system of performance measures and baselines to better position CBP to assess program performance. As of December 2018, CBP set preliminary performance targets for fiscal year 2019, and plans to set targets for future fiscal years by October 31, 2019. GAO will continue to review CBP's actions to address this recommendation.

Chairwoman Rice, Chairman Rose, Ranking Members Higgins and Walker, and Members of the Subcommittees:

I am pleased to be here today to discuss GAO's body of work on U.S. government activities related to screening and vetting nonimmigrant visa (NIV) applicants, and identification and interdiction of international air travelers who are potential security threats to the United States. Foreign nationals who wish to come to the United States on a temporary basis must generally obtain a NIV authorizing their travel to the United States.¹ In particular, from fiscal years 2010 through 2015, the Department of State (State) issued more than 52 million visas for business travel, pleasure, or for foreign student and cultural exchange programs, among other things.²

Previous attempted and successful terrorist attacks against the United States have raised questions about the security of the U.S. government's screening and vetting processes for NIVs. For example, the December 2015 shootings in San Bernardino, California, led to concerns about NIV screening and vetting processes because one of the attackers was admitted into the United States under a NIV. Beginning in calendar year 2017, the President issued executive actions aimed at improving the screening and vetting protocols and procedures associated with the visa issuance process, including the imposition of visa entry restrictions for

¹See 8 U.S.C. §§ 1185, 1201, 1202. Nonimmigrant visas are issued to foreign nationals seeking temporary admission into the United States under a specific nonimmigrant category (8 U.S.C. § 1101(a)(15); 8 C.F.R. § 214.1(a)(1)–(2)), for an authorized period of stay delineated by a particular time frame, or for the duration of a specific program or activity, which may be variable. A visa is not required for travel to the United States by citizens of Canada, as well as participants in the Visa Waiver Program, through which nationals of certain countries may apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate abroad. See 8 U.S.C. § 1187; 8 C.F.R. §§ 212.1, 214.6(d), 217.1–217.7; 22 C.F.R. §§ 41.0–41.3. Foreign nationals seeking permanent status in the United States must generally obtain an immigrant visa, which provides a path to lawful permanent residency. Throughout this statement we generally use the term “foreign national” to refer to an “alien,” which is defined under U.S. immigration law as any person who is not a U.S. citizen or national. See 8 U.S.C. § 1101(a)(3).

²For the purposes of this statement, where we use the term “visa,” it is in reference to a nonimmigrant visa.

certain categories of foreign nationals from designated countries.³ Specifically, the President issued two executive orders and a presidential proclamation that required, among other actions, visa entry restrictions for nationals of certain countries of concern, a review of information needed for visa adjudication, and changes to visa (including NIV) screening and vetting protocols and procedures.⁴

State is responsible for visa adjudication and issuance for foreign nationals and is responsible for managing the consular officer corps and its functions at over 220 visa-issuing posts overseas.⁵ The process for determining who will be issued or refused a visa contains several steps, including completing an online visa application and appearing for an in-person interview at a U.S. embassy or consulate, as shown in figure 1.⁶

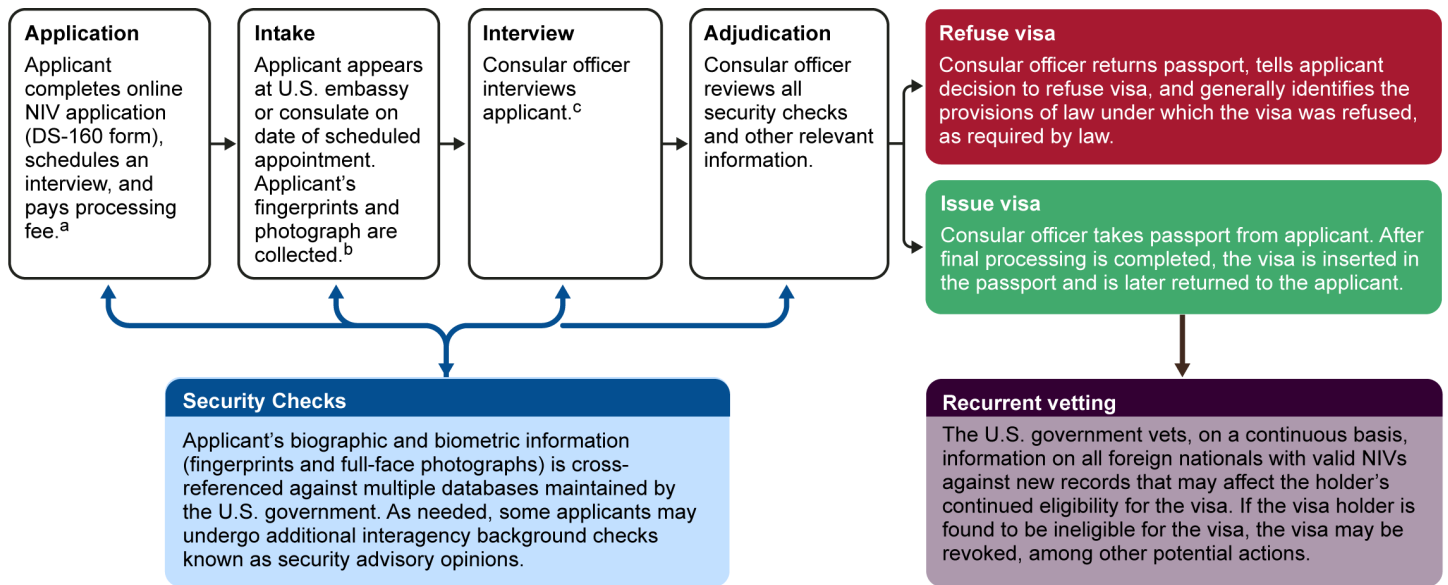
³See Exec. Order No. 13780, Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar.6). Executive Order (EO) 13780 revoked and replaced a prior EO of the same title, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), implementation of which had largely been halted nationwide shortly after issuance by federal court injunction. Visa entry restrictions under EO 13780 were also blocked by the federal district courts in March 2017 but, upon review in June 2017, the U.S. Supreme Court permitted implementation of such restrictions subject to an exception for foreign travelers with bona fide ties to the United States. Pursuant to section 2(e) of EO 13780, the President issued Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24), which restricted entry into the United States of nationals from eight countries (Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen) for an indefinite period. 82 Fed. Reg. 45,161 (Sept. 27, 2017). The Department of State announced that it began fully implementing the proclamation on December 8, 2017, as permitted by the Supreme Court's December 4 order. The proclamation's nationality-based visa entry restrictions were upheld by the Supreme Court in June 2018.

