

**WEAKNESSES IN THE VISA WAIVER PROGRAM:
ARE THE NEEDED SAFEGUARDS IN PLACE
TO PROTECT AMERICA?**

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM,
TECHNOLOGY AND HOMELAND SECURITY
OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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WEAKNESSES IN THE VISA WAIVER PROGRAM: ARE THE NEEDED SAFEGUARDS IN PLACE TO PROTECT AMERICA?

THURSDAY, FEBRUARY 28, 2008

U.S. SENATE,
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY
AND HOMELAND SECURITY, COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:32 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Dianne Feinstein, Chairman of the Subcommittee, presiding.

Present: Senators Feinstein, Kyl, and Sessions.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Chairman FEINSTEIN. I would like to call the meeting to order. The Ranking Member, my friend and colleague Senator Kyl, said sometime ago that he is going to be a little bit late. I know he is on his way, and his staff has said go ahead and begin. So I will at least get my remarks out of the way.

I want to begin by welcoming our witnesses. I also want to indicate to you that I am not a fan of the Visa Waiver Program. I actually believe it is the soft underbelly of this country. And if I understand correctly, 27 countries, 16 million people in 2007, 15 million people in 2006, a total of 31 million people in 2 years come into the United States without a visa; and we today do not yet know whether they have left or not. And this presents all kinds of hazards.

For the citizens of these 27 select countries, including Australia, Singapore, Slovenia, and the U.K., entering the United States is as simple as purchasing an airline ticket and then arriving at the airport with a valid passport in hand. No visa is required because they are from countries that are part of this program, the Visa Waiver Program. Thousands, I think tens of thousands, of these people overstay their authorized visit. Many just simply disappear into the shadows.

It is estimated that 40 percent of the current undocumented population in this Nation are people who have overstayed their visas— not come across the border but come into the country legally, and then they do not go home when they are supposed to. So there is no doubt in my mind that hundreds of thousands of the illegal population came through the Visa Waiver Program over many years.

The Visa Waiver Program also provides an attractive option to terrorists looking to do Americans harm. At a Senate Judiciary Committee hearing on September 25th this past year, DNI Director Mike McConnell testified that al Qaeda is purposefully recruiting Europeans because they do not require a visa to come into this country. As Director McConnell said, this tactic gives al Qaeda “an extra edge in getting an operative or two or three into the country, with an ability to carry out an attack that might be reminiscent of 9/11.”

Secretary Chertoff reiterated these concerns last month when he stated that, “Terrorists are increasingly looking to Europe as both a target and a platform for terrorist attacks” against the United States.

In an interview with BBC World News, Secretary Chertoff acknowledged, and again I quote, “The first time we encounter visa waiver travelers is when they arrive in the United States, and that creates a very small window of opportunity to check them out.”

So, clearly, the Visa Waiver Program leaves open both a major gap in our domestic security and a way to exploit and countervene our immigration laws. And we know there have been thousands of stolen travel documents in Europe, stolen fraud-proof passports, stolen Geneva Convention documents, stolen international driver’s licenses. So one wonders what happens to those.

Congress and the Department of Homeland Security have been focused on immigration enforcement. In fact, Congress appropriated \$3 billion in 2008 for this purpose. The Department of Homeland Security is using this money to build a border fence, to hire thousands more Border Patrol agents, to conduct immigration raids at farms and factories and homes across the country.

Now, despite the money and the resources the Department is devoting to immigration enforcement, it continues to ignore the long-standing directive to track people who overstay their visas. In 1986, as a pre-condition to implementing the Visa Waiver Pilot Program, the Attorney General was required to certify that there was a system in place that could track arrivals and departures. Since then, in no less than 12 pieces of legislation, Congress has directed the executive branch over and over again to create a way to track who is coming in and leaving our country. Congress has appropriated millions of dollars, and deadline after deadline has been missed; but, still, the executive branch has failed to act.

This Subcommittee held a hearing on the US-VISIT entry-exit system last January. At that point it was clear that the Department of Homeland Security was failing to meet the mandate to develop a way to track who is coming in and going out of the United States at all our ports of entry.

Now, today it seems that the Department is moving full steam ahead to admit even more countries to the Visa Waiver Program. In fact, just on Tuesday, DHS signed a Memorandum of Understanding to bring yet another country, the Czech Republic, into the Visa Waiver Program. Once again, they are doing so without meeting the mandates that Congress has laid out for them.

Just last week, Secretary Chertoff gave a press briefing on the Department of Homeland Security’s efforts to strengthen border security and immigration reform. He stated, and I quote, “Congress

didn't give us a comprehensive immigration reform, so we are going to do what we can with the tools we have."

Let me be clear. Congress has given DHS tools to fix our immigration and security problems in the 9/11 legislation. That law has two straightforward requirements:

First, DHS cannot admit new countries into the program until it has a way to track who is coming and going from our country's airports until it can verify the departure of 97 percent of travelers leaving United States airports. It cannot do so today.

Second, DHS cannot admit new countries into the program until it has a fully operational electronic travel authorization system, a system that every visa waiver traveler must use. This means that every visa waiver traveler must provide their biographical information to the Department of Homeland Security before they get on a plane to the United States. DHS cannot do that today. By all accounts, the Department of Homeland Security cannot yet meet either requirement, but it is moving, contrary to law, to admit new countries and even more travelers into this program by this fall.

I believe that what we will hear today is that rather than develop a meaningful exit program, DHS is so determined to certify that it can verify the departure of 97 percent of airport travelers that it has developed a false calculation of the departure rate. I have also heard that although the administration is developing an electronic travel authorization system, it does not intend that all visa waiver travelers must use it initially—in clear contraindication of the statute. Frankly, I hope these reports are untrue. I intend to flesh it out. I would not like to begin to believe that the Department of Homeland Security, which has exposed the way that terrorist operatives and illegal immigrants intend to exploit the Visa Waiver Program is the same agency that is moving full steam ahead to admit at least four and as many as eight new countries into the program without the necessary controls in place.

So I hope that today we can have an open discussion about the administration's intentions with respect to expanding the Visa Waiver Program.

I have been at this for a long time, and I have followed it for a long time. And I would just ask the staff to show those charts, if you would for a minute.

But these charts are pretty clear. As you know, the refusal rate is 10 percent. These are countries above that line. Those are the countries that are above the 10 percent at the end, and then the 3-percent rate, these are all the countries that are above the 3-percent rate, each one—and this is essentially the same kind of thing.

So I was prepared to do an amendment on the floor on the bill, and I compromised with the Homeland Security Program with a view that these strictures that they put in that the two tests be met and changing the refusal rate to 10 percent, that the Department would abide by it. And so I am really concerned that everything I hear indicates that the Department is finding ways to get around it rather than carry out the mandate.

[The prepared statement of Senator Feinstein appears as a submission for the record.]

So that is really the subject of this hearing, and I note that Senator Kyl is not yet present. Shall I just go ahead? OK. I will just

go ahead then and introduce the panel. The panel consists of Mr. Paul Rosenzweig, the Deputy Assistant Secretary, Office of Policy of DHS. Mr. Rosenzweig is the Deputy Assistant Secretary. Prior to joining the Department, he was a senior legal research fellow in the Center for Legal and Judicial Studies at the Heritage Foundation, where he focused on issues of civil liberties, national security, and criminal law. He is also an adjunct professor of law at George Mason University School of Law.

Tony Edson is the Deputy Assistant Secretary for Visa Services, Department of State. He joined the Foreign Service in 1981 and is currently serving as Deputy Assistant Secretary of State for Visa Services in the State Department's Bureau of Consular Affairs. Prior to that, Mr. Edson served as Managing Director of Visa Services and Senior Advisor for Strategic Planning to the Visa Services Directorate from 2001 to 2005. He served as Consul General at the United States Embassy in Jakarta from June 1998 to 2001, and he has also held overseas diplomatic assignments in Naha, Tokyo, Bangkok, and Mumbai.

Jess Ford is Director, International Affairs and Trade, the Government Accountability Office, which we fondly call the "GAO." He joined GAO in 1973 and has worked extensively in the national security and international affairs area concerning trade, foreign assistance, and foreign policy issues. He has managed GAO audits of AID, the State Department, and DOD. He has directed the completion of numerous studies on U.S. national security issues, foreign assistance, counternarcotics, border security, public diplomacy. He is very well fit by biographical information, and he has received numerous awards.

Susan Ginsburg is Director of Programs on Mobility and Security, the Migration Policy Institute. She is the Director of this. She is a member of the Secure Borders and Open Doors Advisory Committee established by Secretary Rice and Secretary Chertoff. Since 2004, Ms. Ginsburg has provided consultation for the 9/11 Public Discourse Project, testified before Congress, and written strategic policy. We welcome her.

And the final, last but not least, Jessica Vaughan, Senior Policy Analyst, the Center for Immigration Studies. She is a Senior Policy Analyst for the center, and the center examines the impact of immigration on American society. She has been with the center since 1992, and her area of expertise is immigration policy and operations, particularly visa programs, immigration benefits, and immigration law enforcement. She was a Foreign Service officer with the Department of State.

So, with that, I would welcome the witnesses, and I would also note the attendance of the very distinguished Senator from Alabama, Senator Sessions.

Senator SESSIONS. Thank you. Good to be with you.

Chairman FEINSTEIN. Good to be with you. Shall I proceed or do you wish to say something?

Senator SESSIONS. Yes, you proceed.

Chairman FEINSTEIN. All right. I have made an opening statement. Senator—

Senator SESSIONS. I would just say one thing.

Chairman FEINSTEIN. You go right ahead.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM
THE STATE OF ALABAMA**

Senator SESSIONS. And that would be that I am supportive of the Visa Waiver Program in general. I think it needs to be monitored carefully. But my concern is the failure to have an effective U.S. visa exit system, a failure to have fingerprint documentation, which I consider to be critical to any effective biometric program of identification. So those are the things I will be asking about because it is one thing to have a system, but if you do not have the mechanics, the details to come together effectively, then it can nullify all these wonderful things we talk about.

Chairman FEINSTEIN. Thank you, Senator. I agree with you 100 percent. I would like to ask the witnesses if you could confine your remarks to 5 minutes. We would like to have your written testimony. We have some of it, but not all of it. And so if you would confine your remarks, this little gizmo will give you the result of your exposition. And then we will be able to have a conversation.

So, please, Mr. Rosenzweig, please begin.

STATEMENT OF PAUL ROSENZWEIG, ACTING ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS, AND DEPUTY ASSISTANT SECRETARY FOR POLICY, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. ROSENZWEIG. I am going to assume that my staff has succeeded in getting you our written testimony, which I would ask to be made a part of the record.

Chairman FEINSTEIN. Yes, it will be part of the record.

Mr. ROSENZWEIG. Senator Feinstein, Senator Sessions, thank you very much for the opportunity to appear before the Committee today to discuss the Visa Waiver Program and examine how the Department of Homeland Security intends to implement the modifications made by the "Implementing Recommendations of the 9/11 Commission Act of 2007".

The Department supports a Visa Waiver Program that promotes legitimate travel to the United States without compromising, and in our judgment even strengthening, our country's national security, law enforcement, and immigration interests. Those are a clear top priority of the administration. Section 711 of the Act accomplishes this objective by concurrently enhancing the Visa Waiver Program's security requirements and creating flexibility that expands opportunities for new countries to join the Visa Waiver Program while imposing new security requirements on existing visa waiver countries.

These twin goals of security and flexibility are complementary, in our judgment: the prospect of VWP membership creates tremendous incentives for improved security postures in aspirant or "road map" countries. In many respects, we will end up with an even stronger travel security cooperation with VWP countries than with non-VWP countries where visas remain required.

Let me spend a brief moment updating you on the steps we have taken so far to strengthen the VWP. To ensure that current VWP members, "road map" countries, and the European Union understand the legislative changes and the enhanced security standards that have been enacted, we have implemented an aggressive out-

reach and engagement strategy. This strategy will allow the new standards to be brought online expeditiously.

Since the summer of 2007 and the passage of the law, DHS has informally met with current and aspirant VWP countries alike to explain exactly what the enhanced security measures entail. This outreach effort has involved both high-level consultation and working-level technical conversations between DHS personnel and their foreign counterparts. More recently, the Department has formalized all seven of the security enhancements contained in the new legislation into draft memoranda of understanding. Each member and aspirant country must sign a memorandum of understanding as well as conclude appropriate implementing arrangements that will detail the terms of the new security measures. Those countries seeking to join the VWP will have to comply with the new security measures prior to admission. More significantly, current participants will also have to meet those new requirements, including some of the discretionary requirements, by October of 2009. Staggering the times for compliance in this way best enables us to ensure a smooth transition to uniform security standards for all VWP members. As we have stated many times, uniform security standards are essential because the terrorist threat is not confined to particular corners of the globe.

To enable the expeditious adoption of these new security measures, we have led teams throughout Europe and Asia. We have been in the Czech Republic, Estonia, Germany, Greece, South Korea, and the United Kingdom. We have, as you noted, concluded a memorandum of understanding with the Czech Republic. We will soon begin formal consultations with Hungary, Slovakia, Latvia, and Lithuania. We expect to travel to their respective capitals in the next few months. We believe that these information-sharing arrangements, as detailed in the memoranda of understanding, enhance American security by allowing us to ensure that we are making determinations about who is coming to the United States not on a blunt country-by-country basis but, rather, on an individual specific based upon the best available information held both by the United States and by the country from which they originate.

Now, as we have said, and as you noted in your opening remarks, Madam Chairman, the law gives the Secretary greater flexibility to do this only after he certifies that an air exit system is in place that can verify the departure of 97 percent of foreign nationals and implementations an Electronic Travel Authorization system. I am sure we will get into the details of this discussion as we go forward, but let me take the opportunity in my oral statement to assure you that the Department of Homeland Security intends to and will comply with the legal requirements imposed upon it in law prior to the admission of any new entrant country into the Visa Waiver Program. That is what we will do, and we intend to—we will not permit the Secretary to certify to a false set of data, I assure you of that.

In short, we believe that Section 711 of the Act provides us with enhanced flexibility that will allow us to strengthen the VWP in a substantive way and also serve our global interests by bringing new members into the program. Ensuring that secure, legitimate,

visa-free travel to the United States is available to our allies is a goal, I submit, we can all and should all agree upon.

Madam Chairman, members of the Committee, I want to thank you for the opportunity to present my testimony today. I would be pleased to respond to any questions you might have.

[The prepared statement of Mr. Rosenzweig appears as a submission for the record.]

Chairman FEINSTEIN. Thank you very much, Mr. Rosenzweig. Mr. Edson, please proceed.

STATEMENT OF STEPHEN A. "TONY" EDSON, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, DEPARTMENT OF STATE, WASHINGTON, D.C.

Mr. EDSON. Thank you, Chairman Feinstein, Senator Sessions. I am delighted likewise to be here this afternoon and appreciate this opportunity to discuss the role the Department of State plays in the Visa Waiver Program under these new legislative requirements of Section 711 of the Implementing the 9/11 Commission Recommendations Act of 2007, as well as some of the implications of the potential expansion of the VWP on our international relations.

In November of 2006, in Tallinn, Estonia, President Bush announced his initiative to revamp and strengthen the VWP. With the passage of the 9/11 Act last summer, we welcomed the legislative concurrence on modernization of the program, particularly the additional security measures. The new law not only strengthens the security framework of the program but also creates a path for expansion of the program to include some of our closest allies. Those enhancements help secure U.S. borders and will promote a safer international travel environment. The State Department is convinced that dialog with countries hoping to join the program will speed their enactment of travel security requirements and will strengthen our ties with those partners.

As I have testified previously, together with our colleagues at the Department of Homeland Security, we strive constantly both to protect America's borders and preserve America's welcome to legitimate international visitors. Section 711 of the 9/11 Act, "Modernization of the Visa Waiver Program," supports these efforts by making clear that the security provisions of the VWP must be enhanced before VWP participation can be extended to any additional countries. Armed with this legislative mandate, we are seeking ways to deepen security partnerships with aspirant as well as current VWP members in order to facilitate secure, legitimate international travel.

With the advancement of both new security technologies and new security risks, we can and must ensure that for VWP participants and aspirant countries, we are able to assess the risks posed by individuals, and not countries, as threats. The changes in the VWP in the 9/11 Act give us the tools to do that.

By statute, DHS has the lead for the VWP program and works in close coordination with the Department of State to evaluate compliance with each of these requirements during DHS' statutorily mandated country reviews for both initial and continuing participation. Historically, the Department of State has had responsibility for formally nominating a country for consideration for member-

ship. We also provide input on the evaluations of a VWP aspirant country's law enforcement, immigration, and security cooperation. We are the primary conduit for guidance to our posts abroad on VWP issues, and we consult with aspirant governments on a regular basis. In fact, we have been in frequent consultations throughout the fall with what are described as the "road map" countries to give them guidance on meeting these new statutory requirements.

The revised VWP legislation also gives the Department the means to increase security-related information sharing with our closest allies. The U.S. Government is negotiating memoranda of understanding with all VWP governments, both existing and prospective, as was discussed before. As part of the State Department's responsibility for Homeland Security Presidential Directive 6 agreements on the integration and use of terrorist screening information, we have provided significant comments on the template memorandum that we and DHS are using, and we are part of the negotiating teams with our DHS colleagues. We currently have eight signed HSPD-6 arrangements on terrorist information sharing and are in negotiation to complete arrangements in more than a dozen other countries. The success in getting these agreements and the increased level of cooperation we believe is a direct result of the dialog on VWP.

In closing, the Department appreciates the congressional passage of the VWP provisions in the 9/11 Act. We see the new requirements as a positive means to strengthen the security of visa-free travel, permit some of our close friends and allies to join the Visa Waiver Program, and thereby enhance our cooperation and ties with those countries over the long term. We look forward to working with our partner agencies and this Committee toward that goal. And, of course, I am happy to answer any questions.

[The prepared statement of Mr. Edson appears as a submission for the record.]

Chairman FEINSTEIN. Thank you very much, Mr. Edson.
Mr. Ford?

STATEMENT OF JESS T. FORD, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.

Mr. FORD. Chairman Feinstein, Senator Sessions, I am pleased to be here to discuss an important aspect of the Visa Waiver Program, which enables citizens of 27 participating countries to travel to the United States for tourism or business for 90 days or less without first obtaining a visa. At your request, we are currently reviewing DHS' implementation of the Visa Waiver Program.

Last August, Congress passed legislation that provided DHS with the authority to consider expanding the program to additional countries with visa refusal rates between 3 and 10 percent if DHS first completes and certifies a number of required actions. My statement today will focus on one of those requirements, namely, that a system is in place that can verify the departure of 97 percent of foreign nationals leaving the United States through airports.

In December, DHS provided us with information on how it planned to certify compliance within the 97-percent requirement. As you can see on the posterboard—actually, it is on my left. I am going to get the right one here. DHS reported to us that—

Senator SESSIONS. Can someone bring that a little further?

Chairman FEINSTEIN. Yes, would the—I dare not ask the press to do something.

[Laughter.]

Chairman FEINSTEIN. Thank you very much.

Senator SESSIONS. Maybe this one over here would be OK. Don't move that and block their view. This one would be fine.

Mr. FORD. Actually, that is a different one, so I am going to explain that one.

Senator SESSIONS. Go ahead.

Mr. FORD. OK. The poster on my left is what DHS has reported to us that it is going to match records which are reported by the airlines of visitors that are departing the country by air to the Department's existing records based on records back through prior arrivals, changes in immigration status, or prior departures from the United States. In essence, this methodology will allow DHS to measure people who are leaving the country as to whether or not they can match it back through when they arrived. Using this methodology, DHS stated that it can attain a match rate of above 97 percent based on data that they looked at back in August of 2007, and that they will be able to use this to help certify compliance with the air exit system called for in the August legislation.

In February, DHS indicated that it has not yet finalized the decision on its methodology, but the Department confirmed that all the methodologies currently under consideration would use the departure records as the starting point for the certification. DHS believes that this approach will satisfy the 97-percent requirement since it will allow the Department to determine that a departing passenger is a foreign national who left the country through a U.S. airport. There are several limitations with this approach. Now I want to turn to the poster on my right-hand side.

The DHS methodology does not begin with arrival records to determine which foreign nationals have stayed in the United States beyond their authorized periods of admission. This term is called "overstays." Therefore, DHS' plan will not inform the overall and country-specific overstay rates—key factors in determining illegal immigration and security risks in the Visa Waiver Program. We believe that an alternate method could better facilitate DHS' assessment of security and illegal immigration risks. DHS could use foreign national arrival data as a starting point and review subsequent DHS records to determine whether these foreign nationals are still in the country.

