HOMELAND SECURITY POLICY PAPER #2

Visa Overstays Outsize Role in Unauthorized Migration

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Executive Summary

On April 22, 2019, President Trump signed a Presidential Memorandum directing the Secretaries of State and Homeland Security "to find effective ways to combat the rampant number of overstays."[1] The White House fact sheet released with this announcement notes that twenty countries have visa overstay rates above 10 percent, and that one action being considered could be to limit the issuance of visas to countries with high rates of visa overstays.[2] This paper will tackle the following questions: How big is the visa overstay problem? How does it compare to other forms of unauthorized migration? And what policy options are available to policymakers?

Background

Overstays refer to individuals who enter the country legally for a specific purpose (e.g. tourism, business, study, etc.) and for a temporary period of time, but who fail to exit when they are supposed to.[3] These travelers enter with a valid visa authorizing their travel and admission to the United States or arrive from a country whose citizens do not require visas to travel to the United States for tourism (i.e. a country that belongs to the Visa Waiver Program or Canada)—though in both cases their entry is subject to a final determination of admissibility by U.S. Customs and Border Protection at a U.S. port of entry. Determining the number of overstays historically has been difficult for a number of reasons, including the fact that the United States has not required an immigration inspection when travelers leave the country and, as such, the nation's ports of entry (airports, seaports, and land border ports) were not designed with the infrastructure that would be needed to conduct an exit inspection.

Identifying individuals who overstay is an important component of managing immigration. It became an even more pressing concern for policy makers after 9/11, when four of the 19 hijackers entered the country with valid visas and subsequently overstayed either as they prepared for or carried out the attacks.[4] Improving the government's ability to identify individuals who overstayed the terms of their admission would not have stopped 9/11—but it is key step that, when combined with intelligence reporting, can better focus law enforcement efforts on dangerous individuals. In order to address this gap, Congress passed a number of laws that required DHS and air and sea carriers to collect information that would be required to

verify the entry and exit of individuals. These requirements included:

1. **Advance Passenger Information**. Airlines are required to provide DHS with their final passenger manifests for all flights bound to the United States 30 minutes before the airplane door closes prior to departure. Sea vessels are also required to submit their passenger and crew manifest in advance of docking at a U.S port.[5]

2. **Passenger Name Record (PNR)**. Airlines must provide DHS with access to the PNR data in their reservation systems up to 96 hours before airplane are scheduled to depart for the United States.[6]

3. **Biometric Entry / Exit System**.[7] DHS is required by law to implement a biometric entry and exit system in part to more reliably identify individuals who overstayed. DHS has yet to fully implement such a system, though it is in the process of piloting the use of facial recognition as an exit system in a number of airports and plans to expand the system to capture 97 percent of air travel in the next four years.[8]

Analysis

DHS began publishing overstay data annually in fiscal year (FY) 2015, which means there is little data available about visa overstay rates prior to that year. These reports are based on collecting and matching the biographic information provided on passenger manifests by all entering and departing aircraft and sea vessels. In these reports, DHS calculates two overstay rates: a top-line overstay rate that encompasses all people who overstayed their admission, including those who ultimately left the country, and a lower "in country" overstay rate that encompasses the number of individuals for whom no exit record is available and are thus suspected of remaining in the country illegally. For this analysis, I focus on the suspected "in-country" overstay rates.

From FY2015 to FY2018 (the most recent year for which data is available), suspected in-country overstays have ranged from a low of 482,781 in FY2015 to a high of 739,478 in FY2016.[9] The overstay rate—that is, the percent of all international travelers to the United States who entered legally but failed to depart when they were required to do so—has ranged from a low of 1.07 percent in FY2015 to a high of 1.47 percent in FY2016. Some categories of visas have substantially higher overstay rates, however. For example, recipients of student visas (F, M, and J visas) have consistently had the highest in-country overstay rates, ranging from 2.81 percent in FY2016 to 2.11 percent in FY2018. Conversely, visa waiver program countries (perhaps unsurprisingly) have the lowest in-country overstay rates, ranging from 0.6 percent in FY2016 to 0.35 percent in FY2018. The DHS reports aggregate visa categories by general type, however, and it is likely that these rates vary by specific visa classification.