⁴GAO has previously reported on the implementation of these executive orders. See GAO, *Border Security and Immigration: Initial Executive Order Actions and Resource Implications*, [GAO-18-470](#) (Washington, D.C.: June 12, 2018).

⁵See 6 U.S.C. § 236(c), (d); 8 U.S.C. §§ 1201-1202.

⁶See 8 U.S.C. § 1202(a), (c), (h); 22 C.F.R. §§ 41.102, 42.62. Generally, all applicants aged 14 through 79 applying for an NIV must be interviewed in person by a consular officer unless the interview requirement is waived pursuant to statute.

Figure 1: Nonimmigrant Visa (NIV) Screening and Vetting Process



Source: GAO analysis of Department of State information. | GAO-19-477T

^aPrior to completing an application, some NIVs require that a petition be filed on behalf of the beneficiary (visa applicant), or on their own behalf for self-petitioning visa categories, with U.S. Citizenship and Immigration Services (USCIS). For all T visas, and U visas where the petitioner is within the United States, USCIS handles nonimmigrant processing exclusively. 8 U.S.C. § 1101(a)(15)(T), (U). Further, applicants seeking a student (F and M) or exchange visitor (J) visa must be accepted into a program from a Department of Homeland Security-certified school or Department of State-designated sponsor, respectively, prior to applying for a NIV. See 8 U.S.C. § 1101(a)(15)(F).

^bFingerprints are sent to the Federal Bureau of Investigation and Department of Homeland Security for screening.

^cSee 8 U.S.C. § 1202 (a), (c), (h); 22 C.F.R. § 41.102.

The various security checks NIV applicants undergo generally screen the applicant's information (biographic and biometric) against multiple U.S. government databases to identify potential matches with records of individuals who are known threats to the United States or other derogatory information that could make the applicant ineligible. In addition, biometric checks include running an applicant's fingerprints and full-face photograph against multiple government systems. Further, at some locations overseas, Department of Homeland Security's (DHS) Visa Security Program uses the Pre-Adjudicated Threat Recognition and Intelligence Operations Team check to identify national security, public

safety, and other eligibility concerns related to visa applicants.⁷ Prior to adjudicating the visa application, consular officers must review all such security check results.⁸ DHS also vets individuals with NIVs on a recurrent basis, which has resulted in State revoking visas after they have been issued when information was later discovered that rendered the individual inadmissible to the United States or otherwise ineligible for the visa.⁹

In addition, DHS seeks to identify and interdict travelers who are potential security threats to the United States, such as foreign fighters and potential terrorists, human traffickers, drug smugglers, and otherwise inadmissible persons, at the earliest possible point in the travel lifecycle. In particular, DHS's U.S. Customs and Border Protection (CBP) is tasked with, among other duties, processing all travelers on U.S.-bound flights and inspecting all people entering or applying for admission to the United States. CBP's National Targeting Center (NTC) conducts traveler data matching, which assesses whether travelers are high-risk by matching their information against U.S. government databases and lists, and rules-based targeting, which enables CBP to identify unknown high-risk individuals. CBP operates multiple predeparture programs that use the results of NTC's analyses to help identify and interdict high-risk travelers before they board U.S.-bound flights.

⁷We reported on the Visa Security Program in March 2018. The Visa Security Program provides an additional level of NIV screening and vetting by deploying agents to certain posts overseas to work with consular officers and review NIV applications. See GAO, *Border Security: Actions Needed to Strengthen Performance Management and Planning for Expansion of DHS's Visa Security Program*, [GAO-18-314](#) (Washington, D.C.: Mar. 20, 2018).

⁸Some applicants are not subjected to all of the security checks depending on certain characteristics, such as age and visa category. For example, State generally does not require that fingerprints be collected for applicants who are either under 14 years old or over 79 years old, or for foreign government officials seeking certain visas. According to State officials, although some applicants do not undergo fingerprint screening, their biographic information is screened against records in the National Crime Interstate Identification Index, which contains criminal history information, via State's Consular Lookout and Support System check. National Crime Interstate Identification Index records include information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.

⁹A consular officer or the Secretary of State is authorized to revoke a visa or other documentation at any time, at his or her discretion. A revoked visa is no longer valid for entry or reentry to the United States. INA § 221(i) (8 U.S.C. § 1201(i)).