For example, if 100 foreign nationals arrive in the United States on an international flight, DHS could track those same 100 foreign nationals to determine if they have remained in the country beyond their authorized period of admission. This information could help DHS monitor illegal immigration and security risks in the Visa Waiver Program and its potential expansion. It would also be consistent with legislation that has tasked DHS with developing an overstay rate.

In addition to providing limited information on overstays, DHS methodology does not address weaknesses in data that the airlines provide to DHS on visitors who are departing the United States by air. DHS has acknowledged that they have data weaknesses, and they are currently in the process of trying to address them.

The inability of the U.S. Government to track the status of foreign nationals who arrive in the United States, to identify those who overstay their authorized period of visit and may still be in the United States, and to use these data to compute overstay rates has been a longstanding weakness in the oversight of the Visa Waiver Program.

Chairman FEINSTEIN. Would you repeat that sentence once again, please?

Mr. FORD. OK. The inability of the U.S. Government to track the status of foreign nationals who arrive in the United States, to identify those that have overstayed their authorized period of visit and may still be in the United States, and to use these data to compute overstay rates has been a longstanding weakness in the oversight of the Visa Waiver Program. We believe that an air exit system that facilitates the development of an overstay rate is important to managing these risks; namely, such a system would help DHS to understand the current and potential visa waiver countries have higher rates of people who remain in the country illegally. DHS' planned methodology for meeting the 97-percent requirement will not help the Department develop overstay rates or identify foreign visitors who remain in the country illegally.

That is all I have to say. I would be happy to answer any of your questions.

[The prepared statement of Mr. Ford appears as a submission for the record.]

Chairman FEINSTEIN. Thank you very much, and I would commend your "Visa Waiver Program: Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals" to everyone to read. I thank you. I think it is very good work. Thank you.

Ms. Ginsburg, please.

STATEMENT OF SUSAN GINSBURG, DIRECTOR, MOBILITY AND SECURITY PROGRAM, MIGRATION POLICY INSTITUTE, WASHINGTON, D.C.

Ms. GINSBURG. Chairman Feinstein, Ranking Member Kyl, Senator Sessions, thank you for the opportunity to testify today before this distinguished Subcommittee. I will speak briefly, and I have submitted my formal written statement for the record.

Recognizing legitimate concerns that the Visa Waiver Program could pose security risks to the United States, it is important to examine the ways in which the program's is being modified to limit potential exposure while also maintaining its considerable benefits.

As you said, Chairman Feinstein, terrorism experts are currently focused on Europe as a primary concern from where there is visa waiver access to the United States. Given this assessment, there is continuing reason to take seriously the risk that terrorists may exploit the Visa Waiver Program. Also, since Europe itself is a target,

European governments and the European Union have a significant stake in cooperative mobility/security measures.

In my view, the steps Congress authorized last year to modernize the Visa Waiver Program do have the potential to enable it to achieve greater security. But to build an effective system, there are several points I consider critical to be addressed. These are, in order: first, information sharing about individuals and travel documents; second, a working electronic travel authorization; and, third, a functioning exit system.

These protective measures, with others, can work together to raise the level of confidence in the visa-free travel system. However, they must be developed with care, and they must actually be implemented.

The United States must take reasonable risks because absolute protection against all risks is impossible. But it cannot rely on methods of protecting travel and homeland security that are invoked in principle but do not actually function. Congress is requiring the Homeland Security Secretary to certify that the partner country cooperates with the United States on information sharing. The reciprocal agreements under which countries provide information allowing for the detection of known or suspect terrorists should be paramount for this certification. According to the State Department's testimony, the United States has signed information agreements under HSPD-6 with eight countries and is in the process of negotiating another dozen or so. These agreements should be signed with all countries in the Visa Waiver Program—should cover all countries in the Visa Waiver Program and any future partners, prioritized by risk of terrorism. Actual participation in the Visa Waiver Program should be recommenced or begin for the first time only when an implementation agreement is signed, not on the basis of a preliminary agreement.

Information on lost and stolen passports is also critical, and the United States must be able to confer in real time with passport-issuing authorities. This allows U.S. officials to verify their findings and helps prevent legitimate travelers from being unnecessarily delayed.

Regarding the Electronic Travel Authorization, the system does have the potential to be a rapid check that protects against security threats while preserving the convenience of travel. But the system has to be well designed. Depending on how the ETA check is done, it could generate many rejections or fewer rejections. If it generates too many rejections, the consular sections, which would then have to process at least some additional visa applications, would be overwhelmed. If it generates too few, travelers who should not be permitted to travel could travel anyway. The result: Inspectors and infrastructure at the ports of entry would be overwhelmed, with deleterious effects on the orderly and efficient flow of people and a higher likelihood that time pressure would lead to erroneous decisions. Either scenario would be troublesome.

Also, if the ETA system sends a notably large percentage of travelers with Arabic names to apply for visas, the resulting ill will might well overcome the critical operational advantages that pre-travel screening clearly provides. Travelers who are rejected because of an initial name recognition problem and are later granted

visas should be assured that the next time they seek to travel, they are not forced to reapply for a visa unless new concerns arise.

In the long-term effort to reduce the lure of terrorism, it is important to ensure that Muslims and Arabs are not discriminated against in the travel and immigration system and that protective measures are perceived to be fair and reasonable for all. This is the only way to build trust and diminish the draw of terrorism.

Regarding the exit system, Congress has pushed for it for over 20 years, and the time has come to take this mission seriously for immigration compliance, crime control, and counterterrorism purposes, to enable enhanced trusted traveler programs, and ultimately to increase opportunities for individuals to travel without visas.

Congress has mandated that the exit system be biographic in the first phase and 97 percent effective in establishing who exits. The 97-percent formula only makes sense as a compliance verification mechanism if the effect is to match arrivals to departures for 97 percent of entering travelers.

By 2009, Congress has mandated that the exit system be biometric. This would allow for a higher rate of accuracy and, therefore, make it easier to manage a trusted traveler program, for example. An effective of exit system would also be directly useful to counterterrorism officials as a tool in tracking suspects and terrorist networks. However, it must also be recognized that once exit violations are clear, enforcement needs concerning visa overstays will be clear as well. A working exit system alone will not fully address the visa overstay problem, which accounts for up to 40 percent of all illegal immigration. Therefore, it is appropriate to begin considering the design of the compliance and enforcement system, including the availability of real-time enforcement response capability at ports of entry. Fixing the visa overstay problem will also require the United States to redesign the visa laws so as to reduce the incentives to overstay.

If anything has been learned in the past year of immigration debate, it is that security confidence and confidence in enforcement systems are essential to forward movement. An effective exit system can contribute to achieving broader reforms in immigration policy.

As Congress oversees the Visa Waiver Program, it is important to remember that continued expansion of opportunities for law-abiding citizens to travel and do business efficiently is an important way by which the United States demonstrates the appeal of an open, democratic society that is based on the recognition of individual rights and in contrast to the destructive visions perpetrated by terrorists.

Chairman FEINSTEIN. Ms. Ginsburg, you are 2 minutes over.

Ms. GINSBURG. Thank you for the opportunity.

[The prepared statement of Ms. Ginsburg appears as a submission for the record.]

Chairman FEINSTEIN. Thank you very much.

Ms. Vaughan?

STATEMENT OF JESSICA M. VAUGHAN, SENIOR POLICY ANALYST, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, D.C.

Ms. VAUGHAN. Good afternoon, and thanks for the chance to be here today. My remarks this afternoon are a summary of my written statement that was submitted in advance.

The weaknesses in the Visa Waiver Program are very important to consider as the Department of Homeland Security moves to expand the program rapidly. We all know that the program benefits certain interests—the travel industry, the State Department in its workload reduction, and, of course, travelers themselves. We know the risks as well. Americans will be more vulnerable to terrorist attack, more exposed to organized criminal enterprises, and will experience even more illegal immigration, all of which comes at enormous fiscal and social costs to the Nation. The challenge is to find a way to reap the benefits and manage the risks.

But DHS is moving forward to add too many countries too quickly before it can show that it can even gauge the risks, much less manage them, and before we have a robust interior enforcement system in place to minimize the cost of the inevitable increases in crime and illegal immigration that will come from people taking advantage of the expansion of the program.

One of the missing pieces is overstay reporting. We have all understood for well over a decade that visa overstayers represent a significant share of the illegal alien population. It is probably 4 to 6 million illegal aliens. They present a possible national security risk. They commit crimes. And like other illegal immigrants, they are costly to taxpayers. Since the total net cost of illegal immigration runs about \$10 billion a year after taxes are accounted for, the share of that cost that is attributable to visa overstayers is likely \$3 to \$5 billion a year. And this has to be weighed against any additional revenues that we might hope to reap from additional travelers coming from overseas.

So with all we know about the risks and costs associated with overstayers, it is hard to understand why DHS has displayed so little curiosity about this population and made so little progress over the years in getting a handle on who is overstaying. Developing the capacity to count overstayers and identify nationality and, ideally, category of entry simply has to be prerequisite for expanding the Visa Waiver Program or any visa program.

Clearly, the biographical matching system that has been discussed by DHS is not a true entry-exit system, and I commend the GAO for pointing this out and for all the work that it has done over the years in drawing attention to the overstay problem. But DHS does have other tools that it can use at its disposal. It has got the beginnings of a biometric system that gets information on arrivals, and DHS uses this information and shares it with other agencies for law enforcement purposes and other analysis. And so if the agency is so confident that these road map countries are ready for the program, why has it not shared with us information on their overstays from their admittedly imperfect systems that they do have?

One of the other features that has been touted as a major security enhancement is the Electronic Travel Authorization. And this

process may well succeed in alerting officials to the pending arrival of people who might be of interest, but we should not pretend that this is a way for the agency to determine visitors' actual eligibility to visit the United States, as DHS has claimed. Qualifying for admission to the United States is not just a matter of proving that you are not a terrorist and not a criminal. You have to demonstrate that you have got a legitimate purpose for visiting and that you are going to go home when your time has expired. And unless the ETA system that we are planning can actually read people's minds, it is going to be a very limited use in minimizing the risks of expanding the program.

The best way to gauge somebody's eligibility for admission is still for consular officers and immigration inspectors to talk to them. The 9/11 Commission study and others done by my organization have shown that the exercise of professional judgment by well-trained officers has done more to thwart plots against America than any technological advances, even though they certainly do help. And the reality is that a number of the fast-track road map countries on the DHS list just simply are not in the same league as other countries that are now in the program.

For instance, most of the countries on the expansion list have per capita incomes that are less than half of the United States, and they are half to two-thirds of the other European countries in the program. Lithuania, in particular, presents a number of concerns in terms of visa compliance organized crime, et cetera. The number of asylum applicants, the number of people who apply for the visa lottery, these are all indicators of demand and interest in permanent migration to the United States. And reports from U.S. and international law enforcement agencies suggest that many of the other countries also present significant concerns, whether it is crime syndicates, drug trafficking, prostitution rings, noncompliance with visa laws, et cetera.

All of this would be less of a concern if we had the means to easily correct our visa mistakes, and, unfortunately, ICE does not have the resources nor the staff to remove more than a fraction of the illegal population. They have improved in the last year or two, but they really are not capable of removing more than about 250,000 people a year, and that is just a drop in the bucket of the illegal population. And we still lack the compliance systems that would lead more illegal immigrants to return home on their own. It is still far too easy for an illegal alien to get a job, a driver's license, a bank account, a mortgage, et cetera.

So, in conclusion, while the expansion of the Visa Waiver Program may serve foreign policy goals and benefit travelers, the expansion comes at a price, and it is up to Congress to do what it can to try to reduce the security and fiscal costs of the program.

In addition, and while there is no requirement to do this, the expansion of the program should be accompanied by an infusion of additional resources for ICE for interior enforcement.

Thank you.

[The prepared statement of Ms. Vaughan appears as a submission for the record.]

Chairman FEINSTEIN. Thank you very much, and let me thank all our witnesses.

We are joined by my friend from a neighboring State, the great State of Arizona. We have worked on this Committee together for, oh, I think at least 10 years now.

Senator KYL. Actually, 13.

Chairman FEINSTEIN. Thirteen years, and exchanged the Chair and the Ranking. And I am delighted that he has joined us today, and thank you, Senator Kyl, and I would like to recognize you for an opening statement.

**STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE
STATE OF ARIZONA**

Senator KYL. Thank you, Madam Chairman. Rather than making a lengthy opening statement, let me just thank you for holding this hearing. I note from our records that our last hearing on this subject was September of 2006, so it is time that we revisit the issue, especially since we have a new program that is underway and we have some potential ability to evaluate the system that is being contemplated here.

I will put the statement that I had written in the record, but I was just struck—and I did read the testimony, and I apologize I was not here for the opening statement of all of you. But we have a real challenge, I think, to evaluate the tradeoffs that have been well stated.

Ms. Vaughan, you stated them, and I suspect some of the others of you did, too. There are two big pressures for change here. There are a lot of countries—I was just in the Czech Republic, and there are a lot of countries that want to be part of our visa waiver system. It is the good—you know, that is the in thing to be, and there are a lot of advantages for citizens of a country to do that.

And, second, it does—well, as a part of that, it certainly enhances travel opportunities, and there are a lot of interests in our country that support that. But the Secretary of Homeland Security also believes that it represents an opportunity to work out enhanced tracking that will assist in tracking criminals and terrorists. And I am sure that that is true.

We also know, however, that there is a greater potential for visa overstayers given the countries that it is being expanded to, and that that in and of itself imposes costs in addition to the potential for a greater number of terrorists and criminals.

So the question is, as Ms. Vaughan said: Is it worth it? And to me the answer is—I mean, first of all, you can never quantify what it is worth to catch a terrorist or two, but we can quantify the huge costs of visa overstayers in this country, and they are enormous. So to me, the only way you answer the question in the affirmative it is worth it is to ensure that you have a system in place to be able to comply with the law, to be able to track the visa overstayers, and, I would go a step further, to know who they are and inform Federal, State, and local law enforcement of who they are. In other words, a simple system—granted, it is totally incomplete because it only deals with the air exits out of the country. But 90 days, or whatever the visa date is, after an individual is supposed to have departed, if we do not have a record that the individual has departed, that information, that person's name goes out to everybody, all law enforcement throughout the entire country. And then

if somebody gets picked up for a traffic stop or whatever, there is an immediate ability to at least identify that individual.

But until we have a system in place that at least offers the potential to identify how many and who the individuals are that overstay, it seems to me that we are moving too fast and, frankly, in potential violation of the law that Congress passed.

Sorry for that statement.

[The prepared statement of Senator Kyl appears as a submission for the record.]

Chairman FEINSTEIN. Well, I thank you. I agree with you 100 percent. I would delete the word "potential" violations. I think they are violating the law. And, you know, we are a period of time away from 9/11. Richard Reid, the Shoe Bomber, came in on a visa waiver. Zacarias Moussaoui came in on a visa waiver. I mean, how many lessons do we need to learn? And just so everybody knows, there are 13 road map countries; 7 of them exceed the rejection rate in the law. The rejection rate is 10 percent, and this means that when somebody goes into an American consulate to get a visa, 10 percent of them are rejected. The reason they are rejected is very often because their economic circumstances are such that the consular officer interviewing them does not believe they are going to come back to the country. They are specifically Hungary, here 10.3 percent of the people are rejected; Latvia, 11.8 percent; Slovakia, 12 percent; Lithuania, which was just mentioned, 12.9 percent; Bulgaria, 14.3 percent; Poland, 25.2 percent; and Romania, 37.7 percent of people who go in to get a visa are rejected because the belief is they will not come back to the country. In Romania, there is an agreement with surrounding nations that allows somebody to come into the country, stay for 24 hours, and then go out on a visa waiver. Now, how is that for security?

I suspect the Department is under a lot of pressure from the American tour industry to push these, but I will tell you, 1 day if it turns out there is another 9/11 and these people came in on the Visa Waiver Program—I do not know how to finish the sentence because I know how I would feel if I did not do my utmost to try to stop it.

Let me ask this question of DHS, Mr. Rosenzweig: Will you be able to verify that 97 percent of the 16 or 17 million visa waiver entrants that we will have this year have left or overstayed before you bring in other countries? Yes or no, sir?

Mr. ROSENZWEIG. I do not think that is the right question, ma'am. The question is whether or not—

Chairman FEINSTEIN. Well, it is my question.

Mr. ROSENZWEIG. The statutory question is whether or not we will be able to verify 97 percent of departures of aliens. That does not necessarily equate to verifying the departure of the 16 million entrants in a particular year.

I can assure you that what we will be able to verify is the departure of 97 percent of foreign nationals as required by the statute, and that if we cannot do that, we will not so certify.

Chairman FEINSTEIN. Well, aren't these people that come in, they come in for a short stay and then they go out?

Mr. ROSENZWEIG. Ma'am, again I would say that that is perhaps only a part of the story. I think that, frankly, Mr. Ford's chart is

incomplete. If you are addressing an overstay question as opposed to a verification of—

Chairman FEINSTEIN. But to overstay, you have to come in.

Mr. ROSENZWEIG. You have to enter, yes. But it does not—but the key word on his chart is “potentially.”

Chairman FEINSTEIN. I cannot see it.

Mr. ROSENZWEIG. I am sorry. I can see it well. I can see it well. The key word is “potentially” overstay. But the verification of departure and the definition of overstay are different things. Between that entrance and that exit, there are any number of ways in which one could affect the overstay rate. I am almost tempted to draw on the chart here, but I will not.

Chairman FEINSTEIN. Go ahead. Do it if it helps you.

Mr. ROSENZWEIG. One can exit by land—I have got a whole list. One could die; change a name that prevents a matching record; be a dual national who used more than—who used two different passports, one on the entry and one on the exit, as is permitted by law; be arrested and in jail in the United States and, therefore, not leaving; be arrested and have been deported already; most commonly, change status.

Chairman FEINSTEIN. Excuse me, but don't you think the Department of Homeland Security, who has the responsibility for letting these people come in, also has the responsibility to know where they go?

Mr. ROSENZWEIG. Well, of course we do to some degree, ma'am, but—

Chairman FEINSTEIN. All right. Then why make all the excuses?

Mr. ROSENZWEIG. I am not making any excuses, ma'am. However, Congress has not seen fit and we have not imposed land exit requirement on the United States. You, for example, I know, have the San Ysidro port of entry in your State, and if you have been there—and I know you have, as have I been—the amount of infrastructure development required to actually check people out at the land border is immense. We think it probably costs in the hundreds of millions of dollars at that port of entry alone.

So I am not making excuses, but I am addressing the reality that we are not going to have land border exit with Canada and Mexico that is mandatory check-out of entrants for quite some time, and that if your question is has that person overstayed, the answer is no if they have left lawfully within the time. Flown into Los Angeles, departed through San Ysidro, that is a perfectly lawful act, and it is not captured in this definition.

Chairman FEINSTEIN. If you believe that Europe is becoming a platform for the entry of people who would do us harm in this Nation—and I am one that believes this based on what I know—then our job is to protect America. And the way we protect America is being able to check everybody out thoroughly and have the requirements of the law in place before we admit additional people.

Mr. ROSENZWEIG. Ma'am, the Visa Waiver Program changes that you have enacted will enhance security not by focusing on checking people out, since there are some who would say that a terrorist departing is a good thing; but, rather, by extending the security arrangements that we are developing to the existing visa waiver countries.

Let me give you two numbers that kind of exemplify this: 4 million and 10,000. Four million is the number of people who came on the Visa Waiver Program already this year from the United Kingdom. Ten thousand is the number of people who came with visas from Latvia last year, roughly.

What we are getting in this new program, the huge benefit we are getting, is cooperative arrangements with the existing VWP countries as well as the new aspirant countries so that people traveling from those countries can be identified in advance of their travel, so that there will never be a day in which somebody departs from, say, Germany and is somebody that the Germans know to be a problem or a serious criminal threat, but that we do not know. We will get from the Germans additional data—or the Czechs or the Estonians—

Chairman FEINSTEIN. My time is just about up.

Mr. ROSENZWEIG. I apologize for taking—

Chairman FEINSTEIN. Let me just frame my question a little quickly. It takes a yes or no answer, very simple. Will you have an air exit system in place by this fall?