There are some limitations with the data that DHS publishes, including the fact that the overstay reports aggregate visa categories and the lack of consistent collection of exit data from the northern and southern land border. As of FY2018, the only exit data being systematically collected at the land border involves an agreement with Canada to provide the biographic data for third country nationals (i.e. non-U.S. or Canadian citizens) who are inspected by Canadian officials as they exit the United States. While DHS has been working with the governments of Mexico and Canada to collect this kind of data for all individuals that exit the U.S.—including citizens of all three countries, who comprise the vast majority of those who cross the land border—the necessary agreements have yet to be finalized.

In its FY2018 report, DHS notes that it is able to close a number of exit records when travelers who habitually cross the land border enter the United States again. However, this process provides ambiguous information, as in some cases (i.e. those in which individuals do not re-enter habitually) DHS is unable to confirm whether these individuals were in the United States when their authorized stay expired. Additionally, DHS does not provide the specific percentage of exit records that it is able to resolve in this way. Given the overall volume of travel back and forth across the land border, it is likely that the current visa overstay reports DHS publishes are undercounting the number of Mexican and Canadian nationals who overstay because it does not include data on land border crossings.

Figure 1 shows that there have been more individuals who overstay their visas each year since FY2015 than individuals apprehended crossing the land border illegally. However, given the ongoing surge in unauthorized migration this year, which has resulted in more than 766,000 apprehensions in FY2019 through July 31, 2019,[10] it appears likely that individuals apprehended along across our southern border will outstrip visa overstays in 2019.

Figure 1: Visa Overstays Versus Land Border Apprehensions
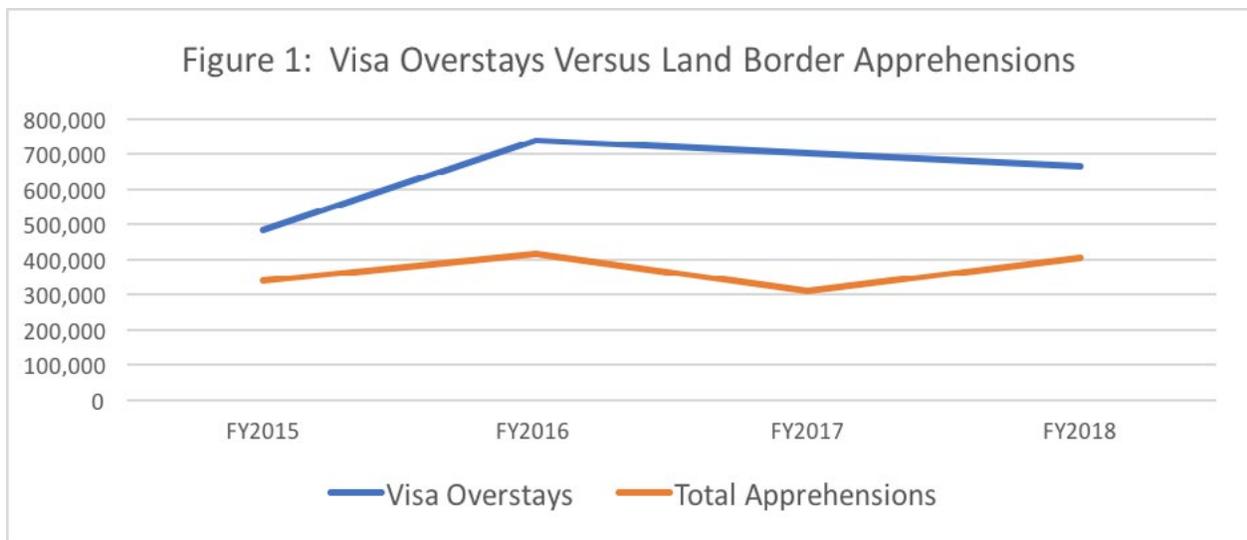
Additionally, a number of studies before DHS began publishing overstay data suggested that this trend (i.e. overstays exceeding land border apprehensions) has existed for quite some time and that visa overstays may have been a bigger driver of unauthorized migration over the past decade than unauthorized border crossings. For example, a 2014 study concluded that "[t]he number who stayed beyond the period authorized by their temporary visas (overstays) exceeded the number who entered across the southern and border without inspection (EWIs) in each year from 2008 to 2012."[11]