My testimony discusses: (1) data and information on NIV adjudications and (2) CBP air predeparture programs. This testimony is based on our prior reports, in particular, those published in January 2017 and August 2018.¹⁰ For these reports, we reviewed agency policies and procedures for NIV screening and predeparture programs; conducted site visits to selected locations to observe NIV operations and the predeparture targeting process; and collected and analyzed data. Additional details on the scope and methodology are available in our published reports. In addition, this statement contains updates to selected information from these reports. For the updates, we collected information from DHS on actions it has taken to address findings and recommendations made in prior reports on which this statement is based. All of our work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

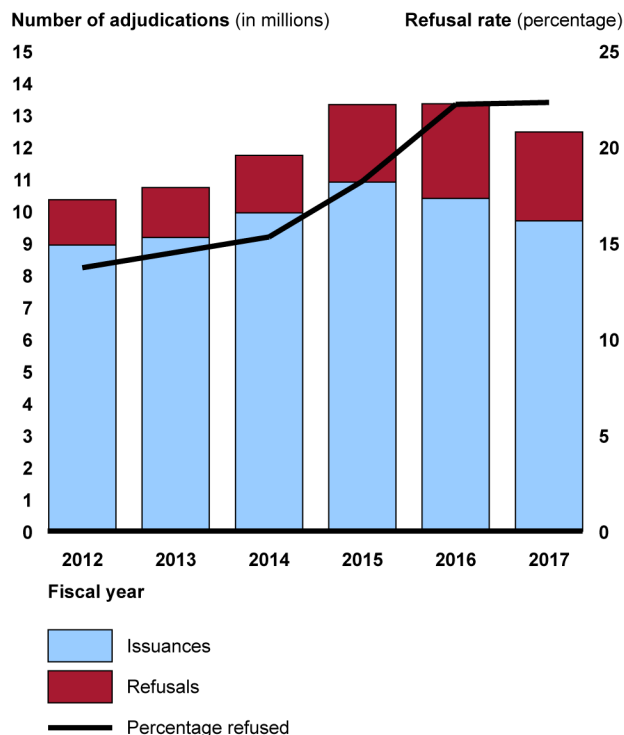
Number of NIV Adjudications and Refusal Rates Increased From Fiscal Years 2012 Through 2016, and Declined in Fiscal Year 2017

¹⁰GAO, *Border Security: CBP Aims to Prevent High-Risk Travelers from Boarding U.S.-Bound Flights, but Needs to Evaluate Program Performance*, [GAO-17-216](#) (Washington, D.C.: Jan. 24, 2017); and *Nonimmigrant Visas: Outcomes of Applications and Changes in Response to 2017 Executive Actions*, [GAO-18-608](#) (Washington, D.C.: Aug. 7, 2018).

NIV Adjudications Increased Annually from Fiscal Years 2012 through 2016 and Declined in Fiscal Year 2017

We reported in August 2018 that the total number of NIV applications that consular officers adjudicated (NIV adjudications) annually peaked at about 13.4 million in fiscal year 2016, which was an increase of approximately 30 percent since fiscal year 2012.¹¹ In fiscal year 2017 (the most recent data available at the time of our report), NIV adjudications decreased by about 880,000 adjudications, or about 7 percent. Figure 2 shows the number of applications adjudicated each year from fiscal years 2012 through 2017.

Figure 2: Issued and Refused Nonimmigrant Visas (NIV) and Refusal Rate, Fiscal Years 2012 through 2017



Source: GAO analysis of Department of State data. | GAO-19-477T

Note: Issued visas include NIVs that were issued during that fiscal year. Such applications may have been initiated in prior fiscal years. Issued visas include applications that overcame an initial refusal as well as applications that were refused and received a waiver from the Department of Homeland Security. The refusal rate is the number of visas that were ultimately refused divided by the total number of adjudications.

¹¹GAO-18-608.

Most NIV Applications Refused from Fiscal Years 2012 through 2017 Were for Reasons Other than Terrorism and Other Security-Related Concerns

As shown in figure 2, the percentage of NIVs refused—known as the refusal rate—increased from fiscal years 2012 through 2016, and was about the same in fiscal year 2017 as the previous year.¹² The NIV refusal rate rose from about 14 percent in fiscal year 2012 to about 22 percent in fiscal year 2016, and remained about the same in fiscal year 2017; averaging about 18 percent over the time period. The total number of NIVs issued peaked in fiscal year 2015 at about 10.89 million, before falling in fiscal years 2016 and 2017 to 10.38 million and 9.68 million, respectively.

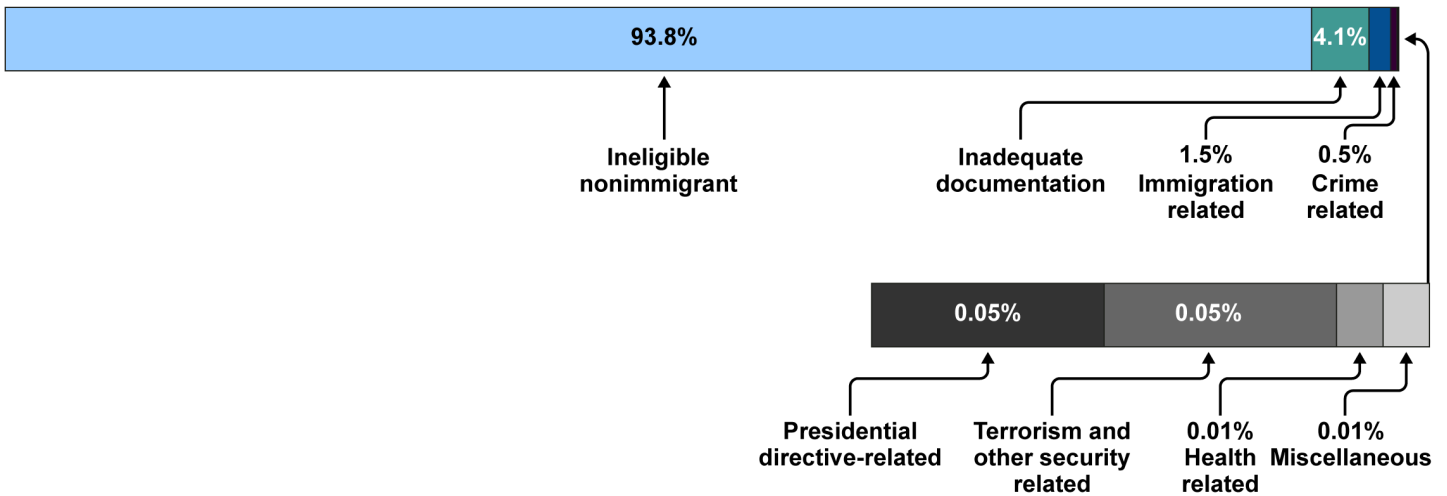
According to State data, while the majority of NIV refusals from fiscal years 2012 through 2017 were a result of consular officers finding the applicants ineligible, a relatively small number of refusals were due to terrorism and other security-related concerns. State data indicate that more than 90 percent of NIVs refused each year from fiscal years 2012 through 2017 were based on the consular officers' determination that the applicants were ineligible nonimmigrants—in other words, the consular officers believed that the applicant was an intending immigrant seeking to stay permanently in the United States, which would generally violate NIV conditions, or that the applicant otherwise failed to demonstrate eligibility for the particular visa he or she was seeking. For example, an applicant applying for a student visa could be refused as an ineligible nonimmigrant for failure to demonstrate possession of sufficient funds to cover his or her educational expenses, as required. As we reported in August 2018, our analysis of State data indicates that relatively few applicants—approximately 0.05 percent—were refused for terrorism and other security-related reasons from fiscal years 2012 through 2017.¹³ As shown in figure 3, in fiscal year 2017, State data indicate that 1,256 refusals (or 0.05 percent) were based on terrorism and other security-related concerns, of which 357 refusals were specifically for terrorism-related reasons.¹⁴