Mr. ROSENZWEIG. That is yet to be determined. We have not settled on a methodology for how to measure it, and so I cannot tell you that the Secretary will affirmatively assert that there is one. Clearly, if we do not have such a system in place by this fall, we will not admit any new entrant countries.

Chairman FEINSTEIN. Thank you.

Senator KYL?

Senator KYL. Thank you, Madam Chairman. I do want to get back to the point that, of course, Congress recognizes that without a land exit system, our system will necessarily be incomplete. We have tried to recognize that, as a practical matter, through seaports and airports primarily, we will at least have a handle on that which we can realistically monitor.

I do not think it is an answer—well, first of all, about what percentage of the foreign nationals that are here on temporary visas are not from Canada and Mexico, who are here from visa waiver countries? It would be a substantial number.

Mr. ROSENZWEIG. I am not sure I understand. There are roughly 16 million entrants in the past year from the visa waiver country program. We do not count Canadians separately because, as you know, we have never had an entry program even with Canada—

Senator KYL. Right.

Mr. ROSENZWEIG.—much less an exit program.

Senator KYL. So the bottom line is there are an awful lot of those folks who are not from Mexico and Canada.

Chairman FEINSTEIN. Sixteen million.

Mr. ROSENZWEIG. Sixteen million entrants from visa waiver countries, past year, yes.

Senator KYL. So let's forget about the land exit to Canada or Mexico. We are still talking about 16 million people here.

Mr. ROSENZWEIG. That is correct for entrants, yes. Senator KYL. OK, now, and I am also not particularly concerned about those who die while they are here, though there may be some. Certainly, as the Chairman pointed out, you would want to know those that are in custody in the United States and, therefore, cannot voluntarily

leave. We should be able to track them. And we ought to be able to find out if people have changed their name if that precludes us from knowing whether they have departed. We ought to try to at least know that.

So it seems to me that the question remains: Are we committed to understanding who has left by a sea-or airport? And can we do that with a 97-percent degree of certainty? And if we have not yet figured out the methodology that we are going to use to achieve that legislatively required goal, should we perhaps put on hold the rush to add more countries in order to beat the deadline? And if Congress has not been clear enough in the way that it has defined this, maybe you could recommend how we could be more clear?

Mr. ROSENZWEIG. There is much in that question. The way I would answer it is this: Congress has afforded the Secretary certain flexibility and discretion in the law that it passed. We are making preparations for the admission of new countries in the event that the United States achieves its side of the obligations, that is, the development of the 97-percent verification system and the development of an Electronic Travel Authorization system. We are working to achieve those, but we have also made clear to all of our partners in Eastern Europe and in South Korea that the negotiations that we are having with them are contingent upon the U.S. completing its own homework and doing at the Department that which the law requires.

They all have entered into these agreements in anticipation of that because they, too, will have much work to do. The Memorandum of Understanding, for example, we signed with the Czech Republic this past Tuesday will require the exchange of information on known and suspected terrorists. Agreeing to that—

Senator KYL. Right. Let me just interrupt and say that is a very positive aspect of this, and I think the Secretary is right to focus on that. But we also need to focus on the other part of this. Could you respond briefly to the comment I made in my opening statement before my time is up here about the ability to advise law enforcement throughout the country if we simply do not have knowledge that somebody has left? It does not mean that they have not left. It does not mean that they have not died. It does not mean that there is some legitimate reason why we do not have their name. But at least it would be an alert that we do not have an indication of departure and, therefore, it is worth checking out if we do have some reason to identify that individual in some other way, some other law enforcement way.

Mr. ROSENZWEIG. That is clearly one of the interstitial objectives of this program that will become even more practicable once we have the biometric air exit portion of this in place. As I am sure you know, biographic programs have many false positive—

Senator KYL. Sure, they do. All right—

Mr. ROSENZWEIG. We do not want to overwhelm the police looking for—

Senator KYL. Right. But let me just ask you, this system is going to be imperfect no matter what.

Mr. ROSENZWEIG. Yes, sir.

Senator KYL. And so the question is: To make an imperfect system at least as good as you can, what is wrong with purely bio-

graphical information, the name and the other information you have, being given to Federal, State, and local law enforcement because we do not know that that individual has departed within the 90 days? It does not mean they have not, but that we do not have any record of it. What is wrong with that?

Mr. ROSENZWEIG. I do not know in theory that anything is wrong with that. As we improve the biographical match so that there are fewer names—I mean, as you know, we stopped—we did not do this for years because our biographical match was at 70 percent, 60 percent. We were just going to overwhelm the system. As we get to a point where we are verifying, say, 97 percent departure, I believe the numbers would probably be manageable.

Senator KYL. I appreciate it.

Chairman FEINSTEIN. Thank you, Senator.

Senator Sessions?

Senator SESSIONS. Thank you, Madam Chairman, for your leadership, and I have enjoyed offering with you legislation that would really enhance penalties and take some real firm steps toward dealing with those who systematically and in large numbers commit fraud in immigration by documents and that kind of thing.

Mr. Rosenzweig, I guess I am just somewhat dispirited by your comments and those of Mr. Edson in the sense that you speak for the U.S. Government, and I sense that you do not understand what the Congress expects and the American people expect. And I sense you have absolutely no intention of fulfilling those requirements.

In my view, I have to say that this Secretary of State and this Secretary of Homeland Security, Mr. Chertoff, and the President are not committed to this. If they were committed to having this system working, they would have come to us, and they would have asked for the money, and they would have asked for the legislation to be able to successfully complete a visa exit system for our country.

Now, do any of you know how many million transactions take place daily when people use credit cards to get money? I do not know, but it is millions. Is it too much to ask that somebody whom we have allowed to enter this country, a non-citizen, take 2 minutes to put their fingers on a machine before they exit the country and to file a document so that that can be recorded as having exited the country? Is this going to cost us hundreds of millions of dollars? I do not think so. And if it does, we are prepared to pay that. We are prepared to pay a good bit more than that.

Let me ask you, Mr. Rosenzweig, about this statute that was passed some years ago that required at airports and seaports, not later than December 31, 2003, the Attorney General, which now I understand is Homeland Security, shall implement an integrated entry and exit system at airports; and then not later than December 31, 2004, they shall implement an entry and exit data system at 50 land border ports, the large land border ports; and, finally, by December 31, 2005—2 years ago—the Attorney General shall fully implement the integrated entry data system throughout the land border system.

Is this law not in effect? Has it been abrogated and—

Mr. ROSENZWEIG. Excuse me, Senator. Pardon me for coughing. As far as I know, the law is still in effect, sir.

Senator SESSIONS. What do you say about a citizen that said that Congress passed a law that said the Government is supposed to have this completed 2 years ago, why hasn't it been completed?

Mr. ROSENZWEIG. I would answer a citizen by saying that though those goals are statutorily mandated, the costs of them have not been appropriated for in many instances, and in some instances, we have received contrary indications in subsequent laws, particularly with respect to land border entry and exit, most particularly on the Northern border—

Senator SESSIONS. Well, let me ask this—OK. You say you could perhaps use some more money. Have you come to the Congress and indicated a desire to have more money so that you can complete the program that you were asked to complete?

Mr. ROSENZWEIG. In each of the President's budgets over the last several years, we have requested money for various aspects of these programs. In many instances, they have been cut, moved, changed, as you know, through the appropriations process.

Senator SESSIONS. No, I do not know. Are you testifying here under oath that the President's budget, if followed, would have provided you the money to complete the exit system?

Mr. ROSENZWEIG. The good news is I was not sworn before I came here, but the answer to your question would be that I could not—

Chairman FEINSTEIN. I have the oath right here.

[Laughter.]

Mr. ROSENZWEIG. The good news, the honest answer is I could not tell you precisely which pieces of this were part of the President's—

Senator SESSIONS. I do not think so. I will just tell you. Nobody that I have heard, the President of the United States or Homeland Security, has come here and said, look, you gave me this requirement, I need these additional funds and technologies to get there. And my time is up, but I would just—it is really dispiriting, I have to tell you, to have this talk and go now 2 years past this deadline and not be close to getting there, when to me it is an absolutely simple, essential part of a lawful system of immigration.

Chairman FEINSTEIN. Mr. Rosenzweig, I think we are going to do another round.

Mr. ROSENZWEIG. Sure. I am ready.

Chairman FEINSTEIN. And I want to get you on the record. I am not going to make you raise your right hand, but you can think it.

Mr. ROSENZWEIG. I am responding truthfully, notwithstanding the absence of the oath, ma'am.

Chairman FEINSTEIN. Let me ask this question: This fall—and you alluded to this, but I want to finish the sentence. Before DHS admits new countries into the program, will you have an air exit system in place that can track overstays?

Mr. ROSENZWEIG. If by tracking overstays you mean a system of the form that Mr. Ford has pointed to over here, the answer is I do not know yet.

Chairman FEINSTEIN. You do not know that?

Mr. ROSENZWEIG. I do not know what methodology we will choose for verifying departure under the 97-percent air departure requirements. That has not been determined yet. The methodology Mr.

Ford has alluded to on this on this side is one of the methodologies under consideration. The one on the other side is another, and there are at least three or four more that I could rattle off at this point.

Chairman FEINSTEIN. So then my conclusion would be that the answer is no. Now, let me ask another question. Under pre-existing law, if more than 2 percent of a current Visa Waiver Program country's nationals overstay or otherwise violate this 90-day visa, the country cannot continue to participate in the program. Is DHS or any other agency now tracking whether nationals of current visa waiver countries are overstaying their 90-day authorized stays?

Mr. ROSENZWEIG. Prior to the development of the systems that we are talking about in the context of this legislation, the data was of, as Mr. Ford said, inadequate quality to allow us to use that as an effective measure. We are—

Chairman FEINSTEIN. So I would say the answer is no. Am I wrong?

Mr. ROSENZWEIG. That would be your characterization. I would say that we have not been able to have adequate data to use that aspect. In fact—

Chairman FEINSTEIN. So there is no real enforcement—

Mr. ROSENZWEIG. On the contrary.

Chairman FEINSTEIN.—in the program against a country—if more than 2 percent of a current visa waiver country's nationals violate their visas, the law says the country cannot continue to participate. And what I hear you saying is we have no way to know. So I would view the answer as no. Is that incorrect?

Mr. ROSENZWEIG. That is not incorrect, ma'am, but that is a characterization. I have no sense at all under the current state of the data whether or not a country is violating or is not violating.

Chairman FEINSTEIN. But this is the whole police power of the law, that if a country's nationals are not complying with it, the country is dropped out of the program. So there has to be a measurement—and I am going to ask the GAO then go in and take a look at it. I do not know, Mr. Ford, whether you did take a look at this, but that is the law. If 2 percent of a country's nationals either violate the visa or overstay the visa, the country is removed from the program. Did you happen to look at that?

Mr. FORD. No, but we can look at it in the context of our current job. As far as I know, DHS does collect some information related to overstays, but based on what we have seen, there are so many holes in the data that it is not very reliable, cannot be relied on. But I do not know whether they are making any effort, you know, to enforce this provision of the law. That I do not know.

Mr. ROSENZWEIG. Actually, if I may followup, one of the things that we think is of great value in the Visa Waiver Program legislation is that Congress has, A, provided us with a definition of overstays now, so there is now a statutory definition; and, B, provided us with the incentive, the 97-percent requirement to enhance the data quality collections from the airlines that will enable us to actually set a maximum visa overstay rate and allow us to also have the data to actually be able to enforce this portion of the law.

Chairman FEINSTEIN. So I take it that no country has ever been disqualified from the program that is in the program on the basis that their nationals did not comply?

Mr. ROSENZWEIG. That is not correct, ma'am. There have been two countries that were removed from the program in the early 1990's, and it was because—and at least in part we had sufficient evidence that was not statistical evidence, but sufficient anecdotal evidence to view a heightened increase in the overstay rate from those two countries.

Chairman FEINSTEIN. What were the two countries?

Mr. ROSENZWEIG. Argentina and Uruguay, and that was as part of the financial crisis down in the Southern Cone back in the early 1990's.

Chairman FEINSTEIN. My time is just about up, and I want the Ranking Member to have some time.

Senator KYL. I would like to change gears here and ask somebody else a question.

Mr. Ford, in the conclusion in your report—and I thank you for that report, by the way—you say, "An air exit system that facilitates the development of overstay rate data is important to managing potential risk in expanding the Visa Waiver Program. DHS' planned methodology for meeting the 97-percent provision so it can move forward with the program expansion will not demonstrate improvements in the air exit system or help the Department identify overstays or develop overstay rates."

Could you explain exactly what you mean by that and what the implications of that conclusion are?

Mr. FORD. Yes. Again, the reason we said that was because in our discussions with DHS, they have not indicated that they were going to use arrivals as a baseline for establishing overstay rates. They are just going to measure departures. So if 100 people come into the country, they are not going to be able to tell you whether 97 of those people overstayed or left appropriately because they are not starting from arrivals. They are measuring from departure. They are going to look at departure manifests from the airlines.

Our point is that that methodology does not allow you to determine an effective overstay rate, which means you cannot have an effective exit system, and that is the point of our testimony.

Chairman FEINSTEIN. If you would permit me, if I understand what you are saying, the 97 percent is not 97 percent of those who come into the country.

Mr. FORD. That is correct.

Chairman FEINSTEIN. It is 97 percent of those who leave.

Mr. FORD. That is correct.

Chairman FEINSTEIN. So it could be 50 percent. That is amazing.

Senator KYL. I am not sure why examining those who leave you cannot 100 percent of departure. If you are looking at a departure list, you ought to be 100 percent right. Are we missing something on this, Mr. Rosenzweig?

Mr. ROSENZWEIG. I do not think you are missing something. I guess my point would be that you said departures in the statute.

Senator KYL. OK. All right. Let me ask you this question very specifically?

Mr. ROSENZWEIG. I am sorry.

Senator KYL. Do you believe that the Secretary of Homeland Security believes that he can comply with the statute without looking at any data to derive a percent of people who came here but, rather, that it is only required that we meet 97 percent of the departures, as Mr. Ford just identified?

Mr. ROSENZWEIG. The Secretary of Homeland Security has not chosen a methodology—

Senator KYL. I understand that. My question was: Are you telling us that it is your understanding that the Secretary of Homeland Security believes that it is a compliance with the statute to simply measure 97 percent of departures rather than deriving 97 percent of people who came here departing?

Mr. ROSENZWEIG. I am sorry if this will disappoint you, but the Secretary has not formed a view on that inasmuch as he is continuing to examine all of the methodologies that might be used to meet the statutory requirements. Some of those would be consistent with what I take to be your interest. Some of those would be more consistent with—

Senator KYL. And when is that methodology going to be decided upon?

Mr. ROSENZWEIG. No doubt before he certifies the—

Senator KYL. Give me a rough timeframe here.

Mr. ROSENZWEIG. Well, we are hoping to be able to achieve a 97-percent air exit departure prior to the fall when we hope to be in a position to admit aspirant countries. That would be our target, but by all means, if we do not achieve that, we will not do it.

Chairman FEINSTEIN. But they are only going to submit to the Secretary 97 percent of departures, not measuring people—

Senator KYL. I guess that is the question. Is it your belief that that is what will be done here? Or can you tell us that you think actually it will be a different methodology?

Mr. ROSENZWEIG. Having participated in the internal discussions, I can assure you that no methodology has been chosen as yet and that—

Senator KYL. Would you assure us of this—and I will back it up.

Mr. ROSENZWEIG. OK.

Senator KYL. That the Secretary will be informed as soon as you are able to inform him after leaving here that at least—and I think I can speak for Senator Sessions as well—the three of us agree with the GAO report that it would not be an appropriate way to achieve the compliance with the statute to simply derive the 97 percent based upon departures? Would you convey that to the Secretary?

Mr. ROSENZWEIG. I will absolutely convey that to him, sir.

Senator KYL. We would appreciate that.

Mr. ROSENZWEIG. I suspect he knew it already.

Chairman FEINSTEIN. And I think we should convey it in writing as well. We will.

Senator KYL. By the way, thank you all, and I am sorry we did not give each of you an opportunity to get on the hot seat like we did Mr. Rosenzweig. But we appreciate—

Chairman FEINSTEIN. They might enjoy missing it.

[Laughter.]

Senator KYL. Yes, right.

Mr. ROSENZWEIG. Oh, this is fun.

Senator KYL. If it were not for the honor of it. Well, this is serious business.

Mr. ROSENZWEIG. It is, sir.

Senator KYL. And I hope you appreciate the seriousness with which we have approached this. And I do not like to be critical of my administration, but it is hard not to be when we get the kind of testimony that we did today.

Mr. ROSENZWEIG. May I respond to that just for a minute? Because I do not want to leave the impression that we are being at all cavalier. But I have to say that there are weaknesses as much in the methodology that Mr. Ford suggests of starting with arrivals, some of which I alluded to earlier, as well as the methodology over here, which I would say is actually false or incorrectly titled as planning to use departure data as a starting point. What we are actually planning to use is starting with arrivals, but in the absence of actual matches to all arrivals, include as well changes of status, which are perfectly permissible ways of not departing, and prior departures that might account for somebody having left, entered, and re-left again just by land.

Senator KYL. I appreciate it. Just—

Mr. ROSENZWEIG. It is not irrational.

Senator KYL. We are not looking for perfection here. We are looking for the best we can. We understand the land-based system is not workable right now, but let's don't let perfection be the enemy of the good here. That is what we are saying.

Chairman FEINSTEIN. But just for one moment, to interpret a statute that in measuring the percent you only take the people that actually want to leave and you do not consider that the people that have come in so that you have a valid percent to me is manipulation any way you put it, because it is a percent of the whole, and the whole are the people that have come in under the Visa Waiver Program. It is not the people that depart. It is a phony statistic if it is just the people that depart.

Mr. ROSENZWEIG. If I may, and with respect, since the statute told us to set a maximum overstay rate in one portion of the law, there is at least some inconsistency between telling us to set an overstay rate in the future and telling us that in another portion of the law you have said verify departure but you meant overstay rate. You lose different—I mean, I am not the lawyer, I am not the OGC lawyer who will interpret this statute and recommend it to the Secretary. But we must at least agree it is ambiguous.

Chairman FEINSTEIN. Well, we will talk with the Homeland Security Committee, and if there is a problem with the statute, we will submit an amendment and try to quickly remedy it. But I cannot believe that anybody in the Congress wants a false measurement. They want a measurement of a population that is using the Visa Waiver Program. That is the point of it.

Senator SESSIONS, would you—

Senator SESSIONS. Yes. Well, I think there is a classical rule of statutory construction that you do not give a statute a construction that would create a ridiculous result. I mean, it is not conceivable that the Congress could have thought of this, I do not think. The words clearly are read one way; then they have to be read that

way. But it certainly was not Congress's intent. We were acting on behalf of the people of the United States of America, and the people of the United States of America supported and elected Congressmen and Presidents who promised to follow the law. And the law and the statute that goes back to the one I read you, which is Title 8, Section 1365, USCA, requires the exit system to be complete at the land borders by 2005.

And so if someone would like to do a research project on why people think this country is on the wrong track and why there is an erosion of confidence in politicians, I think they are underestimating the American people's concern about the question of immigration, because we have had leader after leader after leader promise and pass statutes and say they are going to do wonderful things, including saying we are going to build a fence at the border, and only a few miles of it has been built. We say we are going to do things, and we have no intention of following up with them.

I just have to tell you it is a very, very troubling thing to me, and it is not silly. It is very important. And I hope that the next President of the United States will be asked specifically where they stand on it and are they committed. Are they committed to undermining what Congress does? Or are they committed to seeing that it is enforced?

Senator Feinstein, your explanation of this 97-percent rule was worse than I imagined when I came here. But let me ask you, Ms. Vaughan, you are a critic of the system. What about the situation—how could you ever certify that people have left if they could all leave by land exits and never be recorded? Doesn't that in itself invalidate the integrity of any numbers we would get?

Ms. VAUGHAN. That is definitely one of the weaknesses in relying simply on air exits. The goal, as I understand it, is to ultimately have an exit system in place at the land borders as well to kind of close the circle.

Chairman FEINSTEIN. That is correct. Take the first thing first.

Senator SESSIONS. Back in—I am not sure when this was passed. I think it was in the 1990s. We said by 2005. It was a 10-year warning or opportunity for Congress to get there—for the administrations to get there, and I do not think any administration has been serious.