Recommendations

President Trump's 2019 Visa Overstay Presidential Memorandum states that DHS will prioritize the removal of individuals who have overstayed the terms of their admission to the country. Efforts to identify, locate, and remove individuals who have overstayed are clearly important—but they are also extremely difficult to execute, and may take resources away from pursuing individuals who could present a greater threat, such as potential terrorists or individuals convicted of felonies or other serious crimes.

Policymakers may consider whether improving our ability to prevent people from overstaying in the first place may yield

better results in the long run. However, one of the key challenges policymakers face is the relative lack of information concerning individuals who overstay the terms of their admission to the United States in order to remain in the country illegally. The policy levers outlined here could improve our understanding of who is overstaying and potentially help the government prevent individuals from overstaying in the first place.

Recommendation 1: More Broadly Implement an Electronic Notification System.

Social science research shows that timely reminders can have a powerful effect on behavior and associated policy outcomes, and the use of text message reminders in particular has been linked with positive health care outcomes.[12] Beginning in FY2018, DHS has been sending emails to individuals from Visa Waiver Program countries.[13] DHS could consider whether expanding this system to also send text message reminders to individuals who are close to the end of their authorized stay for all categories of visas may have a deterrent effect for some individuals who are planning to overstay. Additionally, DHS may consider systematically reviewing how these notifications are being structured and delivered in order to ensure the program is based on the scientific research, which could increase its effectiveness.

Recommendation 2: Expedite Completion of Land Border Exit Data Sharing Agreements with Canada and Mexico.

As noted earlier, identifying visa overstays for individuals who exit across the land border has been one of the most challenging areas for DHS. The volume of traffic across the border and the fact that our land border ports of entry have not been designed to facilitate exit inspections makes it difficult for DHS to collect exit data on travelers. While DHS is exploring technology that may allow it to capture biometrics via facial recognition even for passengers in vehicles, all of these travelers are subjected to entry inspections by Mexico and Canada. Fast-tracking agreements with Mexico and Canada to share biographic and biometric information on all traveler inspections at the land border would close the biggest remaining gap in our ability to determine how many travelers overstay each year. This may require the provision of technical assistance and technology, particularly for Mexico, which Congress should consider authorizing and appropriating.

Recommendation 3: Expanding the National Vetting Center.

In 2018, DHS stood up the National Vetting Center (NVC) to centralize the analysis of intelligence and law enforcement data related to immigration benefits (such as visas).[14] The NVC notes that its initial focus is improving the data used by the Electronic System for Travel Authorization (ESTA) to determine whether nationals from Visa Waiver Program countries should be authorized to travel to the United States.[15] However, these efforts are still nascent and DHS could evaluate whether they should be expanded. DHS and Congress could consider expanding the NVC and requiring that it include all visa categories in its scope, beginning with those visa categories that have the highest overstay rates such as student visas. This expansion could complement and inform current efforts at the State Department and U.S. Immigration and Customs Enforcement, creating a layered approach to visa security.

Recommendation 4: Use Scalable Computing Methods to Inform Visa Issuance.

Our current visa issuance system, which begins when potential travelers apply for a visa overseas and includes a number of automated checks against U.S. law enforcement, immigration, and intelligence databases, is heavily reliant on the consular interview to identify potential fraud or individuals who may be planning to overstay. DHS and the Department of State could expand the use of scalable computing methods, such as using artificial intelligence, to analyze vast sets of data in order to identify the characteristics of travelers who overstay their visas. These kinds of techniques are increasingly being used in the private sector to analyze the risk involved in activities that are difficult to predict; for example, there is a large body of literature on the use of artificial intelligence to predict and forecast credit risk in financial markets.[16] DHS could consider reviewing whether these kinds of techniques could be useful in providing a better understanding of the population that overstays their visas, which could be leveraged by the Department of State to inform visa issuance decisions and by CBP to guide its questioning of travelers when they arrive at a port of entry. This kind of analysis could also potentially help the State Department improve, inform, and enhance the performance of consular officers in order to better target training and potentially promotions.