¹²The refusal rate is the number of visas that were ultimately refused divided by the total number of adjudications.

¹³INA § 212(a)(3) (8 U.S.C. § 1182(a)(3)). This ground includes engaging in or inciting terrorist activity, being a member of a terrorist organization, participating in genocide, espionage, and committing torture, among other conditions or activities.

¹⁴The 357 refusals that were specifically for terrorism-related reasons do not include applications for which DHS later issued a waiver. According to State officials, in addition, there were a total of 273 applications that were initially refused for terrorism-related reasons in fiscal year 2017, but for which DHS issued a waiver.

Figure 3: Nonimmigrant Visa (NIV) Refusal Reasons, Fiscal Year 2017



Source: GAO analysis of Department of State data. | GAO-19-477T

Note: This figure does not include visas that were initially refused (for example, due to insufficient documentation or for administrative processing) but then subsequently issued, nor does it include visas that were initially refused but later issued per a Department of Homeland Security waiver. For grounds under ineligible nonimmigrant, see Immigration and Nationality Act (INA) § 214(b) (8 U.S.C. § 1184(b)); inadequate documentation, see INA § 221(g) (8 U.S.C. § 1201(g)); terrorism and other security-related ineligibilities, see INA § 212(a)(3) (8 U.S.C. § 1182(a)(3)); for criminal and related ineligibilities, see INA § 212(a)(2) (8 U.S.C. § 1182(a)(2)); for health-related ineligibilities, see INA § 212(a)(1) (8 U.S.C. § 1182(a)(1)); for immigration-related ineligibilities, see INA § 212(a)(6), (9) (8 U.S.C. § 1182(a)(6),(9)); and for presidential directive related ineligibilities, see INA § 212(f) (8 U.S.C. § 1182(f)). Pursuant to executive actions taken in calendar year 2017, the President invoked the authority under INA § 212(f) to suspend immigrant and nonimmigrant entry of nationals of certain countries of particular or identified concern. See, e.g., Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27), Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6), and Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24). More than 99.5 percent of visa refusals adjudicated in fiscal year 2017 fit within one of these seven categories. The remaining refusal grounds are categorized as miscellaneous (fewer than 400 refusals per year).

Executive Actions Taken in
Calendar Year 2017
Introduced New Visa Entry
Restrictions and
Requirements to Enhance
Screening and Vetting,
Including for NIVs

The President issued Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry Into the United States (EO-1), in January 2017.¹⁵ In March 2017, the President revoked and replaced EO-1 with the issuance of Executive Order 13780 (EO-2), which had the same title as EO-1.¹⁶ Among other things, EO-2 suspended entry of certain foreign nationals for a 90-day period, subject to exceptions and waivers.¹⁷ In September 2017, as a result of the reviews undertaken pursuant to EO-2, the President issued Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Proclamation), which imposes certain conditional restrictions and limitations on the entry of nationals of eight countries—Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen—into the United States for an indefinite period.¹⁸ These restrictions, identified in table 1, are to remain in effect until the Secretaries of Homeland Security and State determine that a country provides sufficient information for the United States to assess adequately whether its nationals pose a security or safety threat.¹⁹ Challenges to both EOs and the Proclamation affected their

¹⁵ Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (issued Jan. 27) (EO-1).

¹⁶ Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (issued Mar. 6) (EO-2).

¹⁷ EO-2, as well as its predecessor EO-1, addressed the immigrant and nonimmigrant visa entry of certain foreign nationals, and refugee admission through the U.S. Refugee Resettlement Program. In conjunction with EO-2, the President, on March 6, also issued a memorandum to the Secretaries of State and Homeland Security and the Attorney General, calling for heightened screening and vetting of visa applications and other immigration benefits. See Memorandum Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People, 82 Fed. Reg. 16,279 (Apr. 3, 2017). Whereas EO-1 imposed visa entry restrictions for a 90 day period for nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen, EO-2 imposed such restrictions on the same countries listed in EO-1 with the exception of Iraq.

¹⁸ Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (issued Sept. 24).