Ms. VAUGHAN. No, and I think it is important to add that there is some matching and analysis of the data that we do have. We all know it is not perfect, but we could learn something from the exits that we are already collecting through the biographic manifests. And what I find a little bit confusing is that DHS seems ready to certify that it is counting an adequate number of departures, and yet is not willing to tell us anything about the people who stayed. There is no attempt to analyze any information about the overstayer, so it is just kind of like, OK, you know, we are certifying, but we still do not have an overstay rate.

So, I mean, we have to—that is the point.

Senator SESSIONS. Well, I think that is a good point. Mr. Rosenzweig, what about that? Is the only interest the administration has in the millions that are overstaying illegally, is the only interest they have in that what is mandated by Congress? Or does this administration understand that it has a responsibility to en-

sure the safety of America and the integrity of this system? And isn't the way it is created today guaranteed not to be effective? The fundamental system, people come here by permission, who commit to leave at a certain date, and we have no way to ascertain whether or not they have left.

Mr. ROSENZWEIG. The law that you passed will move us in that direction. It requires the setting of an overstay rate based upon the biographic air exit information. It requires us to get to a 97-percent air exit verification. We will take that data—

Senator SESSIONS. Air exit. But you have explained to us why that is not an accurate number.

Mr. ROSENZWEIG. Well—

Senator SESSIONS. Couldn't we just say if you come by air you have to exit by air, or if you do not exit by air, you have to file a certain document with a biometric fingerprint as part of that so we can verify? If you wanted to have this system work, couldn't that be a way to do it? And have you ever asked Congress to give you the money and the resources to do it?

Mr. ROSENZWEIG. Actually, Senator, during the conversations about this very provision, we did suggest the possibility of requiring those who enter by air to leave by air as a matter of law. That was not part of the final legislation, and I do not know why because I was not privy to your internal negotiations. That would be one possible solution. I can imagine a number of arguments against it including our desire to allow people to come into New York and then travel to Toronto, or vice versa.

Senator SESSIONS. You know, sometimes I would like to see some leadership out of the administration. I would like to have them who are—you who are running these programs tell us what you need to make it lawful. Don't you understand that is what we want? Isn't that—how much more basic can it be? The American people and this Congress desire a lawful system of immigration. There are some who do not. And so I guess the question is, it is pretty clear which side you are on. You have not come forward to ask us for the things necessary to close these loops—some of them are not difficult to close—and create a lawful system. It is just very discouraging to me.

Thank you, Madam Chairman.

Chairman FEINSTEIN. Thank you very much.

Unless somebody has something they want to say, I think we have heard enough to know that the program really is still in shambles, regretfully, and I do not think that any one of us can say that the Visa Waiver Program provides any sense of stability in controlling illegal immigration.

We have agreed to—we will send Mr. Ford a letter, GAO, and ask you to look into that overstay rate situation, and we will prepare a letter for the Ranking Member, for Senator Sessions, and myself to clarify what the intent was behind the 97 percent. And I think in writing we will prepare a number of other questions so that we have the Department on record.

I really think this is a very serious thing, and I understand the pressures that the economics bring on the Department, and that is, a constant pushing by countries to get into the program because their people believe it means ease with which they can come to the

United States; and, second, constant pressures from the travel industry. But I think we have to protect this country, and if this, in fact, is correct that this program is the soft underbelly and offers an opportunity for people who would do us grievous injury to come to this country, it really is not worth speeding it—which you call “flexibility,” which I call “speed”—into a position without the adequate security portions of it. And I have concluded, after holding several of these hearings for a long, long time, that there are no adequate security provisions within this program.

So I thank you very much for your attendance and for your testimony and, I think, the good graces with which you have taken it. So thank you very much, and the hearing is adjourned.

[Whereupon, at 4:04 p.m., the Subcommittee was adjourned.]

Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator Orrin G. Hatch (#1)
Senate Committee on the Judiciary
February 28, 2008

Question:

It is my understanding that Korea's application to participate in the Visa Waiver Program is in process. At one point, we heard the application would be approved by the end of 2007. Now we are hearing that it will take until 2009 to complete the process.

Are there specific security concerns regarding Korea that are not present in countries currently participating in the Visa Waiver Program that are preventing the Korean application from being approved?

If so, what are they, and when do we expect them to be resolved?

Answer:

The 9/11 Act of 2007 creates new security requirements for VWP countries to fulfill. Assessment of whether a country has met these requirements and identification of any potential security barriers would be included in a comprehensive evaluation led by Department of Homeland Security (DHS) to determine the impact of the country's designation on U.S. security, law enforcement, and immigration security interests. This evaluation would normally come after basic preconditions in the law for participation in the VWP program are met.

The Republic of Korea (ROK) has yet to start issuing e-passports to its citizens, which is a statutory prerequisite for all new VWP entrants. The ROK

plans to begin issuing e-passports in August 2008, but will begin limited issuance to diplomats and possibly others as early as April. The ROK is negotiating, but has not yet concluded, agreements with the United States to comply with the security framework of the 9/11 Act of 2007.

DHS has the lead on the security assessments conducted in conjunction with VWP entry and on negotiations of agreements required under the VWP law, so we refer you to DHS for further information.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator Orrin G. Hatch (#2)
Senate Committee on the Judiciary
February 28, 2008**

Question:

I have concerns about the security vulnerabilities of the visa waiver program, and I think we need to exercise prudence as we consider expansion of the program. Just looking at the current visa waiver program, do you have recommendations for improving the security of the system?

How would you feel about instituting a requirement for visa waiver visitors to complete and submit a form to the Department of State in advance of their travel?

It seems this would allow more time to check names against government watch lists, and that information could be retained and used.

This would be similar to information gathered for other non-immigrant visas, such as B1/B2 visitors and F1 students.

Answer:

We agree that it is important that Visa Waiver Program travelers are screened in order to minimize any security vulnerabilities. However, we believe the best way to achieve this is through the Electronic System of Transportation Authorization (ESTA), currently in development by DHS. ESTA will create an additional layer of advance scrutiny while simultaneously encouraging the citizens of participating nations to travel to the United States without applying for a visa. ESTA applications will be submitted electronically and queried against appropriate

databases, including those pertaining to lost and stolen passports, immigration violations, and appropriate watchlists, and will return an answer within several seconds. If an ESTA application is not approved, a message will inform the applicant that they must apply for a visa at a U.S. Embassy or Consulate.

We believe requiring VWP travelers to submit a form to an Embassy for screening would obviate the advantages of the ESTA process. Moreover, our consular sections in VWP countries do not have the facilities and personnel to process an increase of approximately 16 million applications a year.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#1)
Senate Committee on the Judiciary
February 28, 2008**

Question:

What is the status of DHS efforts to detail DHS personnel to Interpol?

Answer:

This issue falls under DHS's authority. There is no Department of State role in any decision to detail DHS personnel to Interpol. We respectfully defer to DHS on answering this question.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#2)
Senate Committee on the Judiciary
February 28, 2008**

Question:

Has DHS reconsidered its position on US-Visit exit implementation at land ports of entry?

Answer:

US-VISIT is a DHS program and we respectfully defer to DHS on answering this question.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#3)
Senate Committee on the Judiciary
February 28, 2008**

Question:

How will the air exit system required under the 9/11 VWP provisions passed in Public Law 110-53 (Aug. 2007) work in conjunction with current US-Visit?

Answer:

US-VISIT is a DHS program and exit systems are under the exclusive jurisdiction of DHS. We respectfully defer to DHS on answering this question.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#4)
Senate Committee on the Judiciary
February 28, 2008**

Question:

Can you please provide the latest statistics on visa refusal rates for all countries, including those being considered for admission under the VWP "Roadmap"?

Answer:

We have attached a list of the visa refusal rates for all countries. These rates are used as one of the statutory threshold for Visa Waiver Program (VWP) candidacy. In an effort to promote transparency, last year we began publishing the official fiscal year visa refusal rates on the Department of State website www.travel.state.gov. The direct link is <http://travel.state.gov/pdf/refusalratelanguage.pdf>.

We note that the adjusted visa refusal rates for nationals of VWP countries reflect only visa applications submitted at U.S. Embassies and Consulates abroad. They do not take into account persons who, under the Visa Waiver Program, travel to the United States without visas. VWP country refusal rates therefore tend to be higher than they would be if the Visa Waiver Program travelers were included in the calculation, since such travelers would in all likelihood have been issued visas had they applied.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#5)
Senate Committee on the Judiciary
February 28, 2008**

Question:

What is the status of all current and upcoming Enhanced Drivers License pilots?

Answer:

This issue falls under DHS's authority; we respectfully defer to DHS on answering this question.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#6)
Senate Committee on the Judiciary
February 28, 2008**

Question:

With the new E-Passcard coming on line, will the State Dept and Interpol also have data on the cards to identify fraud and counterfeiting/tampering?

Answer:

The Passport Card, to be issued later this spring, is a limited-use passport in card format that will be accepted at land and sea ports of entry only by U.S. citizens entering or re-entering the United States from Mexico, Canada, the Caribbean and Bermuda. It is not valid for air travel. In developing the new passport card, the Department has taken great effort to mirror the business operations and procedures of the passport book, including appropriate processing of lost and stolen passports (LASP). When passport cards are reported lost or stolen, the record is made available to the Department of Homeland Security automatically, as currently with the passport book, and is provided to Interpol on a daily basis. To mitigate the threat of counterfeiting or tampering, the passport card uses a multi-layered approach, including overt, covert and forensic level security features.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#7)
Senate Committee on the Judiciary
February 28, 2008**

Question:

There are a number of countries that have actively lobbied for VWP status. In light of the new law, which countries are the most likely to qualify for admission today?

Answer:

DHS and State are currently working with nations who have engaged the USG for the past several years in discussing these issues. Those roadmap countries which meet the statutory 3% refusal rate or are within range of meeting the 10% visa refusal rate required for exercise of a waiver under the new law include Greece, Malta, Czech Republic, Estonia, Lithuania, Latvia, Hungary, Slovakia and Korea. There is no current plan to expand the roadmap process and enter into discussions with additional nations, pending resolution of the many issues raised by recent legislation. At present, the Administration is not in a position to nominate countries that would require a waiver of the three percent visa refusal rate established by the 9/11 Act of 2007. To exercise this waiver authority, the Administration must certify to Congress that the preconditions set in the 9/11

Act law have been met. Although dialogue and negotiation continue with those countries already engaged in the roadmap process, there are no plans to consider additional countries until the Administration is in a position to exercise the waiver of the three percent visa refusal rate.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#8)
Senate Committee on the Judiciary
February 28, 2008**

Question:

What is the status of DHS's review of current VWP countries and have any countries recently reflected statistics that warrant their termination from the VWP program?

Answer:

This issue falls under DHS's authority; we respectfully defer to DHS on answering this question.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator John Cornyn (#9)
Senate Committee on the Judiciary
February 28, 2008**

Question:

What steps is DHS taking to identify and remove aliens who were admitted to the US through the VWP but are now overstays?

Answer:

This issue falls under DHS's authority; we respectfully defer to DHS on answering this question

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator Dianne Feinstein (#1)
Senate Committee on the Judiciary
February 28, 2008**

Question:

The State Department and DHS have established a group of 13 so-called “road map” countries with whom the Administration has been negotiating to admit into the Visa Waiver Program. Assistant Secretary Barth recently stated that DHS hopes to admit as many as 9 countries into the Visa Waiver program, if all conditions are met.

What has the State Department been told by DHS as to whether it expects to meet all the requirements of the “Implementing Recommendations of the 9/11 Commission Act of 2007”?

Answer:

As DHS stated in its testimony and has stated publicly, it expects to meet all of the requirements of the 9/11 Act of 2007.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator Dianne Feinstein (#2)
Senate Committee on the Judiciary
February 28, 2008**

Question:

How has the State Department selected the "Roadmap" countries?

Answer:

In early 2005, President Bush committed to working with Central European and Baltic countries not already included in the Visa Waiver Program (VWP) to collaboratively develop appropriate steps to assist them in meeting the legislative criteria of the VWP. The countries were selected based on their new and imminent membership in the European Union. The Republic of Korea (ROK) was also added to the roadmap process in September 2006 because the President wished to extend the same process to the ROK as our seventh largest trading partner, one of our strongest military allies, and one of our primary sources of tourists and foreign students.

In the roadmap process, the State Department works with countries to clarify criteria that must be met to be considered for participation in the VWP, to encourage realistic expectations in terms of the criteria and time needed to meet them, and to discuss measures that further international security and cooperation.

In most of these cases we signed “roadmap” documents, which served as a statement of our mutual goal and our commitment to work together to reach that goal, without compromising the integrity of the Visa Waiver Program. In these non-binding documents, each country agreed to work towards meeting these legal prerequisites, and the USG promised to provide whatever technical and other assistance we can. In other cases, these commitments were less formal. The “roadmap” process reflected these ongoing efforts and served as structure for discussions by Consular Working Groups in each country, particularly focusing on identifying areas where additional actions, cooperation, dialogue and assistance can bring each country closer to meeting VWP legislative criteria.

Poland was the first country with which we instituted a roadmap document, which was signed in February 2005. Other countries with formal roadmap documents are Bulgaria (signed January 2006), Czech Republic (exchange of letters, April 2005), Hungary (signed September 2005), Latvia (signed May 2005), Lithuania (signed April 2005), and Malta (signed October 2005). For the remaining roadmap countries, the process was more informal, with information sharing and collaboration through regular Consular Working Group meetings.

**Questions for the Record Submitted to
Deputy Assistant Secretary Tony Edson by
Senator Dianne Feinstein (#3)
Senate Committee on the Judiciary
February 28, 2008**

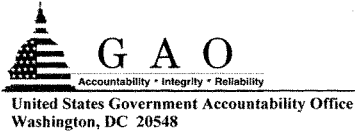
Question:

What has been communicated to “roadmap” countries about the timetable for admission into the Visa Waiver Program?

Answer:

Roadmap countries, with few exceptions, will require a waiver of the three percent visa refusal rate to be admitted to the VWP. They have been informed about the provisions in the 9/11 Act which specify pre-conditions for this waiver, including certification to Congress that an Electronic System for Travel Authorization is fully operational and that DHS can verify the departure of aliens by air with a 97 percent accuracy. They are aware that these preconditions are unlikely to be met for several more months, but efforts are underway by DHS and State to meet the USG side of the requirements set by Congress before the end of the current fiscal year. The roadmap countries are also aware that admission to the VWP will depend on their entering into appropriate agreements with the USG on information exchange, sharing of lost and stolen passport data, as well as production of e-passports and other requirements specified by law.

Timelines for meeting these conditions will vary from country to country. For those countries that will require a waiver of the three percent visa refusal rate, they are also aware that the ability to exercise this waiver may be suspended in July 2009 if a U.S. biometric exit system has not been established by that date.



March 31, 2008

The Honorable Dianne Feinstein
Chairman, Subcommittee on Technology, Terrorism, and Homeland Security
Committee on the Judiciary
U.S. Senate

Chairman Feinstein:

Attached please find GAO's response to the Committee's questions submitted for the record following the hearing titled, "Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America" held on February 28, 2008.

If you have any further questions, please contact me on (202) 512-4128 or fordj@gao.gov

Sincerely yours,

Jess T. Ford,
Director, International Affairs and Trade

Enclosure

Enclosure GAO

Response to Questions for the Record

It is my understanding that Korea's application to participate in the Visa Waiver Program is in process. At one point we heard the application would be approved by the end of 2007. Now we are hearing that it will take until 2009 to complete the process. Are there specific security concerns regarding Korea that are not present in countries currently participating in the Visa Waiver Program that are preventing the Korean application from being approved? If so, what are they and when do we expect them to be resolved?

Since last year, DHS has met with and has continued discussions with South Korean officials regarding South Korea's admission to the Visa Waiver Program, but based on our conversation with DHS and State Department officials, there is no schedule for South Korea's entrance to the program. A number of actions need to occur before South Korea could join the program. First, the State Department would have to nominate South Korea, though State indicated that it does not plan to do so until all legislative requirements (certification of an air exit system and an electronic travel authorization program) have been met. After State's nomination, DHS would need to conduct a detailed in-country security assessment to identify any potential security, law enforcement, and illegal immigration concerns associated with South Korea. For example, according to embassy officials, human trafficking concerns and risks of North Korean citizens obtaining South Korean passports are two issues that require further study. In addition, South Korea, like any aspiring country, must develop and begin issuing electronic passports (e-passports) before it can be nominated into the program. During our visit to Seoul in January 2008, embassy officials informed us that the South Korean government is working toward rolling out e-passports by August 2008. Therefore, it is doubtful that South Korea would be able to join the program until late 2008 or 2009.

I have concerns about the security vulnerabilities of the visa waiver program, and I think we need to exercise prudence as we consider expansion of the program. Just looking at the current visa waiver program, do you have recommendations for improving the security of the system?

How would you feel about instituting a requirement for visa waiver visitors to complete and submit a form to the Department of State in advance of their travel? It seems this would allow more time to check names against government watch lists, and that information could be retained and used. This would be similar to information gathered for other non-immigrant visas, such as B1/B2 visitors and F1 students.

A number of actions could be taken to improve security of the Visa Waiver Program. We have previously reported that DHS needs to improve its oversight of the program. In addition, DHS is in the process of developing a number of systems required by law that have potential for improving the security of the program.

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In 2006, we reported that there were a number of weaknesses associated with DHS's oversight of the Visa Waiver Program. To address these weaknesses, we recommended that DHS implement a number of actions including finalizing protocols for country assessments and providing these protocols to stakeholders; providing stakeholders with copies of the country assessments; improving communication with points of contacts at overseas posts; and requiring the reporting of lost and stolen passports to the United States and Interpol. As part of our ongoing work for the Subcommittee, we are assessing the extent to which DHS has implemented the recommendations from our 2006 report.

Legislation passed in August 2007 that established a number of requirements to safeguard the Visa Waiver Program. One of these requirements is the implementation of an Electronic Travel Authorization (which will allow DHS to check VWP travelers against U.S. databases and watch lists). Before a national from a Visa Waiver country departs for the United States, he/she will be required to complete and submit an online form that includes the biographic information of that traveler. Instituting a requirement for Visa Waiver Program travelers to complete and submit a form to the State Department in advance of their travel would be an alternative form of advance screening, similar to the Electronic Travel Authorization required by law. One disadvantage of this alternative would be that it could be construed as a quasi-visa application process because the forms would be submitted to State. This could negate some of the benefits of the Visa Waiver Program. Another safeguard included in the August 2007 legislation is the implementation of a biometric exit system. A biometric air exit system has the potential to provide more reliable data on foreign nationals who are departing the United States, which DHS could use to develop country-specific overstay rates, including for Visa Waiver Program countries.

We believe that the full implementation of the Electronic Travel Authorization system and the biometric air exit system has the potential to assist DHS in assessing and mitigating risks associated with the Visa Waiver Program.

Under the "Implementing Recommendations of the 9/11 Commission Act of 2007," before DHS can admit new countries into the Visa Waiver Program it must certify that an air exit system is in place that can verify the departure of 97% of foreign nationals who leave through the airports of the United States. You have testified that DHS intends to use a methodology that only looks at whether a foreign national has departed the U.S, without taking into account when the visitor entered the U.S. or whether they overstayed their authorized stay. What methodology would you recommend that DHS use in order to accurately certify that it has satisfied the 97% requirement?

We do not have specific recommendations regarding what methodology DHS should use to certify that it has an air exit system in place that can verify "the departure of not less than 97 percent of foreign nationals who exit through airports of the United States." As we testified in February, DHS indicated to us in December 2007 that it intended to use a foreign national's departure from the United States as a starting point and then track that foreign national's departure to his/her prior entries, departures, or changes of status. This methodology will not provide meaningful and useful information about Visa Waiver Program countries for decision-makers. In our testimony, we described two alternative approaches that would provide meaningful and useful information. The first would be to

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track air arrivals from a given point in time and determine whether those foreign nationals have overstayed. However, using this methodology, we believe that DHS will face difficulty meeting the 97 percent goal. The second alternative would be to assess the accuracy of data provided by airlines on foreign nationals who exit the country by air and to develop a method to verify that these people did in fact depart the United States.

Does DHS currently have a method in place for calculating whether or not current Visa Waiver countries are in violation of the 2% overstay law?