Recommendation 5: Improve State Department Visa Fraud Detection Activities.

A key priority for the U.S. government is detecting individuals who are applying for visas to come to the United States but who intend to overstay their visas. To do so, the Department of State will need to improve their processes and policies related to the detection and identification of individuals and applications that indicate an underlying intent or likelihood to violate the terms and conditions of the visa, particularly with respect to the authorized period of stay. One key step could be to review its fraud detection program to identify any areas and processes that could be improved. This could include ensuring that Fraud Prevention Manager (FPM) positions are staffed full time by senior officials, that all personnel working in the program have received appropriate training on how to prevent fraud, and that outcome measures are used to track the performance of the program. This has not always been the case: for example, in 2012 the Government Accountability Office "found that 81 percent of [FPM] positions were filled by entry-level officers and 84 percent of FPM positions were designated as either part-time or rotational."[17] And a 2018 State Department Office of the Inspector General (OIG) report noted that "the Office of Fraud Prevention Programs provided relevant and effective fraud prevention and detection training, but the office lacked a centralized system to record training activities, limiting its ability to track and evaluate its overall training efforts."[18] Improving the State Department's ability to track and evaluate the fraud detection training given to consular officers is a key first step.

Recommendation 6: Enhance Reporting on Undocumented Immigrant Population.

DHS' Office of Immigration Statistics is required by law to produce an annual report that estimates the number of people residing in the United States without authorization.[19] However, the most recent estimate is for 2015,[20] and these annual reports do not include information that could be useful for policymakers, such as estimates of how the unauthorized population arrived. DHS could consider updating these estimates more frequently and including estimates of the percent of this population that entered illegally across the land border and those who entered legally and overstayed. As part of this report, DHS could explore using state of the art statistical techniques in order to overcome the lack of data related to land border exits, allowing it to give policymakers a better picture on the overall universe of visa overstays. DHS could also explore the potential benefits of providing the data that is used to generate these reports to the research community, which could use innovative techniques and derive insights from the data that DHS is currently not aware of.

Endnotes

1   Donald J. Trump, "Presidential Memorandum on Combating High Nonimmigrant Overstay Rates" (April 22, 2019), https://www.white-house.gov/presidential-actions/presidential-memorandum-combating-high-nonimmigrant-overstay-rates/. Hereafter "Visa Overstay Presidential Memorandum."

2   Donald J. Trump, "President Donald J. Trump is Taking Action to Reduce Visa Overstays and Uphold the Rule of Law," *White House Fact Sheet* (April 22, 2019), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-is-taking-action-to-reduce-visa-overstays-and-uphold-the-rule-of-law/.

3   8 U.S.C. § 1202(g) (2019) (statutory provision that provides for nullification of a visa when a person stays beyond the period of admission);8 U.S.C. § 1227(a)(1)(B) (2019) (classifies any individual who is present in the U.S. in violation of the Immigration and Nationality Act as being deportable from the U.S.; visa overstays fall into this classification).

4   National Commission on Terrorist Attacks Upon the United States, "*Staff Statement 1:* Entry of the 9/11 Hijackers into the United States," January 26, 2004, 7-8.

5   Congress required air and sea carriers to provide their passenger manifests and access to passenger name record databases in order to secure aviation and inform immigration inspections in the following laws: the Aviation and Transportation Security Act of 2001, P.L. 107–71, § 115; and the Enhanced Border and Visa Security Act of 2002, P.L. 107–173, § 402.

6   Note that this time frame can vary depending on specific agreements DHS signs with other countries.

7   The Intelligence Reform and Terrorism Prevention Act of 2004 required that a biometric entry and exit system be deployed at ports of entry and that biometrics be collected at consular posts abroad. For the specific provision of law see P.L. 108–458, § 7208.

8   *Fiscal Year 2018 Entry/Exit Overstay Report,* Department of Homeland Security, 5.