¹⁹ For example, on April 10, 2018, the President announced that nationals of Chad would no longer be subject to visa entry restrictions under Proclamation No. 9645, because Chad's identity-management and information sharing practices have improved sufficiently. See Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9723, 83 Fed. Reg. 15,937 (Apr. 13, 2018) (issued Apr. 10).

implementation and, while EO-2's entry restrictions have expired,²⁰ the indefinite visa entry restrictions outlined in the Proclamation continued to be fully implemented as of our August 2018 report.²¹

Table 1: Presidential Proclamation Nonimmigrant Visa (NIV) Entry Restrictions by Country of Nationality (as of April 2018)

Country(ies) of Nationality	Scope of NIV Restrictions ^a
Yemen, Libya, Chad	All temporary visitor (B-1, B-2, and B-1/B-2) visas ^b
Syria	All NIVs
North Korea	All NIVs
Iran	All NIVs except nonimmigrants seeking entry on valid student (F and M) or exchange visitor (J) visas
Venezuela	Official-type and diplomatic-type visas for officials of certain government agencies and temporary visitor (B-1, B-2, and B-1/B-2) visas for their immediate family members
Somalia	None ^c

Source: GAO analysis of Presidential Proclamation 9645 of September 24, 2017. | GAO-19-477T

Note: The Presidential Proclamation also permits consular officers to grant waivers to the restrictions and authorize the issuance of visas on a case-by-case basis if the visa applicant can demonstrate the following: (a) denying entry would cause undue hardship to the applicant; (b) the visa applicant's entry would not pose a threat to the national security or public safety of the United States; and (c) his or her entry would be in the U.S. national interest.

^aThe Presidential Proclamation has provided certain exceptions to the entry restrictions. For example, unless otherwise specified, suspensions do not apply to diplomatic (A-1 or A-2) or diplomatic-type visas, visas for employees of international organizations and NATO (NATO-1-6, G-1, G-2, G-3, or G-4), or visas for travel to the United Nations (C-2).

^bAs of April 10, 2018, the Proclamation's visa entry restrictions are not applicable to nationals of Chad.

^cThe restrictions for Somalia only apply to immigrant visas, and do not apply to NIVs.

We reported in August 2018 that our analysis of State data indicates that out of the nearly 2.8 million NIV applications refused in fiscal year 2017, 1,338 were refused due to visa entry restrictions implemented in accordance with the executive actions.²² To implement the entry

²⁰After the expiration of EO-2's entry restrictions, the Supreme Court vacated and remanded cases related to EO-2 to the Fourth and Ninth Circuits with instructions to dismiss them as moot. *Trump v. Int'l Refugee Assistance Project*, 138 S. Ct. 353 (2017); *Trump v. Hawaii*, 138 S. Ct. 377 (2017).

²¹According to the U.S. Supreme Court's June 26, 2018, decision, the President may lawfully establish nationality-based entry restrictions under the INA; therefore, Proclamation 9645 "is squarely within the scope of Presidential authority." See *Trump v. Hawaii*, 138 S. Ct. 2392 (2018)

²²The Proclamation's new indefinite restrictions did not go into full effect until fiscal year 2018.

restrictions, in March 2017, State directed its consular officers to continue to accept all NIV applications and determine whether the applicant was otherwise eligible for a visa without regard to the applicable EO or Proclamation.²³ If the applicant was ineligible for the visa on grounds unrelated to the executive action, such as having prior immigration violations, the applicant was to be refused on those grounds. If the applicant was otherwise eligible for the visa, but fell within the scope of the nationality-specific visa restrictions implemented pursuant to the applicable EO or Proclamation and was not eligible for a waiver or exception, the consular officer was to refuse the visa and enter a refusal code into State's NIV database indicating that the applicant was refused solely due to the executive actions.²⁴ More than 90 percent of the NIV applications refused in fiscal year 2017 pursuant to an executive action were for tourist and business visitor visas, and more than 5 percent were for students and exchange visitors.

CBP's Air Predeparture Programs Interdict High-Risk Air Travelers, but CBP Has Not Fully Assessed the Programs' Performance

²³State guidance directed consular officers to halt interviews for visa applicants subject to EO-1 visa entry restrictions beginning on January 28, 2017. This guidance was in place until federal courts halted the implementation of EO-1 visa entry restrictions in February 2017.

²⁴State instructed consular officers to use the refusal code for a refusal based on section 212(f) of the INA (presidential suspension of, or imposition of restrictions on, alien entry). 8 U.S.C. § 1182(f). It later created a unique refusal code for refusals related to these executive actions.

CBP Identifies and Interdicts High-Risk Travelers before They Board U.S.-Bound Flights

As we reported in January 2017, CBP electronically vets all travelers before they board U.S.-bound flights, and continues to do so until they land at a U.S. port of entry.²⁵ Through these vetting efforts, CBP seeks to identify high-risk travelers from the millions of individuals who travel to the United States each year. As we reported in January 2017, CBP's vetting and targeting efforts are primarily conducted by its NTC and entail (1) traveler data matching and analysis, (2) rules-based targeting, and (3) recurrent vetting. Specifically:

- CBP's primary method of identifying high-risk individuals is through the comparison of travelers' information (such as name, date of birth, and gender)²⁶ against records extracted from U.S. government databases, including the Terrorist Screening Database (TSDB)—the U.S. government's consolidated terrorist watch list.²⁷ Traveler data matching focuses on identifying known high-risk individuals—that is, individuals who may be inadmissible to the United States under U.S. immigration law or who may otherwise pose a threat to homeland or national security. CBP's primary tool for vetting and targeting travelers is the Automated Targeting System (ATS), which is a computer-based enforcement and support system that compares traveler information against intelligence and law enforcement data to identify high-risk travelers. Traveler data matching occurs throughout the travel process

²⁵GAO-17-216. Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where DHS officers inspect persons entering or applying for admission into, or departing the United States pursuant to U.S. immigration law.