Under the law, a country must be terminated from the Visa Waiver Program if that country's disqualification rate for the most recent fiscal year for which data are available was more than 3.5 percent. The disqualification rate is the total for a given fiscal year, of (1) those nationals of the country who were admitted as nonimmigrants and violated the terms of their admission—this would include overstays—and (2) the number of foreign nationals who were denied admission upon arrival in the United States, as it compares to the total number of nationals of that country who applied for admission as nonimmigrant visitors during the same time period. (See 8 USC § 1187 (f)). In addition, under the law, if a VWP country has a disqualification rate greater than 2% but less than 3.5 % then the country is placed in probationary status for a period not to exceed two fiscal years. If at the end of the two years the country still has a disqualification rate of 2% or more the country shall be terminated as a program country.

However, DHS has not yet developed a method to compute reliable overstay rates and, thus, has not attempted to calculate any disqualification rates. As a result, DHS is not able to monitor compliance with this provision of law. Until DHS implements the exit portion of a biometric air entry and exit system that can track when visitors depart the country, it will face difficulties developing accurate overstay rates and identifying individuals who may have overstayed.

DHS US-VISIT does develop some data on potential overstays, but DHS has reported that these data have methodological weaknesses and are not used in the assessment of countries' participation in the Visa Waiver Program. In addition, the State Department has conducted validation studies for some of the "Road Map" countries to determine if foreign nationals from these countries who have visited the United States have returned to their home country within the authorized time frame. Although the US-VISIT overstay data and the State Department validation studies might have methodological weaknesses, they do provide data on overstay rates that could be useful in assessing illegal immigration risks associated with current Visa Waiver Program members and aspiring entrants to the program.

Question#:	1
Topic:	Taiwan
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Taiwan and my home state of Utah have enjoyed close ties for a longtime. The Church of Jesus Christ of Latter-day Saints (LDS) continues to send missionaries to Taiwan, who are well received by its government and people. In fact, it is my understanding that Taipei is the headquarters for the LDS Church in the Asian region. Taiwan is also an important trading partner of Utah as well as the entire country. And, the universities in Taiwan have established numerous exchange and cooperation programs with Brigham Young University.

I understand that Taiwan has taken a number of measures to fulfill the criteria established by the Visa Waiver Program. Specifically, it:

Offers visa-free travel privileges to U.S. citizens;
 Issues machine-readable passports;
 Has established a program to incorporate biometric identifiers into passports;
 Reports the theft of blank passports to the U.S. Government on a regular basis; and,
 Had a average 3% refusal rate for non-immigrant visa applications to the United States in past years – lower than several countries now being considered for Visa Waiver Program participation.

Having completed these steps, how does Taiwan compare with nations that our government has given so-called “roadmaps” for eventual Visa Waiver Program membership?

What are your thoughts about Taiwan becoming a candidate for the Visa Waiver Program?

What potential barriers do you foresee with respect to Taiwan?

Answer:

Taiwan has taken a number of steps to improve travel document and border security, and we welcome further improvements in these areas. These steps have been taken by Taiwan in line with international trends and best practices as part of a general program to improve passport and immigration practices. Some of the factors you mention such as offering visa-free travel to U.S. citizens and issuing machine-readable passports are met by a large number of governments. Taiwan does not yet issue e-passports. Our

Question#:	1
Topic:	Taiwan
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

understanding indicates they do not share information on the theft or loss of blank passports with the United States at this time. The VWP law requires sharing of data on both blank passports and personalized passports.

In the roadmap process, DHS and the State Department are continuing a dialogue with potential candidates, a dialogue that was started several years ago. There is no plan at this time to expand the roadmap process and enter into discussions with additional candidates. DHS may revisit this decision pending the completion of current efforts to securely expand the VWP.

Concerning possible security-related barriers to Taiwan's participation in the VWP, in such a case, any and all security issues would need to be identified and mitigated during a DHS-led comprehensive review to determine the impact of VWP designation on U.S. law enforcement, immigration, and security interests.

Question#:	2
Topic:	visa waiver program requirements
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: As has been stated, the Implementing Recommendations of the 9/11 Commission Act of 2007 allows the Department of Homeland Security (DHS) to extend visa waivers to countries with a 10% visa refusal rate, an expansion of the typical 3% standard, if specified security benchmarks are met. Most prominent among these benchmarks is an exit system that can verify the departure of at least 97% of the foreign nationals who fly out of the country.

There are concerns among members of this committee – indeed, it is one of the major reasons this hearing has been scheduled – that the DHS has interpreted these requirements to be ambiguous and, as a result of this interpretation, has taken steps to expand the visa waiver program in a manner that is inconsistent with the statute.

My question to you is: do you believe the statute is ambiguous, leaving DHS with significant room to interpret the requirements? If so, what steps can Congress take to make the requirements more explicit?

Answer: As noted in your question, section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 gives the Secretary of Homeland Security flexibility to waive the low nonimmigrant visa refusal rate requirement for countries wishing to join the Visa Waiver Program provided he can certify that an air-exit system is in place that can verify the departure of at least 97 percent of foreign nationals exiting through U.S. airports, that an electronic travel authorization system is in place, and that the aspirant countries meet other security-related requirements.

With respect to the 97 percent air exit system requirement, the Department is currently reviewing several different methods that could be used to verify the departure of foreign nationals through U.S. airports. However, no final decision has been made as to precisely which methodology DHS will use to calculate the air-exit rate. We believe that the statute defines the standards and provides the Department with the authority to develop an air-exit methodology; the Secretary will not certify such a system unless it meets the statutory standard.

Question#:	3
Topic:	interpol
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: What is the status of DHS efforts to detail DHS personnel to Interpol?

Answer:

DHS is currently working with Department of Justice to determine the appropriate staffing levels for the U.S. National Central Bureau Interpol. DHS has also been working with Interpol concerning the addition of a Customs and Border Protection Officer to Interpol headquarters located in Lyon, France. DHS currently details several agents and officers from its components to the Interpol-U.S. National Central Bureau (USNCB), a component of the Department of Justice. The USNCB and DHS are currently discussing augmenting this support in light of the increased workload of the USNCB expected to result from the use of Interpol's Stolen Lost Travel Document (SLTD) database by DHS personnel at U.S. ports of entry.

Question#:	4
Topic:	exits at land ports
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Has DHS reconsidered its position on US-VISIT exit implementation at land ports of entry?

Response: The Department of Homeland Security (DHS) has consistently expressed its commitment to developing a comprehensive strategy for exit at the land ports of entry (POEs). Implementing biometric confirmation of the departure of travelers via land POEs is significantly more complicated and costly than for the air or sea environments. Because of the immense scope and complexity of the land border, enabling biometric collection of data upon exit will require a costly expansion of exit capacity, including physical infrastructure, land acquisition, and staffing.

As DHS tests and installs air and then sea biometric exit solutions, US-VISIT will explore and evaluate options for exit at the land POEs that will result in a practical solution for land border exit. The program is currently in the data-gathering stage for a comprehensive analysis on the various challenges and possible solutions for land border exit. DHS is committed to keeping Congress informed as we move forward with this effort.

Question#:	5
Topic:	air exit system
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: How will the air exit system required under the 9/11 VWP provisions passed in Public Law 110-53 (Aug. 2007) work in conjunction with current US-VISIT procedures?

Response: The Department of Homeland Security (DHS) is planning to implement biometric exit capabilities at our air and sea ports of entry. This deployment will cover Visa Waiver Program travelers, as required by subsection 217(i) of the Immigration and Nationality Act (8 USC 1187(i)), as well as all aliens who are "in-scope" for US-VISIT. Once these capabilities are deployed, the biometric and biographic data collected during exit will be used to determine if individual aliens have complied with the terms of their admission. US-VISIT currently performs this function using only biographic information through the Arrival and Departure Information System, which uses electronic carrier manifest information; however, the addition of this biometric system will improve both the completeness of collection and US-VISIT's ability to match exit records with corresponding entry records.

DRAFT

Question#:	6
Topic:	visa refusal rates
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Can you please provide the latest statistics on visa refusal rates for all countries, including those being considered for admission under the VWP "road-map"?

Answer:
The Department of State publishes this information. Attached is the final 2007 B Visa Refusal numbers for all countries.

**ADJUSTED REFUSAL RATE - B-VISAS ONLY
BY NATIONALITY
FISCAL YEAR 2007**

COUNTRY NAME	AJUSTED REFUSAL RATE
Afghanistan	38.4%
Albania	49.5%
Algeria	22.7%
Andorra	9.1%
Angola	12.8%
Antigua And Barbuda	14.8%
Argentina	4.4%
Armenia	61.4%
Australia	16.5%
Austria	16.1%
Azerbaijan	15.4%
Bahrain	2.0%
Bangladesh	50.1%
Barbados	6.1%
Belarus	26.1%
Belgium	13.1%
Belize	26.9%
Benin	37.4%
Bhutan	43.7%
Bolivia	29.3%
Bosnia-Herzegovina	19.3%
Botswana	15.6%
Brazil	9.6%
Brunei	1.8%
Bulgaria	14.3%
Burkina Faso	43.1%
Burma	49.8%
Burundi	56.0%
Cambodia	53.1%
Cameroon	42.5%
Canada	36.6%
Cape Verde	39.6%
Central African Republic	28.9%
Chad	29.3%
Chile	6.7%
China - Mainland	20.7%
China - Taiwan	4.6%
Colombia	29.4%
Comoros	25.0%
Congo (Brazzaville)	31.6%
Congo (Kinshasa)	34.7%
Costa Rica	22.4%
Cote D'ivoire	46.4%
Croatia	5.1%
Cuba	53.1%

Data must be read in conjunction with the explanatory notes.

**ADJUSTED REFUSAL RATE - B-VISAS ONLY
BY NATIONALITY
FISCAL YEAR 2007**

COUNTRY NAME	AJUSTED REFUSAL RATE
Cyprus	1.8%
Czech Republic	6.7%
Denmark	11.0%
Djibouti	21.5%
Dominica	28.6%
Dominican Republic	40.6%
Ecuador	28.1%
Egypt	33.7%
El Salvador	50.1%
Equatorial Guinea	23.8%
Eritrea	49.0%
Estonia	4.0%
Ethiopia	46.0%
Federated States Of Micronesia	0.0%
Fiji	33.2%
Finland	16.0%
France	8.1%
Gabon	23.4%
Georgia	55.4%
Germany	10.2%
Ghana	54.8%
Great Britain And Northern Ireland	21.1%
Greece	1.6%
Grenada	27.4%
Guatemala	54.1%
Guinea	58.3%
Guinea - Bissau	55.0%
Guyana	62.3%
Haiti	44.2%
Honduras	37.7%
Hong Kong (BNO HK passport)	2.4%
Hong Kong S. A. R.	3.4%
Hungary	10.3%
Iceland	8.5%
India	21.7%
Indonesia	40.2%
Iran	44.9%
Iraq	44.6%
Ireland	24.2%
Israel	2.5%
Italy	7.1%
Jamaica	37.7%
Japan	12.0%
Jordan	38.9%
Kazakhstan	12.2%

Data must be read in conjunction with the explanatory notes.

**ADJUSTED REFUSAL RATE - B-VISAS ONLY
BY NATIONALITY
FISCAL YEAR 2007**

COUNTRY NAME	AJUSTED REFUSAL RATE
Kenya	33.7%
Kiribati	19.6%
Kuwait	3.8%
Kyrgyzstan	29.8%
Laos	72.9%
Latvia	11.8%
Lebanon	24.7%
Lesotho	39.8%
Liberia	50.7%
Libya	25.3%
Liechtenstein	6.7%
Lithuania	12.9%
Luxembourg	6.2%
Macau S.A.R.	9.6%
Macedonia	35.7%
Madagascar	14.2%
Malawi	36.5%
Malaysia	7.7%
Maldives	21.5%
Mali	55.7%
Malta	2.7%
Mauritania	59.1%
Mauritius	13.1%
Mexico*	32.5%
Moldova	35.5%
Monaco	37.5%
Mongolia	60.6%
Morocco	24.4%
Mozambique	18.3%
Namibia	4.8%
Nauru	0.0%
Nepal	55.1%
Netherlands	12.1%
New Zealand	7.9%
Nicaragua	46.4%
Niger	53.3%
Nigeria	32.3%
Norway	9.4%
Oman	4.3%
Pakistan	39.5%
Palestinian Authority	56.3%
Panama	26.3%
Papua New Guinea	12.2%
Paraguay	18.0%
Peoples Republic Of Korea - North Korea	14.3%

Data must be read in conjunction with the explanatory notes.

**ADJUSTED REFUSAL RATE - B-VISAS ONLY
BY NATIONALITY
FISCAL YEAR 2007**

COUNTRY NAME	AJUSTED REFUSAL RATE
Peru	44.2%
Philippines	32.4%
Poland	25.2%
Portugal	8.3%
Qatar	2.4%
Republic Of Palau	0.0%
Republic Of The Marshall Islands	3.1%
Romania	37.7%
Russia	12.4%
Rwanda	46.9%
Samoa	29.2%
San Marino	40.0%
Sao Tome And Principe	9.7%
Saudi Arabia	6.2%
Senegal	59.5%
Serbia	60.8%
Serbia And Montenegro	23.0%
Seychelles	19.1%
Sierra Leone	43.1%
Singapore	9.0%
Slovakia	12.0%
Slovenia	7.0%
Solomon Islands	5.0%
Somalia	51.7%
South Africa	5.9%
South Korea	4.4%
Spain	7.0%
Sri Lanka	28.2%
St. Kitts And Nevis	20.9%
St. Lucia	26.9%
St. Vincent And The Grenadines	23.1%
Sudan	33.6%
Suriname	10.5%
Swaziland	18.8%
Sweden	8.4%
Switzerland	7.1%
Syria	36.2%
Tajikistan	30.1%
Tanzania	21.1%
Thailand	17.0%
The Bahamas	5.2%
The Gambia	57.0%
Timor-Leste	0.0%
Togo	47.5%
Tonga	45.4%

Data must be read in conjunction with the explanatory notes.

**ADJUSTED REFUSAL RATE - B-VISAS ONLY
BY NATIONALITY
FISCAL YEAR 2007**

COUNTRY NAME	AJUSTED REFUSAL RATE
Trinidad And Tobago	19.6%
Tunisia	24.4%
Turkey	15.0%
Turkmenistan	49.2%
Tuvalu	11.8%
Uganda	42.8%
Ukraine	37.9%
United Arab Emirates	4.6%
Unknown Place Of Birth Or Stateless	41.7%
Uruguay	12.1%
Uzbekistan	70.9%
Vanuatu	25.0%
Vatican City	0.0%
Venezuela	18.5%
Vietnam	36.3%
Yemen	64.2%
Zambia	45.8%
Zimbabwe	32.3%

*Includes applications for both B visas and combination B-1/B-2/Mexican Border Crossing Cards

Data must be read in conjunction with the explanatory notes.

Question#:	7
Topic:	enhanced driver license pilots
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: What is that status of all current and upcoming Enhanced Drivers License pilots?

Answer:

Washington State began issuing Enhanced Driver's Licenses (EDL) in February 2008. So far they have booked 16,986 appointments for interviews and have issued 4,839 EDLs.

Vermont signed their EDL business plan on January 29, 2008. They expect to issue EDLs in the fall 2008.

Customs and Border Protection is working with New York and Arizona to finalize their EDL business plans. New York is on schedule to issue its first EDL in August 2008. Arizona plans to issue its EDLs in the fall 2008.

Governor Granholm just signed legislation allowing Michigan to issue EDLs. DHS is working with Michigan to develop a Memorandum of Agreement, which will allow DHS and Michigan to begin work on an EDL business plan.

Texas is considering whether to undertake an EDL project.

Question#:	8
Topic:	E-passcard
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: With the new E-Passcard coming on line will State Dept and Interpol also have data on the cards to identify fraud and counterfeiting/tampering?

Answer:

State Department will be issuing passport cards for use at U.S. land and sea ports-of-entry by U.S. Citizens arriving from Canada, Mexico, the Caribbean and Bermuda. The cards contain a number of security features to make them tamper-resistant. In addition, DHS will be able to verify passport cards with the State Department's application information to ensure that the cards are valid, using the Radio Frequency Identification (RFID) chip in the card as a pointer to the secure database where personal information is securely stored. Because of this, DHS will have real time access not only to review lost and stolen passport card information but also to verify that cards have been issued. Real-time verification provides a valuable capability to counter fraud. The USNCB has already begun talks with Department of State representatives concerning the inclusion of the lost/stolen e-pass data into the SLTD database. The USNCB expects no obstacles in this process and will continue discussions to determine the best manner for implementation.

Both DHS and State have a long history of working with Interpol. State Department would be best positioned to address the question regarding sharing of lost and stolen passport card data with Interpol.

Question#:	9
Topic:	VWP status
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: There are a number of countries that have actively lobbied for VWP status. In light of the new law, which countries are most likely to qualify for admission today?

Answer:

Prior to VWP designation, a country must meet all of the technical requirements for membership. In addition, DHS must assess a country to determine that the security, law enforcement, and immigration interests of the United States would not be compromised by its entry into the program. Until these conditions are met, it is premature to speculate on whether a country is likely to ultimately qualify for the VWP.

To date we have signed Memoranda of Understanding with eight countries—the Czech Republic, Estonia, Latvia, Slovakia, Hungary, Malta, and the Republic of Korea, and Lithuania—who have indicated their dedication to meeting the qualification requirements.

Question#:	10
Topic:	VWP termination
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: What is the status of DHS' review of current VWP countries and have any countries recently reflected statistics that warrant their termination from the VWP program?

Answer:

Pursuant to statutory requirements, DHS reviews current member countries biennially. DHS has completed the majority of the reviews for the 2006-2007 cycle and is currently finalizing the rest of the reviews. DHS has also begun working on the next review cycle. DHS addresses any specific concerns that might prevent a country's continued participation in the program in these classified reviews, which it provides to appropriate congressional committees.

Question#:	11
Topic:	overstays
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable John Comyn
Committee:	JUDICIARY (SENATE)

Question: What steps is DHS taking to identify and remove aliens who were admitted to the US through the VWP but are now overstays?

Answer:

In June 2003, U.S. Immigration and Customs Enforcement (ICE) established the first national program dedicated to the enforcement of nonimmigrant visa violations. ICE's Compliance Enforcement Unit (CEU) focuses on preventing terrorists and other criminals from exploiting the Nation's immigration system by developing cases for investigation from the various DHS registration systems, including the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system. These systems allow the CEU to proactively identify nonimmigrant aliens that violate their status or overstay their visa.

To bolster these existing efforts and more specifically address vulnerabilities within the Visa Waiver Program (VWP), the CEU is utilizing funding received in Fiscal Year 2008 to develop and deploy a new Visa Waiver Enforcement Program. Under this enforcement program, the CEU will collaborate with the US-VISIT Program Office to identify and target high-risk overstay and status violators who entered the United States under the VWP.

Question#:	12
Topic:	methodology
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Under the “Implementing Recommendations of the 9/11 Commission Act of 2007” before DHS can admit new countries into the Visa Waiver Program it must certify that an air exit system is in place that can verify the departure of 97% of foreign nationals who leave through the airports of the United States.

You have testified that DHS has not yet decided on the precise methodology it will use to calculate the 97% rate. You have also indicated that DHS is considering using a methodology that only looks at whether a foreign national has departed the U.S. without taking into account when the visitor entered the U.S. or whether they overstayed their authorized stay.

When can we expect that a final decision will be made regarding what methodology DHS intends to use to calculate the 97% rate?

Do you agree DHS is required to track the overstay rates of Visa Program travelers?

If so, why does your proposed methodology only track whether the foreign national has left the U.S. without taking into account when or how many times the visitor entered?

Is it true that if you compared departure records to prior arrival records you could only achieve a 92.8% match rate?

What steps is DHS taking to validate the accuracy of passenger manifest records?

Answer:

With respect to the 97 percent air-exit verification requirement, the Department is considering several methodologies to calculate a 97 percent biographical match for the departure of foreign nationals exiting through U.S. airports. However, no final decision has been made as to precisely which methodology DHS will use in calculating the exit rate, nor has a specific deadline been set by which to make this decision. The Department continues to evaluate and look for ways to improve the methodology underpinning the air exit calculations.

Pursuant to the 9/11 Commission Act and previous legislation, DHS is responsible for estimating the overstay rates for all non-immigrants entering the United States. We

Question#:	12
Topic:	methodology
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

anticipate a final decision on an overstay methodology before the Secretary determines the maximum overstay rate. We intend to do so consistent with all laws.

Raw data on the comparison of departures to arrivals is subject to various methodologies of analysis and verification. The Department believes that it will be able to verify a 97 percent biographical match for the departure of foreign nationals exiting through U.S. airports.