9   *Fiscal Year 2015 Entry/Exit Overstay Report,* Department of Homeland Security; *Fiscal Year 2016 Entry/Exit Overstay Report,* Department of Homeland Security; *Fiscal Year 2017 Entry/Exit Overstay Report,* Department of Homeland Security; *Fiscal Year 2018 Entry/Exit Overstay Report,* Department of Homeland Security.

10   "CBP Enforcement Statistics 2019," U.S. Customs and Border Protection, accessed August 8, 2019, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.

11   Robert Warren and Donald Kerwin, "Beyond DAPA and DACA: Revisiting Legislative Reform in Light of Long-Term Trends in Unauthorized Immigration to the United States," *Journal on Migration Human Security* 3, no. 1 (Mar. 2015), 80-108.

12   "Using Health Text Messages to Improve Consumer Health Knowledge, Behaviors, and Outcomes: An Environmental Scan," U.S. Department of Health and Human Services, Health Resources and Services Administration (May 2014); Kati Anneli Kannisto et al., "Use of Mobile Phone Text Message Reminders in Health Care Services: A Narrative Literature Review," *Journal of Medical Internet Research* 16, no. 10 (Oct. 2014); Seneca Perri-Moore et al., "Automated Alerts and Reminders Targeting Patients: A Review of the Literature," *Patient Education and Counseling* 99, no. 6 (2016), 953-59; Michael Furukawa and Meghan Gabriel, "Updated Literature Review Shows that Meaningful Use of Health IT Improves Quality, Safety, and Efficiency Outcomes," *HealthITBuzz*, Jan. 9, 2014, https://www.healthit.gov/buzz-blog/electronic-health-and-medical-records/meaningful-use-healthit-improves-quality-safety-efficiency-outcomes.

13   "Traveler Compliance Check FAQs," U.S. Customs and Border Protection, accessed May 8, 2019, https://help.cbp.gov/app/answers/detail/a_id/3668/~/traveler-compliance-check---faqs.

14   Donald J. Trump, "Presidential Memorandum on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise" (February 6, 2018), https://www.whitehouse.gov/presidential-actions/presidential-memorandum-optimizing-use-federal-government-information-support-national-vetting-enterprise/.

15   "National Vetting Center," U.S. Customs and Border Protection, accessed May 10, 2019, https://www.cbp.gov/border-security/ports-entry/national-vetting-center.

16   Sabqib Aziz and Michael Dowling, "Machine Learning and AI for Risk Management," in *Disrupting Finance: FinTech and Strategy in the 21st Century*, ed. Theo Lynn et al. (Cham, Switzerland: Palgrave Pivot, 2019); Girija Attigeri et al., "Credit Risk Assessment Using Machine Learning Algorithms," *Advanced Science Letters* 23, no. 4 (Apr. 2017), 3649-53; José Willer Prado et al., "Multivariate Analysis of Credit Risk and Bankruptcy Research Data: A Bibliometric Study Involving Different Knowledge Fields (1968–2014)," *Scientometrics* 106, no. 3 (2016), 1007; Asogbon Mojisola Grace and Samuel Oluwarotimi Williams, "Comparative Analysis of Neural Network and Fuzzy Logic Techniques in Credit Risk Evaluation," *International Journal of Intelligent Information Technologies* 12, no. 1 (Jan. 2017).

17   Government Accountability Office, *State Could Enhance Visa Fraud Prevention by Strategically Using Resources and Training*," GAO-12-888 (Sept. 10, 2012).

18   Office of Inspector General, U.S. Department of State, *Inspection of the Bureau of Consular Affairs' Office of Fraud Prevention Programs*, ISP-I-18-42 (Aug. 2018).

19   8 U.S.C. §1103 (d). This section, titled "Statistical information system," requires the Commissioner to publish annual information that could be "useful in evaluating the social, economic, environmental, and demographic impact of immigration laws," including estimates of the "the number of aliens estimated to be present unlawfully in the United States in each fiscal year."

20   Office of Immigration Statistics, U.S. Department of Homeland Security, *Population Estimates: Illegal Alien Population Residing in the United States, January 2015* (Dec. 2018).