²⁶According to CBP officials, information from both (1) the Advance Passenger Information System, which includes biographical information such as full name, date of birth, gender, flight number, date of arrival and departure, citizenship, and passport/alien registration card number, among others; and (2) the Passenger Name Record, which refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each traveler or group of travelers included under the same reservation record, are utilized in the targeting and vetting of individuals attempting to travel to the United States. See 49 U.S.C. § 44909; 19 C.F.R. §§ 122.49a, 122.49d.

²⁷Information in the TSDB comes from two sources: the National Counterterrorism Center, which provides information on known or suspected international terrorists, and the Federal Bureau of Investigation, which provides information about known or suspected domestic terrorists. For more information about the process by which the U.S. government manages this watchlist, see GAO, *Terrorist Watchlist: Routinely Assessing Impacts of Agency Actions since the December 29, 2009, Attempted Attack Could Help Inform Future Efforts*, GAO-12-476 (Washington, D.C.: May 31, 2012).

and, upon a positive or possible match, CBP officers can select these individuals for further vetting, interviewing, and inspection.

- CBP's rules-based targeting efforts seek to identify unknown high-risk travelers—that is, travelers for whom U.S. government entities do not have available derogatory information directly linking them to terrorist activities or any other actions that would make them potentially inadmissible to the United States but who may present a threat and thus warrant additional scrutiny. CBP identifies unknown high-risk individuals by comparing their information against a set of targeting rules based on intelligence, law enforcement, and other information. NTC officials stated that these rules have identified potential high-risk travelers, including potential foreign fighters. Rules-based targeting evaluates travelers during the travel process and, in some cases, in advance of the travel process. If a traveler is a rule “hit,” this individual can be selected for further vetting, interviewing, and inspection.²⁸
- CBP supports its traveler data matching and rules-based targeting efforts through the use of recurrent vetting. NTC's vetting, targeting, and traveler data matching activities in ATS run 24 hours a day and 7 days a week and automatically scan updated traveler information, when available. This process is to ensure that new information that affects a traveler's admissibility is identified in near real time. Recurrent vetting occurs throughout the travel process and continues until a traveler arrives at a domestic port of entry. For example, after checking into a foreign airport, a traveler may have his or her visa revoked for a security or immigration-related violation. Due to recurrent vetting, CBP would be alerted to this through ATS and could take action, as appropriate.

²⁸In general, when a traveler is identified through rules-based targeting, the traveler is considered to have hit a rule.

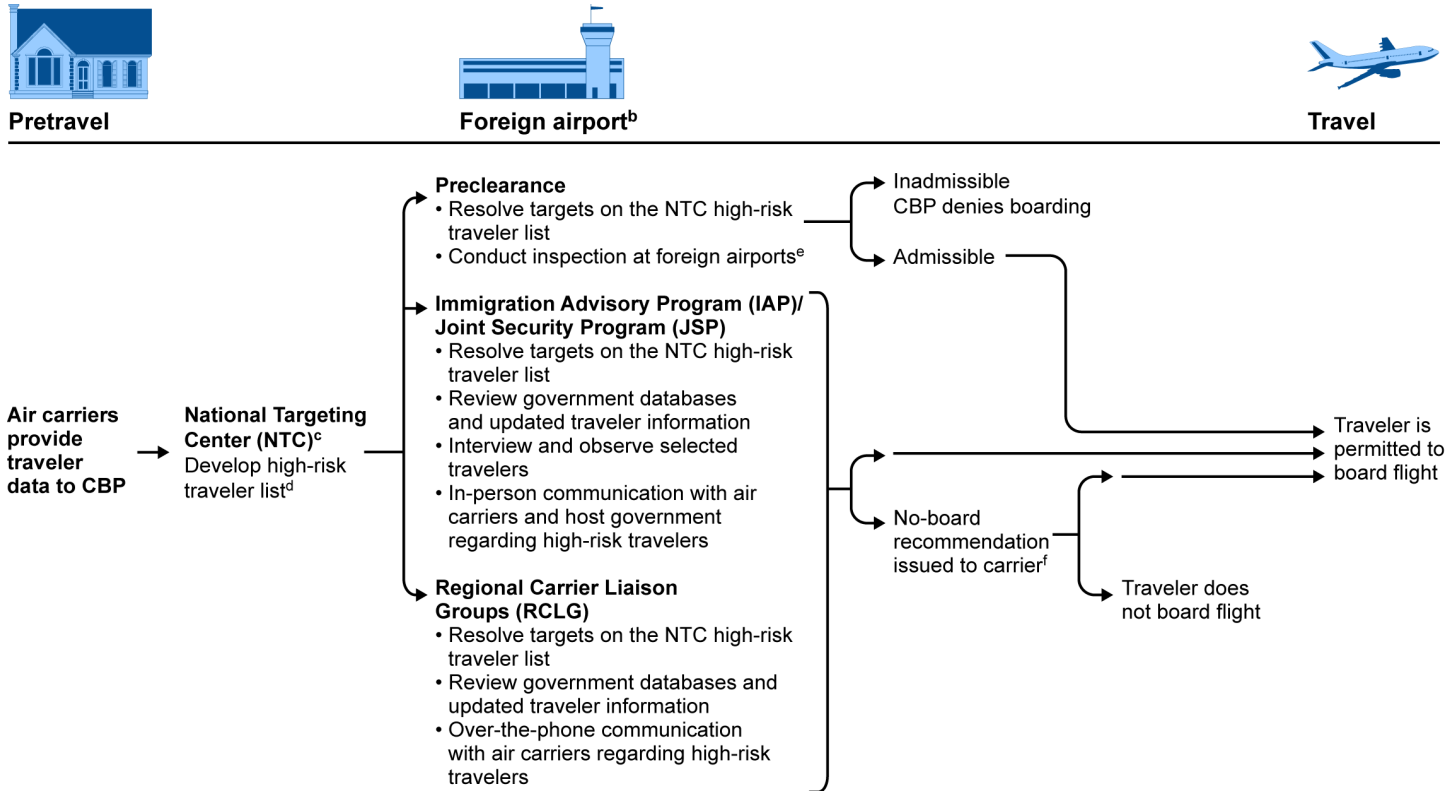
CBP's Air Predeparture Programs Interdict High-Risk Travelers on U.S.-Bound Flights, but CBP Has Not Fully Evaluated Overall Effectiveness of These Programs