DHS is working with air carriers to ensure that they are providing accurate passenger manifest information. Specifically, Customs and Border Protection (CBP) has worked closely with the carriers to improve both the timeliness and comprehensiveness of the passenger manifest data. With the implementation of the Advance Passenger Information System (APIS) Pre-Departure regulations, commercial carriers will be required to transmit manifest information for each traveler prior to issuing a boarding pass for that traveler. Once the aircraft departs, the air carriers will be required to provide CBP with a close-out transmission that will confirm on-board passengers or reconcile the manifest to account for those passengers that did not board.

Question#:	13
Topic:	ETA system
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: The “Implementing Recommendation of the 9/11 Commission Act of 2007 also requires that DHS develop a fully operational electronic travel authorization system that would collect and verify the biographical information of all visa waiver travelers before they get on the plane.

What has to be in place for the program to be considered “fully operational” by DHS?

Please describe the progress you have made towards developing an electronic travel authorization system.

Answer: In support of the requirement that DHS develop and implement an automated electronic travel authorization system, DHS is developing the Electronic System for Travel Authorization (ESTA), an automated application and screening mechanism for direct access by travelers from Visa Waiver Program (VWP) countries.

DHS’s U.S. Customs and Border Protection (CBP) has initiated the utilization of existing contract vehicles to develop the underlying ESTA information technology (IT) infrastructure. Funding will be allocated to meet IT requirements including, but not necessarily limited to, data-center operations, hardware, commercial off-the-shelf software licensing, engineering, software development, system security, independent validation/verification testing, language translation, and disaster recovery operations requirements.

CBP has also established an ESTA program management office that will support all areas of the ESTA program including system development, hardware acquisition, required system lifecycle reviews, DHS milestone reviews, enterprise lifecycle processes, and capital-planning reviews. While identifying additional personnel to fully staff the program management office, CBP is also in the process of hiring staff that will support the screening and security assessment of ESTA applicants.

As provided for in the 9/11 Commission Act, ESTA will collect such information as the Secretary deems necessary to determine, in advance of travel, the eligibility of the alien to travel to the United States under the VWP and whether such travel poses a law enforcement or security risk.

Question#:	13
Topic:	ETA system
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

We plan to compare the data collected from ESTA applications with appropriate law enforcement databases, including lost and stolen passports, and appropriate watchlists. To the extent possible, ESTA will provide almost immediate determinations of eligibility for travel under the VWP. If an ESTA application is not approved, we expect to refer the applicant to the local U.S. embassy or consulate to apply for a non-immigrant visa to travel to the U.S.

In order to ensure that the initiation of the ESTA program is as smooth and user friendly as possible for our VWP allies and affected VWP travelers, and to ensure a smooth transition for our Department of State colleagues and CBP staff, DHS expects to enroll VWP countries in ESTA on a staggered basis, rather than enrolling all VWP countries at one time.

Question#:	14
Topic:	VWP - overstays
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Under pre-existing law, if more than 2% of a visa waiver program country's nationals overstay or otherwise violate their visa, the country cannot participate in the Visa Waiver Program.

Are you or any other agency now tracking whether nationals of a current visa waiver country are overstaying their 90-day authorized stay?

If not, why not?

If so, please describe how you obtain this information.

What is the overstay rate for each of the visa waiver countries and how have you calculated this rate?

Are any of the current visa waiver countries in violation of the 2% overstay law? If so, what actions have been taken by DHS to remedy this situation?

Answer:

More than 15 million travelers entered the United States under the VWP in FY 2006. DHS is currently working on developing overstay rates for visa waiver and other countries, but they have not been finalized yet.

Question#:	15
Topic:	road map countries
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: The State Department and DHS have established a group of 13 so-called "road map" countries with whom the Administration has been negotiating to admit into the Visa Waiver Program. Assistant Secretary Barth recently stated that DHS hopes to admit as many as 9 countries into the Visa Waiver Program, if all conditions are met.

With which countries has the administration negotiated a Memoranda of Understanding?

Why is the Administration negotiating with countries that do not have visa refusal rates below 10%?

What assurances, if any, has the Administration made to the "road map" countries about their admission into the Visa Waiver Program?

How does DHS determine whether a "road map" country presents a risk of overstays?

Answer:

To date, the Department has signed Memoranda of Understanding with the Czech Republic, Estonia, Latvia, Slovakia, Hungary, Malta, Republic of Korea, and Lithuania.

Signing a Memorandum of Understanding is merely one step in the VWP designation process. Roadmap countries understand that they must meet all statutory requirements before DHS can designate them as VWP participants. While some roadmap countries have visa refusal rates over 10 percent for Fiscal Year 2007, preliminary indications are that these numbers are declining and are likely to be less than 10 percent at the end of fiscal year 2008. Accordingly, it seems prudent to conclude these Memoranda of Understanding and derive benefits from the closer security cooperation they establish. Of course, if the FY08 overstay rate for any of the roadmap countries – including countries that have signed the initial VWP Memorandum of Understanding – exceeds 10 percent, that country will not be admitted into the VWP.

Prior to any VWP designation DHS undertakes a comprehensive review of a country to determine how its participation would impact the law enforcement, immigration, and security interests of the United States, including, whether citizens of that country present a risk of overstay.

Question#:	16
Topic:	VWP - initial review
Hearing:	Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect America?
Primary:	The Honorable Sam Brownback
Committee:	JUDICIARY (SENATE)

Question: Can the Department of Homeland Security start to review an aspiring country to participate the Visa Waiver Program based on its technical/security merits, even though the State Department has not yet nominated the country for the program?

If a country meets all the mandatory technical/security criteria and is willing to enter into bilateral security cooperation agreement with the U.S. in terms of the voluntary requirements of the Visa Waiver Program, can the Department of Homeland Security add the country into the list of "roadmap countries"? Can DHS begin to allocate resources to review the case?

Answer:

DHS and the State Department may consult with an aspirant country, and DHS may even begin the assessment process, prior to a formal nomination. However, the country cannot become a VWP participant until the State Department officially nominates and DHS designates it.

If a country meets all of the mandatory technical and security criteria and is willing to enter into a bilateral security cooperation arrangement, then there are no barriers to its beginning VWP consultations with both DHS and the State Department. In fact, DHS and the State Department are currently working with nations who have engaged the U.S. Government for the past several years in discussing these issues. There is no plan at this time to expand the roadmap process and enter into discussions with additional nations. DHS may revisit this decision pending the completion of current efforts to securely expand the VWP.

SUBMISSIONS FOR THE RECORD

STATEMENT FOR THE RECORD

by

Representative Shelley Berkley
United States House of Representatives

Before the

Subcommittee on Terrorism, Technology and Homeland Security
United States Senate

Hearing on "Weaknesses in the Visa Waiver Program:
Are the Needed Safeguards in Place to Protect America?"

February 28, 2008

Thank you, Senators Feinstein, for holding this hearing on our government's Visa Waiver Program. I am pleased to submit this statement for the record in my capacity not only as an interested Member of Congress, but also as a co-chair of the Congressional Taiwan Caucus.

Let me begin by praising your leadership in advancing immigration policies that both preserve the openness of our society and protect against threats to our security. This subcommittee's oversight of the Visa Waiver Program (VWP) in particular since the horrific events of 9/11 has been important in ensuring that our laws contribute to the safety and security of the American people, while facilitating tourism and commerce by visitors to our country. We have sought to ensure that those seeking membership in this program adhere to clear and strict standards, as well as collaborate with our government to strengthen their immigration procedures. It is for these very reasons that I believe Taiwan should be included in the VWP, and that it would serve as a model for others who share its aspirations.

Indeed, a number of very deserving countries – Greece, Israel, South Korea, Poland, and others – are still waiting to be accepted into the VWP. Those countries have all made enormous strides toward fulfilling the requirements of the VWP and it is important that the U.S. recognize and reward their efforts. They share our desire to have close relations and we must do our part to bring them closer to us, rather than drive them away. Though all these countries are equally deserving, I focus my comments today on Taiwan as just one example of a strong U.S. ally whose friendship we already value and need to further cultivate.

As you know, Taiwan and the United States have enjoyed a strong and unique partnership for over fifty years. Our close relations have been of enormous diplomatic, economic, and strategic advantage to both our governments as we have confronted challenges to our common interests in the Asia-Pacific region. These ties have also promoted the rise of a vibrant democracy in Taiwan, which stands today as a beacon for all in the region who seek freedom and representative government.

Taiwan's economic advances have been just as impressive as its democratic progress. Today it is the United States' ninth largest trading partner, with trade flows between the two totaling a projected \$63 billion in 2007. Further, Taiwan contributed over \$646 million in foreign direct investment to the United States last year. These impressive economic statistics are upheld in part by the large number of Taiwanese Americans in our country, who have made significant contributions to America's commercial, civic and cultural life. They are also supported by the 350,000 non-immigrant visa holders from Taiwan who travel to our country each year.

I understand that if Taiwan were accepted into the VWP, these numbers – and the resulting economic benefits – would increase considerably, just as they did when Japan waived visa requirements for visitors from Taiwan. During this time of economic uncertainty, the increased tourism and commerce generated by allowing Taiwan into the VWP would be a welcome stimulus to communities across America, particularly in the Pacific region of our country. According to the Department of Commerce, in 2006, 59.2% of Taiwanese visitors to the U.S. cited California as their travel destination.

Despite these clear benefits, I am not trying to make a case for Taiwan based on the economic merits alone. In the post-9/11 world, we must instead make such decisions first and foremost with our national security in mind. The legislation that we passed last year to strengthen the requirements for entry into the VWP was intended to serve this very purpose.

In this regard, I am pleased to say that Taiwan meets or exceeds nearly every benchmark for inclusion in the VWP, and has a better record than many of the so-called "road map" countries currently seeking entry into the program. For example, Taiwan's government:

- Has issued machine-readable passports since 1995;
- Offers visa-free travel privileges to U.S. citizens;
- Is undertaking a program to incorporate biometric identifiers into passports; and,
- Has for the past decade reported the theft of lost and blank passports to the United States on a weekly basis.

Furthermore, in 2007, Taiwan had a three percent refusal rate for nonimmigrant visa applications to the United States – lower than several countries currently under consideration for the VWP.

Beyond efforts to meet new VWP standards, Taiwan is involved in other important measures to enhance our mutual security. For instance, it participates in the Container Security Initiative, a critical effort to control the transit of materials through our ports. Taiwan is also a partner in the Department of Energy's Megaports Initiative, which seeks to prevent the trafficking of radioactive materials. Finally, Taiwan works closely with our government to identify and shut down financial networks that support terrorists across the globe.

In light of the great strides Taiwan has made to meet the VWP requirements and its enduring role as a key regional ally, I encourage you to join me in calling on the relevant agencies of our government to rearrange and allocate their resources to review Taiwan's policies and procedures with the goal of admitting it into the VWP as soon as reasonably possible.

I appreciate the opportunity to submit this statement for the record, and I look forward to working with the other members of this subcommittee to ensure that the VWP remains strong and effective.



**Written Testimony of Bill Connors, Executive Director and Chief Operating Officer,
National Business Travel Association**

**Senate Judiciary Committee's Subcommittee on Terrorism, Technology and Homeland
Security Hearing
"Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in Place to Protect
America?"
Thursday, February 28, 2008**

A strengthened and expanded Visa Waiver Program (VWP) is essential to the economic health of the United States and its key trading partners. As the Department of Homeland Security (DHS) implements the new VWP program established by the U.S. Congress in 2007, the National Business Travel Association (NBTA) calls on DHS to aggressively evaluate the security commitments of potential applicants and implement the new security requirements included in the 2007 law so VWP expansion can occur expeditiously. NBTA is pleased by the recent agreement with the Czech Republic to place that nation on a track to obtain VWP status this year.

The VWP allows nationals from approved countries to travel for business or pleasure to the United States without applying for a visa for up to ninety days. VWP has become an important tool in the United States' public diplomacy efforts as well as an important asset for the business travel community to conduct business with some of our most important international economic partners.

Regarding the new biographic exit requirements, which DHS must implement before it can enroll new countries into VWP, NBTA believes that the 97% exit requirement should not include those with a legitimate reason for not departing the U.S. within 90 days. The Congress is rightfully concerned about visa overstays but DHS should recognize that some VWP travelers legally depart the U.S. by land or sea. In addition, the 97% requirement must be interpreted to recognize that some individuals may become hospitalized, imprisoned, die, or change legal status.

Additionally, the 2007 legislation requires DHS to deploy a new Electronic Travel Authorization system (ETA) for VWP travelers. This new security tool will allow DHS to collect additional data on VWP passengers to allow for a security review. If implemented properly, the ETA is an appropriate security measure and will serve as an important complement to current passenger screening efforts. NBTA is also encouraged by the possibility that registrants in the upcoming US-PASS international registered traveler program may be exempt from a separate ETA requirement. However, as we wrote to DHS Secretary Chertoff on October 17, 2007, business travelers make travel plans with little or no notice and the ETA must be deployed in a manner that does allow compliance with little notice.

The authoritative voice of the business travel community is the National Business Travel Association, representing more than 3,000 corporate travel managers and travel service providers who collectively manage and direct more than \$170 billion of expenditures within the business travel industry, primarily for Fortune 1000 companies.

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Travel Industry Association

TESTIMONY FOR THE RECORD

OF

**ROGER DOW, PRESIDENT AND CEO OF THE TRAVEL INDUSTRY
ASSOCIATION**

ON

**“WEAKNESSES IN THE VISA WAIVER PROGRAM: ARE THE NEEDED
SAFEGUARDS IN PLACE TO PROTECT AMERICA?”**

BEFORE THE

**SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

FEBRUARY 28, 2008

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Chairman Feinstein, Ranking Member Kyl, members of the committee: I am pleased to offer testimony on behalf of the Travel Industry Association (TIA), the national, non-profit organization representing 1,700 travel and tourism public and private entities across the country. TIA members encompass every sector of the diverse, \$740 billion travel community and our mission is to promote and facilitate increased travel to and within the United States.

Over the last six years, Congress and the Executive Branch have worked to fill gaps in our international travel policies by building a layered security program that is designed to identify those who would do us harm, confirm travelers have identification documents that prove their identity and ensure compliance with entry requirements to the United States. The travel community understands that these measures are a necessary factor in keeping Americans safe from another terrorist attack and to deter other criminal behavior and illegal immigration. However, we also believe that increased security and travel facilitation are not mutually exclusive and that appropriate investments and policies can make travel more secure and allow for more legitimate travel to the United States.

In January 2007, TIA issued "A Blueprint to Discover America," a report in which we outlined for Congress and the Administration the negative – though unintentional – impact that security improvements to our travel system have had on America's economy and image abroad. Millions of international visitors simply stopped coming to America because we did not do enough to ensure our new security programs were well-balanced with improved facilitation. This Blueprint provided a series of recommendations to policy makers on ways to continue to strengthen America's security while also fixing the country's broken travel system. A significant recommendation was the need to strengthen the security of the Visa Waiver Program (VWP) including expansion to countries with a stellar record of law enforcement cooperation. On behalf of the travel community, I would like to thank Chairman Feinstein and Ranking Member Kyl, and many other members of the Congress, for their leadership on the Visa Waiver Program and their efforts last year to ensure that VWP reforms were enacted as part of P.L. 110-53, the *Implementing the 9/11 Commission Recommendations Act of 2007*. This new law both strengthened the security of the program and expanded access to millions of legitimate international travelers.

TIA strongly believes that the VWP reforms will have a positive impact on the U.S. economy at a time when generating economic growth is a top priority, and on America's public diplomacy efforts around the world. For example, the South Korean government estimates that joining the VWP could lead to an annual increase of 800,000 South Korean visitors resulting in a \$300 million boost to our economy.

TIA is pleased that the DHS is fully behind VWP expansion and is actively engaged in discussions with countries that may be eligible to join the VWP under the new reforms. In fact, TIA applauds the DHS for signing a memorandum of understanding with the Czech Republic that will forge the way for the country's inclusion in the VWP. Economic estimates show that inclusion of the Czech Republic in the VWP could result in 61,000 additional Czech visitors to the United States over the next five years and \$220

million in new spending. TIA is encouraged by this recent agreement and by news reports that additional countries are likely to be admitted in 2008 and 2009.

As the DHS and the Department of State determine which countries should be considered for inclusion in the VWP, we urge them to look beyond the scope of "roadmap" countries in the European Union. We believe that other major international partners around the world deserve consideration as well. For instance, in South America alone, three countries now have visa refusal rates of less than 10 percent: Argentina (4.4%), Brazil (9.6%) and Chile (6.7%). Taken together, there were nearly 850,000 visitors to the U.S. from these countries in 2006. Inclusion of these countries into the VWP would help return arrivals from these countries back to the levels in 2000, when nearly 1.5 million visitors from these countries came to the U.S. In addition, countries as diverse as South Korea and Taiwan also merit serious consideration.

With the promise of the new VWP program, much work remains to ensure that all of the security requirements of the VWP reforms are implemented fully and expeditiously by DHS. In particular, TIA urges DHS to move as quickly as possible to develop two new security programs required before the VWP expansion can occur.

First, DHS must improve its ability to track departing VWP travelers to ensure that the overwhelming majority of travelers are departing within the terms of their temporary admission to the U.S. At the same time, however, in calculating the exact percentage of VWP travelers that DHS can track successfully, Congress must recognize that some VWP travelers have legitimate reasons for not appearing in an exit record. For instance, some VWP entrants will depart the U.S. via a land or sea port of entry where DHS does not currently track the exit of visitors. Small numbers of VWP travelers may become hospitalized and unable to travel, perish, or change legal status. In addition, certain VWP travelers may be identified under different names on entry and exit if they maintain multiple passports or airlines utilize different formats for capturing names in their databases. DHS must be afforded some flexibility in determining compliance with the new law that reflects these real-world situations.

Further, TIA urges DHS to move forward quickly with the proposed regulation to obtain biometric information from VWP travelers departing the country by air through the US-VISIT program. To date, DHS has not formally announced its proposal for how it intends to collect such data, although it has indicated that it envisions requiring airlines to collect such information as part of their passenger processing systems. DHS must immediately make its intention public through the formal rule-making process and allow stakeholders to comment on the development of this critical program. Congress rightfully gave DHS two years to build the biometric exit system but the clock is ticking. Further regulatory delays only increase the chance that DHS will not be able to further expand the VWP to qualified applicant countries because of its inability to comply with the biometric deadline in 2009.

Second, TIA strongly supports the proposed Electronic Travel Authorization (ETA) program as a means to build additional security into the VWP program both for new

VWP countries and legacy members. While the proposed cost of the ETA at approximately \$20 is minimal considering that it will allow visa-free travel for as many as three years, communicating the new requirements will take time and a concerted outreach campaign to travelers currently used to traveling with only a legitimate passport from a VWP country.

In fact, the need to communicate new programs such as the ETA and US-VISIT exit is a key reason why Congress should pass the Travel Promotion Act (S. 1661 and H.R. 3232) this year. The Travel Promotion Act would help reverse the decline in overseas travel by establishing a nationally coordinated travel promotion campaign at no cost to the American taxpayer. The program would better communicate complex travel policies and assure foreign travelers that they are welcome to visit the United States. Studies show that such a campaign could attract millions of additional overseas visitors per year, resulting in billions of dollars of new visitor spending. The legislation currently awaits Senate floor action and has the bipartisan support of nearly 160 members of the House of Representatives and 40 Senators, including Chairman Feinstein and seven other members of the Senate Judiciary Committee (Senators Biden, Cardin, Durbin, Hatch, Kennedy, Schumer, and Specter).

In closing, TIA congratulates the Subcommittee for their oversight of the VWP and looks forward to working with DHS, the Department of State, and the Congress to ensure that travel to the United States is both secure and robust.

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**Subcommittee on Terrorism, Technology and Homeland Security
of the
Committee on the Judiciary
United State Senate
Testimony of
Stephen A. "Tony" Edson
Deputy Assistant Secretary for Visa Services
February 28, 2008**

Thank you, Chairman Feinstein, Ranking Member Kyl and distinguished Members of the Subcommittee. I am delighted to be here this afternoon and appreciate this opportunity to discuss the role the Department of State plays in the Visa Waiver Program (VWP) under the new legislative requirements in Section 711 of "Implementing the 9/11 Commission Recommendations Act of 2007" (the 9/11 Act) as well as the implications that potential expansion of the VWP may have for our international relations.

European leaders told President Bush repeatedly of the desire of their citizens to travel visa-free to the United States. In November of 2006, in Tallinn, Estonia, President Bush announced his initiative to revamp and strengthen the VWP. With the passage of the 9/11 Act last summer, we welcomed legislative concurrence on modernization of the VWP, particularly the additional security measures. The new law not only strengthens the security framework of the program but it also creates a path for expansion of the program to include some of our closest allies. These enhancements help secure U.S. borders and will promote a safer international travel

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environment. The State Department is convinced that dialogue with countries hoping to join the program will speed their enactment of travel security requirements and will strengthen our ties with these partners.

As I have testified previously in the House of Representatives, together with our colleagues at the Department of Homeland Security (DHS), we strive constantly both to protect America's borders and to preserve America's welcome to legitimate international visitors. Section 711 of the 9/11 Act, "Modernization of the Visa Waiver Program," supports these efforts by making clear that the security provisions of the VWP must be enhanced before VWP participation can be extended to any additional countries. Armed with this legislative mandate, the United States Government is seeking to deepen security partnerships with aspirant as well as current VWP countries in order to facilitate secure, legitimate international travel, and we consider the modernization of the VWP an essential step toward that end.

With the advancement of both new security technologies and new security risks, we can and must ensure that for VWP participants and aspirant countries, we are able to assess the risks posed by individuals, not countries, as threats. The changes in the VWP in the 9/11 Act give us the tools to do this.

The 9/11 Act spells out four mandatory areas of enhanced security cooperation that both participant and aspirant countries must agree to, including participating in an Electronic Travel Authorization (ETA) system, reporting of lost and stolen passports -- both blank and personalized, exchanging passenger information, and repatriation of nationals ordered removed from the United States. In determining whether to waive the three percent visa refusal rate, the Secretary of Homeland

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Security must also consider the nation's airport security standards, travel document standards and its participation in an air marshals program. The Department of State believes these enhanced security measures promote safer international travel.

By statute, DHS has the lead for the VWP program and works in close coordination with the Department of State to evaluate compliance with each of these requirements during DHS's statutorily-mandated country reviews for both initial and continuing participation in the VWP. Historically, the Department of State has had responsibility for formally nominating a country for consideration for VWP membership. We also provide input on DHS's evaluations of a VWP aspirant country's law enforcement, immigration, and security cooperation. We are the primary conduit for guidance on VWP issues to our posts abroad, and we consult with aspirant governments. In fact, we, along with DHS, have been in frequent consultations with the "roadmap" countries to give them guidance on meeting the new statutory requirements.

As you may know, several months ago Secretary Rice sent forward a formal nomination for Greece. Greece meets the statutory threshold for consideration with a visa refusal rate of less than 3%, and therefore would not need a waiver by the Secretary of Homeland Security to join the VWP. Preliminary consideration of the Greek candidacy also suggested Greece would be able to meet the requirements of the law regarding impact on U.S. law enforcement, security and immigration interests. DHS sent a formal assessment team to Greece in late November and the Department of State participated in that assessment. The Department sees the Greece VWP candidacy as a way to establish a procedure to determine eligibility for future

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VWP members and, as such, will continue to engage with DHS to refine and clarify the process.

For other aspirant countries, under the 9/11 Act, the Secretary of Homeland Security has the authority to waive the three percent visa refusal requirement if all other new security requirements have been met. Provisions requiring a non-immigrant visa refusal rate of less than three percent remain in the law, but new authority has been added for the Secretary of Homeland Security to waive that refusal rate up to a ten percent refusal rate in the previous fiscal year. This waiver authority is conditioned on a number of factors, including DHS implementation of the ETA and verification of the departure of not less than 97 percent of the foreign nationals who exit by air, and the aspirant country's adoption of the enhanced security measures of the new law. The Department of State monitors and reports on these visa refusal rates annually on our website at www.Travel.State.Gov.

I wanted to briefly clarify what a nonimmigrant refusal rate means in the context of the VWP. For purposes of the VWP, the nonimmigrant visa refusal rate is based only on the number of visitor ("B") visa applications submitted worldwide, by nationals of that country. (B visas are issued for short-term business or pleasure travel to the United States.) The Department adjusts the refusal rate to exclude the number of visa refusal cases that are overcome and subsequently issued. Adjusted visa refusal rates for nationals of current Visa Waiver Program countries reflect only visa applications submitted at U.S. embassies and consulates abroad. They do not take into account persons who, under the Visa Waiver Program, travel to the U.S. without visas. Visa Waiver Program country refusal rates therefore tend to be higher

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than they would be if the Visa Waiver Program travelers were included in the calculation.

The revised VWP legislation also gives the USG the means to increase security information-sharing with our closest allies. The USG is negotiating memoranda of understanding (MOUs) with all VWP governments, both existing and prospective. As part of State's responsibility for Homeland Security Presidential Directive 6 (HSPD-6) agreements on the integration and use of terrorist screening information, we have provided significant comments on the template VWP MOU and are part of the negotiating teams with our DHS colleagues. We currently have eight signed HSPD-6 agreements and are in negotiation to complete agreements in more than a dozen other countries. The success in getting these agreements and the increased level of cooperation is a direct result of the dialogue on VWP.

The foreign policy and diplomatic implications are important as well. Here the benefits of VWP are substantial. The two largest participants in the VWP are the United Kingdom and Japan, two of our closest allies. When looking at the current program as a whole, over 80 percent of the current VWP participants, and nearly all of the aspirant countries, are in Europe, and many have been among our closest partners in counterterrorism cooperation and other national security matters. We have very close foreign policy, commercial and cultural ties to VWP members, and the VWP provides a foundation on which these ties can flourish. As well, we have a strong overlap of values, interests, and responsibilities with many of the VWP countries.

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In commerce, the U.S.-European trade and investment relationship is the largest in the world. Transatlantic trade totals over \$500 billion annually, and the United States and the European Union are the largest investors in each other's markets. Of the \$5 trillion in foreign assets owned by U.S. companies, nearly 60 percent are in Europe. Similarly, nearly three-quarters of all foreign direct investment in the United States comes from EU investors. U.S.-owned affiliates in Europe employ six million workers; over four million Americans work for European companies. Similarly Japan, a current VWP member, and the Republic of South Korea, which seeks membership in the VWP under the new legislation, are among our largest partners in trade and investment and among our closest strategic in Asia.

In closing, the Department appreciates the Congressional passage of the VWP provisions in the 9/11 Act. We see the new requirements as a positive means to strengthen the security of visa-free travel, permit some of our close friends and allies to join the Visa Waiver Program, and thereby enhance our cooperation and ties with those countries over the long term. The Department looks forward to working with our partner agencies and with this Committee toward that goal. I would be happy to answer your questions.

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STATISTICS

NIV Worldwide B1+ B2 + B1/B2 Adj. Refusal Rates

FY-1999 - FY-2008 YTD

Nationality	FY-1999	FY-2000	FY-2001	FY-2002	FY-2003	FY-2004	FY-2005	FY-2006	FY-2007	FY-2008*
Argentina	17.7%	35.8%	38.2%	12.8%	12.1%	9.3%	9.3%	6.7%	4.4%	3.2%
Brazil	23.0%	36.5%	37.2%	41.7%	39.0%	28.9%	24.2%	13.2%	9.6%	6.3%
Bulgaria	28.0%	35.9%	34.9%	30.5%	22.4%	22.6%	23.7%	17.5%	14.3%	13.4%
Cyprus	9.8%	10.9%	12.5%	14.7%	12.1%	4.1%	1.6%	2.2%	1.8%	1.7%
Czech Republic	16.2%	15.4%	24.3%	24.8%	15.3%	11.7%	9.1%	9.4%	6.7%	6.6%
Estonia	16.1%	36.3%	42.0%	38.3%	31.9%	17.4%	10.6%	7.1%	4.0%	3.9%
Greece	3.1%	3.8%	4.4%	5.6%	5.7%	3.4%	2.5%	2.2%	1.6%	1.6%
Hungary	8.9%	20.2%	39.8%	38.9%	26.7%	26.7%	17.4%	12.7%	10.3%	8.4%
Israel	4.8%	3.2%	3.2%	6.8%	7.5%	9.3%	8.0%	4.2%	2.5%	2.0%
Korea, South	11.0%	8.3%	10.3%	6.8%	2.6%	3.4%	3.7%	3.6%	4.4%	4.0%
Latvia	18.0%	17.6%	24.5%	33.3%	31.8%	24.6%	21.9%	21.6%	11.8%	8.2%
Lithuania	38.7%	42.6%	46.7%	56.7%	54.0%	42.9%	37.7%	27.7%	12.9%	8.5%
Malta	0.5%	0.4%	0.6%	0.7%	0.5%	0.8%	4.9%	2.8%	2.7%	6.7%
Poland	33.1%	40.3%	49.9%	47.2%	45.8%	32.6%	25.4%	26.2%	25.2%	14.8%
Romania	46.0%	47.7%	40.8%	45.2%	41.1%	33.3%	33.4%	34.1%	37.7%	31.3%
Slovakia	37.5%	34.6%	34.3%	41.5%	44.6%	29.7%	17.5%	16.0%	12.0%	7.7%
Taiwan	3.8%	3.6%	3.5%	4.5%	3.4%	1.0%	1.7%	3.1%	4.6%	5.2%
Turkey	10.3%	13.2%	24.8%	24.2%	24.4%	21.3%	17.2%	15.4%	15.0%	13.9%
Uruguay	2.3%	12.1%	10.9%	9.0%	8.6%	19.1%	18.5%	12.6%	12.1%	13.2%

preliminary data through 01/31/2008*

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All NIV Categories Worldwide Adj. Refusal Rates

FY-1999 - FY-2008 YTD

Nationality	FY-1999	FY-2000	FY-2001	FY-2002	FY-2003	FY-2004	FY-2005	FY-2006	FY-2007	FY-2008*
Argentina	3.3%	7.3%	11.8%	11.5%	10.9%	8.2%	8.2%	6.1%	4.1%	2.9%
Brazil	21.0%	33.0%	33.1%	35.8%	30.5%	18.9%	17.7%	11.3%	8.7%	5.8%
Bulgaria	23.7%	27.8%	26.2%	20.6%	13.1%	13.2%	16.7%	15.1%	10.4%	11.3%
Cyprus	12.1%	12.1%	13.9%	15.6%	11.7%	3.4%	1.5%	2.1%	2.2%	2.1%
Czech Republic	14.6%	13.4%	19.9%	18.4%	11.2%	9.1%	7.7%	7.9%	5.7%	6.1%
Estonia	13.6%	31.2%	35.0%	30.5%	24.4%	13.9%	8.6%	6.2%	3.5%	3.6%
Greece	2.6%	3.3%	3.9%	4.6%	4.4%	2.8%	2.2%	1.9%	1.5%	1.6%
Hungary	7.8%	18.0%	34.7%	31.2%	20.9%	21.9%	15.0%	11.1%	9.1%	7.3%
Israel	4.6%	3.1%	3.1%	6.5%	6.9%	8.4%	7.2%	3.8%	2.4%	2.0%
Korea, South	12.0%	8.9%	10.4%	7.0%	2.9%	3.6%	3.9%	3.6%	4.7%	5.0%
Latvia	13.4%	13.0%	18.6%	24.2%	20.1%	16.5%	14.5%	15.6%	9.0%	6.7%
Lithuania	32.6%	35.9%	39.5%	39.4%	31.2%	26.6%	24.5%	19.0%	9.3%	7.4%
Malta	0.5%	0.4%	0.7%	0.6%	0.5%	0.9%	4.4%	2.8%	2.5%	6.5%
Poland	30.2%	36.2%	42.0%	37.4%	36.2%	26.0%	21.2%	22.0%	21.5%	13.5%
Romania	39.5%	39.8%	32.5%	34.0%	31.1%	23.0%	25.3%	27.1%	29.9%	26.0%
Slovakia	30.9%	26.7%	24.0%	24.2%	25.7%	15.9%	10.2%	10.3%	7.8%	6.3%
Taiwan	4.0%	3.9%	3.8%	4.8%	3.4%	1.0%	1.7%	3.1%	4.8%	5.3%
Turkey	9.0%	11.6%	21.7%	21.3%	22.8%	19.9%	15.6%	14.6%	13.8%	13.6%
Uruguay	2.2%	5.3%	5.2%	6.0%	7.4%	16.9%	15.9%	10.9%	10.1%	11.9%

preliminary data through 01/31/2008*

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**Nonimmigrant Admissions
FY 2004-2006¹**

Class of admission	2006		2005		2004	
	Number	Percent	Number	Percent	Number	Percent
Total	33,667,328	100.0	32,003,435	100.0	30,781,330	100.0
Temporary visitors	29,928,567	88.9	28,510,374	89.1	27,395,921	89.0
Pleasure	24,888,065	73.9	23,814,565	74.4	22,802,797	74.1
Pleasure (B-2)	11,269,933	33.5	9,758,617	30.5	9,185,492	29.8
<i>Visa waiver</i>	<i>12,921,832</i>	<i>38.4</i>	<i>13,568,455</i>	<i>42.4</i>	<i>13,521,963</i>	<i>43.9</i>
Business	5,040,502	15.0	4,695,809	14.7	4,593,124	14.9
Business (B-1)	2,673,309	7.9	2,432,587	7.6	2,352,404	7.6
<i>Visa waiver</i>	<i>2,364,967</i>	<i>7.0</i>	<i>2,261,354</i>	<i>7.1</i>	<i>2,239,595</i>	<i>7.3</i>

**NONIMMIGRANT ADMISSIONS (I-94 ONLY) BY
CATEGORY OF ADMISSION AND REGION AND COUNTRY
OF CITIZENSHIP: FISCAL YEAR 2006**

COUNTRY	Total	Visa Waiver ²
Total	33,667,328	15,985,325
Andorra	858	762

¹ These statistics from DHS Immigration Yearbook 2006.

² Note: DHS notes that, for this chart, INA 212d4A entries also count as "Visa Waiver" entries; therefore, the total number of 15 million is not solely VWP entrants.

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Australia	750,492	676,461
Austria	157,474	140,144
Belgium	219,727	200,162
Brunei	847	575
Bulgaria	39,493	N/A
Cyprus	8,942	N/A
Czech Republic	47,169	N/A
Denmark	228,268	205,761
Estonia	10,057	N/A
Finland	112,950	99,603
France	1,192,201	1,011,273
Germany	1,704,154	1,511,970
Greece	65,839	N/A
Hungary	47,704	N/A
Iceland	49,535	44,256
Ireland	496,660	459,770
Italy	758,896	657,553
Japan	4,306,792	4,010,916
Korea, South	942,341	N/A
Latvia	11,938	N/A
Liechtenstein	1,376	1,224
Lithuania	12,780	N/A
Luxembourg	9,329	8,119
Malta	5,367	N/A
Monaco	857	699
Netherlands	646,025	598,158

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New Zealand	238,215	215,312
Norway	173,364	149,968
Poland	182,416	N/A
Portugal	108,122	94,754
San Marino	583	533
Slovakia	27,402	N/A
Slovenia	15,443	12,962
Spain	543,755	487,816
Sweden	347,803	311,002
Switzerland	284,197	254,618
Turkey	121,153	91
United Kingdom	4,949,130	4,557,850

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Senator Feinstein
February 27, 2008
Amy Pope

Statement for Subcommittee Hearing:
**“Weaknesses in the Visa Waiver Program: Are the Needed Safeguards in
Place to Protect America?”**

For the citizens of 27 select countries – including Australia, Singapore, Slovenia, and the United Kingdom – entering the United States is as simple as purchasing an airline ticket and then arriving at the airport with a valid passport in hand. No visa is required because they are from countries that are part of the visa waiver program.

In fact, 15 million people enter the United States through the visa waiver program each year. Thousands of these people overstay their authorized visit; many just simply disappear into the shadows.

It is estimated that 40% of the current undocumented population are people who have overstayed their visas. That means that if there are 12 million undocumented people now in the U.S., 4.8 million people overstayed their visa. They did not enter the country illegally. These are people who came in at a U.S. port through legal channels but never went home.

There is no doubt that hundreds of thousands, if not millions, of the illegal population came through the visa waiver program over a period of years. I believe the visa waiver program represents the Achilles' heel of our immigration system.

The visa waiver program also provides an attractive option to terrorists looking to do Americans harm.

Senator Feinstein
February 27, 2008
Amy Pope

At a Senate Judiciary Committee hearing on September 25, 2007, DNI
Director Mike McConnell testified that Al Qaeda is purposefully recruiting
Europeans because they do not require a visa to come into this country.

As Director McConnell said, this tactic gives Al Qaeda "an extra edge in
getting an operative or two or three into the country with the ability to carry out an
attack that might be reminiscent of 9-11."

Secretary Chertoff reiterated these concerns last month when he stated
that "terrorists are increasingly looking to Europe as both a target and a platform
for terrorist attacks" against the United States.

In an interview with BBC's "World News America," Secretary Chertoff
acknowledged, "the first time we encounter [visa waiver travelers] is when they
arrive in the United States and that creates a very small window of opportunity to
check them out."

Clearly, the visa waiver program leaves open both a major gap in our
domestic security and a way to exploit our immigration laws.

Congress and the Department of Homeland Security have been focused
on immigration enforcement. In fact, Congress appropriated 3 billion dollars for
2008 for this purpose. The Department of Homeland Security is using this
money to build a border fence; to hire thousands more border patrol agents; to
conduct immigration raids at farms and factories and homes across the country.

However, despite the money and resources the Department of Homeland
Security is devoting to immigration enforcement, it continues to ignore the long-
standing directive to track people who overstay their visas.

Senator Feinstein
February 27, 2008
Amy Pope

In 1986, as a pre-condition to implementing the visa waiver pilot program, the Attorney General was required to certify a system that could track arrivals and departures.

Since then, in no less than 12 pieces of legislation, Congress has directed the Executive branch over and over again to create a way to track who is coming and going from our country.

Congress has appropriated millions of dollars and deadline after deadline. But still, the Executive branch has failed to act.

This subcommittee held a hearing on the US-VISIT entry-exit system last January. At that point, it was clear that the Department of Homeland Security was failing to meet the mandate to develop a way to track who is coming and going from the United States at all of our ports of entry.

Today, it seems that the Department of Homeland Security is moving full steam ahead to admit even more countries to the visa waiver program. In fact, just on Tuesday, DHS signed a memorandum of understanding to bring yet another country – the Czech Republic – into the visa waiver program. Once again, they are doing so without meeting the mandates that Congress has laid out for them.

Just last week, Secretary Chertoff gave a press briefing on the Department of Homeland Security's efforts to strengthen border security and immigration reform. He stated, "Congress didn't give us comprehensive immigration reform, so we are going to do what we can with the tools that we have."

Senator Feinstein
February 27, 2008
Amy Pope

Let me be clear. Congress has given DHS tools to fix our immigration and security problems in the 9/11 legislation. The law has two straight-forward requirements:

First – DHS cannot admit new countries into the program until it has a way to track who is coming and going from our country's airports – until it can verify the departure of 97% of travelers leaving U.S. airports. It cannot do so.

Second – DHS cannot admit new countries into the program until it has a fully operational electronic travel authorization system – a system that every visa waiver traveler must use. That means that every visa waiver traveler must provide their biographical information to the Department of Homeland Security before they can get on a plane to the United States. DHS cannot do so.

By all accounts, DHS cannot yet meet either requirement, but it is moving – contrary to law – to admit new countries – and even more travelers – into the program by this fall.

I believe that what we will hear today is that, rather than develop a meaningful exit program, DHS is so determined to certify that it can verify the departure of 97% of airport travelers, that it has developed a false calculation of the departure rate.

I have also heard that although the Administration is developing an "electronic travel authorization system," it does not intend that all visa waiver travelers must use it initially – in clear contradiction of the statute.

Senator Feinstein
February 27, 2008
Amy Pope

Frankly, I hope that these reports are untrue. I would not like to believe that the Department of Homeland Security – which has exposed the way that terrorist operatives and illegal immigrants intend to exploit the visa waiver program – is the same agency that is moving full steam ahead to admit at least 4 and as many as 8 new countries into the program without the necessary controls in place.

I hope today that we can have an open discussion about the Administration's intentions with respect to expanding the visa waiver program. We need straightforward answers to what needs to be done to make this program work without compromising our national security

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Terrorism,
Technology, and Homeland Security,
Committee on the Judiciary, U.S.
Senate

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VISA WAIVER PROGRAM

Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals

Statement of Jess T. Ford, Director
International Affairs and Trade



GAO-08-458T

February 28, 2008



Highlights of GAO-08-458T, a testimony before the Chairman, Subcommittee on Terrorism, Technology, and Homeland Security, Committee on the Judiciary, U.S. Senate.