As we reported in January 2017, throughout the travel process, CBP's predeparture programs use the results of NTC's efforts to identify and interdict high-risk individuals destined for the United States while they are still overseas; however, we found that CBP had not evaluated the effectiveness of its predeparture programs as a whole, including implementing a system of performance measures and baselines to assess whether the programs are achieving their stated goals.²⁹

CBP operates three air predeparture programs that are responsible for all U.S.-bound air travelers—(1) Preclearance; (2) the Immigration Advisory Program (IAP) and Joint Security Program (JSP); and (3) the regional carrier liaison groups (RCLG). As we reported in January 2017, CBP data indicated that these programs identified and ultimately interdicted approximately 22,000 high-risk air travelers in fiscal year 2015, the most recent data available at the time of our review. Information on individuals who the NTC identifies through traveler data matching or rules-based targeting, including recurrent vetting, is compiled automatically through ATS into a daily high-priority list (or, traveler referral list). CBP officers at the NTC review the traveler referral list for accuracy and to remove, if possible, any automatically generated matches determined to not be potential high-risk individuals. After this review, CBP officers at the NTC use ATS to send the traveler referral list to officers at each Preclearance, IAP, JSP, and RCLG location, as shown in figure 4.

²⁹[GAO-17-216](#).

Figure 4: Actions Taken by U.S. Customs and Border Protection’s (CBP) Predeparture Programs to Interdict High-Risk U.S.-Bound Air Travelers Throughout the Travel Process^a



Source: GAO analysis of CBP information. | GAO-19-477T

^aFor the purposes of this statement, the term travel process denotes the sequential steps that an international traveler takes to travel to the United States and focuses specifically on the points in time when travelers reserve and purchase airline tickets; check-in at the airport; transit to the United States; and arrive at a U.S.-based (i.e., domestic) airport. It does not focus on steps taken by the traveler before a ticket is reserved or purchased, such as obtaining a requisite travel authorization.

^bThis figure generally represents the actions CBP officers take to interdict high-risk travelers who will travel directly to the United States from a foreign last point of departure airport.

^cCBP’s NTC leads all of CBP’s predeparture targeting and vetting efforts. The NTC is a 24/7 operations entity within CBP’s Office of Field Operations responsible for providing advance information and research about high-risk travelers and facilitating coordination between law enforcement and intelligence agencies in support of CBP’s anti-terrorism mission and efforts to keep high-risk travelers from boarding U.S.-bound flights.

^dFor the purposes of this statement, the term “high-risk traveler” refers to any traveler who may be inadmissible to the United States under U.S. immigration law or who may otherwise pose a threat to homeland or national security. See 8 U.S.C. § 1182 (establishing grounds for inadmissibility). According to CBP, the predeparture programs discussed in this statement aim to interdict all high-risk travelers, but primarily focus on national security concerns and preventing known or suspected terrorists or travelers with connections to known or suspected terrorists from boarding flights destined for the United States.

^eCBP officers at air Preclearance locations conduct inspections of all U.S.-bound air travelers and determine whether they are admissible into the United States, as if conducted at a domestic U.S. port of entry.

^fIf CBP determines that a traveler at an RCLG, IAP, or JSP location will likely be deemed inadmissible upon arrival in the United States, CBP officers responsible for the location may recommend to the air carrier that it not board the traveler. Air carriers, however, retain authority to board the traveler unless, for example, the traveler has been identified by the Transportation Security Administration as being on the No Fly List, which is a subset of the Terrorist Screening Database that identifies individuals prohibited from, in general, boarding flights to, from, within, or overflying the United States.

Preclearance. Preclearance locations operate at foreign airports and serve as U.S. ports of entry. Preclearance operations began in 1952 in Toronto to facilitate trade and travel between the United States and Canada. As of March 2018, CBP operated 15 air Preclearance locations in six countries.³⁰ Through the Preclearance program, uniformed CBP officers at a foreign airport exercise U.S. legal authorities to inspect travelers and luggage and make admissibility determinations prior to an individual boarding a plane to the United States.³¹ According to CBP officials, an inspection at a Preclearance location is the same inspection as an individual would undergo at a domestic port of entry, and officers conducting Preclearance inspections exercise the same authority as officers at domestic ports of entry to approve or deny admission into the United States.³² As a result, travelers arriving at domestic air ports of entry from Preclearance locations do not have to be re-inspected upon entry.³³ According to CBP data, in fiscal year 2015, CBP officers at Preclearance locations determined that 10,648 air travelers were inadmissible out of the approximately 16 million air travelers seeking admission to the United States through a Preclearance location. In

³⁰See 19 C.F.R. § 101.5. CBP's Preclearance location in Victoria, Canada, only processes maritime travelers and, as a result, we did not include it in our January 2017 report. See [GAO-17-216](#).

³¹See 8 U.S.C. § 1103(a)(7); 19 U.S.C. § 1629. See also 8 C.F.R. §§ 235.1, 235.5; 19 C.F.R. §§ 148.22, 162.6, 162.8; and Preclearance Authorization Act of 2015, Pub. L. No. 114-125, tit. VIII, subtit. B, § 813, 130 Stat. 122, 217-18 (2016) (classified at 19 U.S.C. § 4432) (subject to certain provisos, the Secretary of Homeland Security is authorized to establish and maintain CBP preclearance operations in a foreign country).

³²Individuals denied admission to the United States at a Preclearance location are not permitted to proceed beyond the point of inspection and, thus, are unable to board a flight to the United States.

³³According to CBP officials, in accordance with CBP's current preclearance agreements and processes, CBP officers retain the authority to inspect these travelers and their accompanying goods or baggage after arriving in the United States should further inspection be warranted.

addition to requiring that all travelers undergo a primary inspection, CBP officers in these locations also referred almost 290,000 individuals for secondary inspection.³⁴

Immigration Advisory Program (IAP) and Joint Security Program (JSP). IAP and JSP operated at nine and two foreign airports, respectively, as of January 2017. According to CBP officials, under this program, unarmed, plainclothes CBP officers posted at foreign airports partner with air carriers and host country government officials to help prevent terrorists and other high-risk individuals from boarding U.S.-bound flights by vetting and interviewing them before travel.³⁵ According to CBP program documentation, CBP established IAP in 2004 to prevent terrorists, high-risk travelers, and improperly documented travelers from boarding airlines destined to the United States. Building on the IAP concept, CBP established JSP in 2009 to partner with host country law enforcement officials to identify high-risk travelers. CBP officers at IAP and JSP locations have the ability to question travelers and review their travel documents. They are to act in an advisory manner to the air carriers and host governments and do not have authority to deny boarding to individuals on U.S.-bound flights or fully inspect travelers or their belongings. IAP and JSP officers are authorized by CBP to make recommendations to airlines as to whether to board or deny boarding (known as a no-board recommendation) to selected travelers based on their likely admissibility status upon arrival to the United States. The final decision to board travelers, however, lies with the carriers. According to CBP data, CBP officers at IAP and JSP locations made 3,925 no-board recommendations in fiscal year 2015 for the approximately 29 million air travelers bound for the United States from such locations. During this same time period, CBP data indicated 1,154 confirmed encounters with

³⁴Primary inspection refers to the procedure that CBP uses to conduct an initial inspection of individuals seeking to enter the United States to determine if additional review or scrutiny is needed to ensure compliance with U.S. law. Persons who need additional scrutiny and persons selected as part of a random selection process are subjected to a more detailed review called a secondary inspection. This involves, for example, a closer inspection of travel documents and possessions, additional questioning by CBP officers, and cross references through multiple law enforcement databases to verify the traveler's identity, background, purpose for entering the country, and other appropriate information.

³⁵See 8 U.S.C. § 1225a(b).

individuals in the TSDB, including 106 on the No Fly List.³⁶

Regional Carrier Liaison Groups (RCLG). RCLGs are located and operate at three domestic airports—Miami International Airport, John F. Kennedy International Airport, and Honolulu International Airport. CBP established RCLGs in 2006 to assist air carriers with questions regarding U.S. admissibility requirements and travel document authenticity. According to CBP officials, RCLGs are responsible for coordinating with air carriers on all actionable referrals from NTC on U.S.-bound travelers departing from an airport without an IAP, JSP, or Preclearance presence. Each RCLG is assigned responsibility for travelers departing out of a specific geographic location.³⁷ Similar to IAP and JSP, CBP officers in RCLGs also make no-board recommendations, as appropriate, to air carriers. CBP officers at RCLGs do not have authority to make admissibility determinations about U.S.-bound air travelers, and the final decision to board or not board a traveler lies with the carrier. We reported in January 2017 that CBP officers working at the three RCLGs made 7,664 no-board recommendations in fiscal year 2015 for the approximately 59 million travelers bound for the United States from locations within the RCLGs' spheres of responsibility. During this time period, CBP data indicated that RCLGs also reported 1,634 confirmed encounters with individuals in the TSDB, including 119 on the No Fly List.

In January 2017, we reported that CBP had not evaluated the effectiveness of its predeparture programs as a whole, including implementing a system of performance measures and baselines to assess whether the programs were achieving their stated goals.³⁸ We reported that CBP had taken some initial steps to measure the performance of these programs. Specifically, CBP officials told us that they had collected a large quantity of data and statistics regarding the actions of their predeparture programs and had done so since program inception for all programs. However, due to changes in operational focus, technology updates, and the use of separate data systems at program

³⁶A confirmed encounter refers to when a representative of the U.S. government (in this case a CBP officer) comes into contact, either through physical interviewing or inspection or through electronic vetting, with an individual whose identity is confirmed as a match to a record in the TSDB. The No Fly List is a subset of the TSDB that, in general, identifies individuals prohibited from boarding flights to, from, within, or overflying the United States.

³⁷RCLGs are not responsible for travelers departing from Preclearance locations.

³⁸[GAO-17-216](#).

locations, CBP had not collected consistent data across all of its predeparture programs. As a result, CBP did not have baseline data on which to measure program performance. Therefore, we recommended that CBP develop and implement a system of performance measures and baselines for each program to help ensure that these programs achieve their intended goals. In response, as of March 2018, CBP has developed three performance measures for its predeparture programs. On the basis of our review of CBP documentation, as of December 2018, CBP has collected the fiscal year 2018 data relevant to these measures, used those data to set preliminary targets for fiscal year 2019, and plans to analyze the fiscal year 2019 results and set targets for future fiscal years by October 31, 2019. We will review documentation of CBP's analysis of the fiscal year 2019 results and future targets, when available, to determine if CBP's actions address our recommendation.

Chairwoman Rice, Chairman Rose, Ranking Members Higgins and Walker, and Members of the Subcommittees, this concludes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Acknowledgments

For further information regarding this testimony, please contact Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Kathryn H. Bernet, Assistant Director; Eric Hauswirth; Thomas Lombardi; Sasan J. "Jon" Najmi; Erin O'Brien; and Natalie Swabb.

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