Why GAO Did This Study

The Visa Waiver Program, which enables citizens of participating countries to travel to the United States without first obtaining a visa, has many benefits, yet also presents security, law enforcement, and illegal immigration risks. In August 2007, Congress passed legislation that provides the Department of Homeland Security (DHS) with the authority to expand the program to additional countries whose nationals' applications for short-term business and tourism visas were refused between 3 and 10 percent of the time in the prior fiscal year. Countries must also meet certain conditions, and DHS must first complete and certify a number of required actions aimed at enhancing the security of the program. This testimony will focus on one of these required actions—namely, that a system be in place that can verify the departure of 97 percent of foreign nationals who depart through U.S. airports (referred to as an air exit system). Our observations are based on our review of relevant legislation, regulations and agency operating procedures, and prior GAO reports on the Visa Waiver Program and immigrant and visitor entry and exit tracking systems, as well as on discussions with federal agency officials. In commenting on a draft of this statement, DHS emphasized that it had not finalized its plan for certifying the “97 percent” requirement, but that the department believes the current plan would meet the legislative requirement. The Department of State also provided technical comments, which we incorporated, as appropriate.

To view the full product, including the scope and methodology, click on GAO-08-458T. For more information, contact Jess Ford at (202) 512-4128 or fordj@gao.gov.

VISA WAIVER PROGRAM

Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals

What GAO Found

On December 12, 2007, DHS reported to us that it will match records of foreign nationals departing the country, as reported by airlines, to the department's existing records of any prior arrivals, immigration status changes, or prior departures from the United States. Using this formula, DHS stated that it can attain a match rate above 97 percent, based on August 2007 data, to certify compliance with the legislative air exit system requirement. DHS told us that it believes this methodology would meet the statutory requirement. On February 21, 2008, DHS indicated that it had not finalized its decision on the methodology the department would use to certify compliance. Nevertheless, the department confirmed that the basic structure of its methodology would not change, and that it would use departure records as the starting point. There are several limitations with this methodology. For example, DHS's methodology does not begin with arrival records and determine if these foreign nationals stayed in the United States beyond their authorized periods of admission (referred to as overstays). Therefore, this methodology will not inform overall and country-specific overstay rates—key factors in determining illegal immigration risks of the Visa Waiver Program. Although most long-term overstays are likely motivated by economic opportunities, a few overstays have been identified as terrorists or involved in terrorist-related activity, including some of the September 11, 2001, hijackers. In addition, DHS's current methodology does not address the accuracy of airlines' transmissions of departure records, and DHS acknowledges that there are weaknesses in the departure data. For example, there may be some visitors who did not leave the country by air even though they were recorded on airlines' manifest data as having departed. The inability of the U.S. government to track the status of visitors in the country, to identify those who overstay their authorized period of visit, and to use this data to compute overstay rates have been longstanding weaknesses in the oversight of the Visa Waiver Program. DHS's plan to meet the “97 percent” requirement in the visa waiver expansion legislation will not address these weaknesses.

United States Government Accountability Office

February 28, 2008

Chairman Feinstein and Members of the Subcommittee:

I am pleased to be here to discuss an important aspect of our ongoing work on the Department of Homeland Security's (DHS) oversight of the Visa Waiver Program¹ and executive branch plans to expand the program—namely, a newly enacted legislative requirement that a system be in place that can verify the departure of 97 percent of foreign nationals who depart the United States through airports (referred to as an air exit system). The Visa Waiver Program enables citizens of 27 participating countries to travel to the United States for tourism or business for 90 days or less without first obtaining a visa from U.S. embassies and consulates.² The program has many benefits, including facilitating international travel for millions of foreign nationals seeking to visit the United States each year, creating substantial economic benefits to the United States, and allowing the Department of State (State) to allocate resources to visa-issuing posts in countries with higher-risk applicant pools.

However, as we have reported,³ the program also poses inherent security, law enforcement, and illegal immigration risks to the United States. In particular, visa waiver travelers are not subject to the same degree of screening as those with visas because they are not interviewed by a consular officer before arriving at a U.S. port of entry. Therefore, the program could be exploited to gain illegal entry into the United States. In addition to these concerns, weaknesses in the U.S. government's system to track foreign visitors may hamper efforts to track foreign nationals who enter the country illegally, as well as those who enter legally yet overstay their authorized period of admission (referred to as overstays). Although most long-term overstays are likely motivated by economic opportunities, a few overstays have been identified as terrorists or involved in terrorist-related activity, including some of the September 11, 2001, hijackers.

¹The Immigration Reform and Control Act of 1986, P.L. 99-603, created the Visa Waiver Program as a pilot program. In 2000, the program became permanent under the Visa Waiver Permanent Program Act, P.L. 106-396.

²The participating countries are Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

³See GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, GAO-06-854 (Washington, D.C.: July 28, 2006).

Until recently, U.S. law required that a country may be considered for admission into the Visa Waiver Program if the refusal rate for its nationals' business and tourism visas was less than 3 percent in the prior fiscal year. The executive branch has supported more flexible criteria for admission, and, in August 2007, Congress passed legislation that provides DHS with the authority to admit countries with refusal rates between 3 percent and 10 percent, if the countries meet certain conditions.⁴ For example, countries must meet all mandated Visa Waiver Program security requirements and cooperate with the United States on counterterrorism initiatives. Before DHS can exercise this new authority, the legislation requires that the department complete certain actions aimed at enhancing security of the Visa Waiver Program.

As requested, my testimony today will focus on one of these requirements placed on DHS—namely that an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports.⁵ Our observations are derived from our ongoing review of the Visa Waiver Program based on a request from this subcommittee.

In the course of this work, we reviewed documentation, including the laws governing the Visa Waiver Program and its expansion, relevant regulations and agency operating procedures, and prior GAO reports on immigrant and visitor entry and exit tracking systems. (A list of related GAO products appears at the end of this testimony.) Specifically, we collected and analyzed documentation and interviewed officials from several DHS components—including Customs and Border Protection (CBP) and the U.S. Visitor and Immigrant Status and Indicator Technology (US-VISIT)

⁴Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53.

⁵Before DHS can expand the program to countries with refusal rates between 3 percent and 10 percent, it must also certify that an electronic travel authorization system is fully operational. This system would require nationals from visa waiver countries to provide the United States with biographical information before boarding a U.S.-bound flight to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the foreign national to travel to the United States under the program. As of Feb. 21, 2008, DHS had not announced its plans for this authorization system. In addition, Congress also required the implementation of a biometric exit system at U.S. airports. If this is not in place by mid-2009, the flexibility DHS could have obtained to admit countries with refusal rates between 3 percent and 10 percent will be suspended until it is in place. A biometric air exit system utilizes biometric identifiers such as digital fingerprint scans rather than paper documents and biographic information to verify the departure of foreign nationals from the United States. As of Feb. 21, 2008, DHS had not announced plans for a biometric exit system.

Program Office⁵—on the department's plans for the air exit system. We conducted this performance audit from September 2007 through January 2008, 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. We will be reporting later this year on other aspects of the Visa Waiver Program, including the actions that DHS has taken to implement recommendations from our 2006 report.⁷

Summary

On December 12, 2007, DHS reported to us that it will match records, reported by airlines,⁸ of visitors departing the country to the department's existing records of any prior arrivals, immigration status changes,⁹ or prior departures from the United States. Using this methodology, DHS stated that it can attain a match rate above 97 percent, based on August 2007 data, to certify compliance with the air exit system requirement in the legislation.¹⁰ On February 21, 2008, in commenting on a draft of this statement, DHS indicated that it had not finalized its decision on the methodology the department would use to certify compliance. Nevertheless, the department confirmed that it planned to use departure

⁵The US-VISIT program is governmentwide program designed to integrate information on certain foreign nationals' arrival and departure from the United States. US-VISIT aims to enhance the security of U.S. citizens and visitors, facilitate legitimate travel and trade, ensure the integrity of the U.S. immigration system, and protect visitors' privacy. In 2004, DHS's US-VISIT program began collecting information on foreign nationals arriving in the United States. The program is managed by the US-VISIT Program Office, which is headed by the US-VISIT Director, who reports to the DHS Undersecretary for National Protection and Programs. GAO has issued a series of reports on the US-VISIT program.

⁷GAO-06-854.

⁸Air carriers transmit visitor manifest information, which is obtained directly from government-issued passports, to CBP through the Advanced Passenger Information System (APIS). APIS includes arrival and departure manifest information such as name, date of birth, travel document issuing country, gender, U.S. destination address, entry date, and departure date. As of Feb. 19, 2008, commercial carriers are required to transmit manifest information to be vetted by DHS prior to departure of the aircraft.

⁹This includes changes and extensions of the visits of lawfully admitted, nonimmigrant foreign nationals.

¹⁰DHS officials indicated that they may update the air departure data prior to certification.

records as the starting point. There are several limitations with this approach. First, DHS's approach does not begin with arrival records to determine if those foreign nationals stayed in the United States beyond their authorized periods of admission. Therefore, DHS's plan will not inform overall and country-specific overstay rates—key factors in determining illegal immigration risks in the Visa Waiver Program.¹¹ In addition, the methodology does not address weaknesses in data the airlines report on people who are departing the United States by air, and DHS acknowledges there are weaknesses in the departure data. For example, there may be some visitors who did not leave the country by air even though they were recorded on airlines' manifest data as having departed. The inability of the U.S. government to track the status of visitors in the country, to identify those who overstay their authorized period of visit, and to use these data to compute overstay rates have been longstanding weaknesses in the oversight of the Visa Waiver Program.¹² DHS's plan to meet the "97 percent" requirement in the visa waiver expansion legislation will not address these weaknesses.

Background

In 2007, almost 13 million citizens from 27 countries entered the United States under the Visa Waiver Program. The program was created to promote the effective use of government resources and to facilitate international travel without jeopardizing U.S. national security. The United States last expanded the Visa Waiver Program's membership in 1999 with

¹¹The overstay rate is the ratio of the total number of nationals of a country who were admitted to the United States as nonimmigrant visitors during the previous fiscal year and who violated the terms of such admission by remaining in the country beyond the authorized time period to the total number of nationals of that country who arrived at a U.S. port of entry and applied for admission into the United States as nonimmigrant visitors during the same period.

¹²For more than 10 years, GAO has recommended the collection of departure information and the development of estimates of overstays by air. See GAO, *Illegal Aliens: Despite Data Limitations, Current Methods Provide Better Population Estimates*, PEMD-93-25 (Washington, D.C.: Aug. 5, 1993) and GAO, *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*, PEMD-95-20 (Washington, D.C.: Sept. 26, 1995). In November 2007, DHS told us that the department could not yet respond to open recommendations from these reports, in part because DHS has not identified which office will have responsibility for calculating overstay rate estimates.

the addition of Portugal, Singapore, and Uruguay,¹³ since then, other countries have expressed a desire to become members. In recent years, Members of Congress have introduced bills calling for the expansion of the program. In February 2005, President Bush announced that DHS and State would develop a strategy, or "Road Map Initiative," to clarify the statutory requirements for designation as a participating country. According to DHS, some of the countries seeking admission to the program are U.S. partners in the war in Iraq and have high expectations that they will join the program due to their close economic, political, and military ties to the United States.

In July 2006, we reported that DHS and State were consulting with 13 "Road Map" countries seeking admission into the Visa Waiver Program—Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and South Korea.¹⁴ In September 2007, State nominated Greece for admission into the program, and DHS is currently reviewing this nomination to assess the impact of Greece's participation on U.S. security, law enforcement, and illegal immigration interests. In fiscal year 2006, Greece was one of three countries (along with Cyprus and Malta) with a refusal rate below 3 percent. Three other "Road Map" countries have refusal rates between 3 and 10 percent, while seven others have rates above 10 percent (see table 1).¹⁵

¹³In 2003, the Attorney General removed Uruguay from the Visa Waiver Program, stating that Uruguay's participation in the program was inconsistent with U.S. interests. According to a 2002 *Federal Register* notice on the subject, Uruguayan nationals were, on average, two to three times more likely than all nonimmigrants to have been denied admission at the border. Uruguayan air entries had an apparent overstay rate more than twice that of the average apparent overstay rate for all nonimmigrant air entries. In addition, Argentina was removed from the program in 2002, following an economic crisis in that country and an increase in the number of Argentinean nationals attempting to use the Visa Waiver Program to live and work illegally in the United States.

¹⁴See GAO, *Process for Admitting Additional Countries into the Visa Waiver Program*, GAO-06-835R (Washington, D.C.: July 28, 2006).

¹⁵Under the August 2007 visa waiver legislation, a country whose refusal rate is above 10 percent could also be considered for admission into the program if its overstay rate does not exceed a maximum overstay rate. According to the legislation, DHS and State must establish the maximum overstay rate, using information from the air exit system to do so. DHS has not indicated if or when it plans to establish this rate.

Table 1: Visa Refusal Rates for Short-Term Tourist and Business Visitors of Countries Seeking to Join the Visa Waiver Program, Fiscal Year 2007

"Road Map" country	Refusal rate (%)
Greece	1.6
Cyprus	1.8
Malta	2.7
Estonia	4.0
South Korea	4.4
Czech Republic	6.7
Hungary	10.3
Latvia	11.8
Slovakia	12.0
Lithuania	12.9
Bulgaria	14.3
Poland	25.2
Romania	37.7

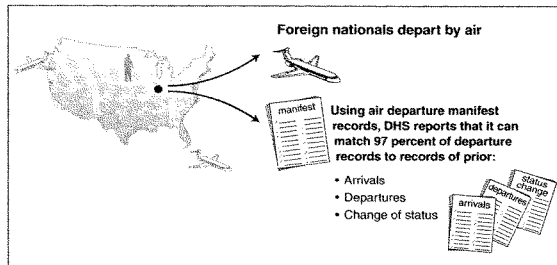
Source: Department of State.

We plan to report later this year on the other aspects of our ongoing work for the subcommittee, including the status of DHS's plans to expand the Visa Waiver Program to other "Road Map" countries and the extent to which DHS has implemented other provisions in the August 2007 legislation, including an electronic travel authorization system. In addition, we plan to report this year on the cost and resource implications for State's consular operations of changes in the countries that participate in the Visa Waiver Program.

DHS's Current Plan to Certify Air Exit System Requirement Will Not Address All Potential Risks of An Expanded Visa Waiver Program

In response to our inquiries, on December 12, 2007, DHS reported to us that it will match records of foreign nationals' departures that airlines reported to the department to records of any prior arrival, change of status action, or prior departure from the United States to certify the air exit system requirement (see fig. 1). Using this methodology, DHS stated that it can achieve a 97.10 percent match rate, based on data from August 2007. Although DHS acknowledged there are weaknesses with this methodology, the department told us that it had no intention of altering its plans for certifying the air exit system requirement. On January 23, 2008, the assistant secretary for policy development noted that DHS may use more current departure manifest data prior to certification. On February 21, 2008, in commenting on a draft of this testimony, DHS indicated that it had not finalized its decision on which methodology the department would use to certify compliance; however, the department confirmed that all methodologies under consideration would match foreign nationals' departure records against prior records "to determine that the person is a foreign national, and that the person did depart the country through a U.S. airport."

Figure 1: DHS's Current Plan for Certifying "97 Percent" Requirement

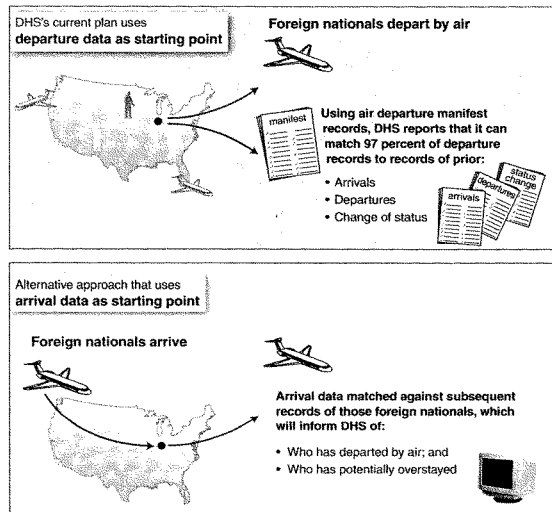


Sources: GAO analysis of Department of Homeland Security data; Map Resources (maps); Nova Development (clip art)

There are several weaknesses with this approach. First, DHS's methodology does not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of admission—more useful data for oversight of the Visa Waiver Program and consideration of its expansion. Furthermore, DHS's methodology will not inform overall or country-specific overstay rates, which are key factors in determining illegal immigration risks in the

Visa Waiver Program. An alternate approach would be to track air arrivals from a given point in time and determine whether those foreign nationals have potentially overstayed.¹⁶ Figure 2 compares DHS's plan to match visitor records using departure data as a starting point to a methodology that would track foreign nationals using arrival data as a starting point.

Figure 2: DHS's Current Plan Omits Those Who Remain in the United States



Sources: GAO analysis of Department of Homeland Security data; Map Resources (maps); Nova Development and Ingram Publishing (clip art).

¹⁶This could include foreign nationals who departed after their authorized period of admission expired, as well as those foreign nationals who may have remained in the country as overstays.

Second, for the purposes of this provision, we do not see the value in verifying that a foreign national leaving the United States had also departed at a prior point in time—in other words, matching a new departure record back to a previous departure record from the country.¹⁷ If, however, DHS attempted to match records of air departures in August 2007 back to records of prior entries alone, US-VISIT data for that month show that DHS would only achieve a 92.8 percent match rate. DHS's assistant secretary for policy development told us in January 2008 that the department chose to include previous departure and change of immigration status records in its methodology because this method allowed the department to achieve a match rate of 97 percent or greater.

Third, DHS's methodology does not address the accuracy of airlines' transmissions of departure records, and DHS acknowledges that there are weaknesses in the departure data. Foreign nationals who enter the United States by air are inspected by DHS officers—a process that provides information that can be used to verify arrival manifest data—and, since 2004, DHS has implemented the US-VISIT program to collect biometric information on foreign nationals arriving in the United States.¹⁸ However, the department has not completed the exit portion of this tracking system; thus, there is no corresponding check on the accuracy and completeness of the departure manifest information supplied by the airlines. As a result, according to DHS, it cannot be certain that visitors listed on airlines' manifest data as departing the country did in fact physically depart. Furthermore, there may be some visitors who did leave the country by air, but were not recorded on airlines' manifest data as having departed. According to DHS, the department works with air carriers to try to improve both the timeliness and comprehensiveness of manifest records,

¹⁷A DHS official told us that the system functions by matching the departure record to an alien's "account," which may contain numerous prior arrivals, departures, and immigration benefit transaction records. The official also stated that a specific departure record match may not fall chronologically in the alien's "account" after an arrival; it may fall, for example, after a record that an immigrant benefit was granted to extend the alien's stay for 6 additional months.

¹⁸DHS's US-VISIT program collects, maintains, and shares data, including biometric identifiers like digital fingerprints, on selected foreign nationals entering the United States to verify their identities as they arrive at air, sea, and land ports of entry. DHS currently operates the entry portion of the US-VISIT program at more than 300 air, sea, and land U.S. ports of entry. When fully implemented, US-VISIT is also intended to capture the same information from foreign nationals as they depart the country. The program aims to, among other things, identify foreign nationals who have overstayed or violated the terms of their visit.

and fines carriers that provide incomplete or inaccurate information. If DHS could evaluate these data, and validate the extent to which they are accurate and complete, the department would be able to identify problems and work with the airlines to further improve the data.

DHS reported to us that it had used its methodology for meeting the “97 percent” requirement to match records in the past; however, we were unable to identify an instance when DHS had used this particular methodology. We noted that DHS has used a similar methodology since 2004 in its annual report to the Committees on the Judiciary in the U.S. Senate and House of Representatives on the matching of visitor arrival and departure records using biographic and biometric data gathered through US-VISIT.¹⁹ However, the methodology used in these annual reports is different from what DHS told us it intends to use to certify the “97 percent” provision. In these prior annual reports, DHS matched departure records to records of prior arrivals into the United States. For example, for the period of January 5, 2004, through September 30, 2004, DHS was able to match 71 percent of recorded departures from air and sea ports of entry to records of prior arrivals. In its May 2007 report on its integrated entry and exit data system, DHS was able to match 88.1 percent of recorded departures from air and sea ports of entry to records of prior arrivals. While these reports have shown that DHS’s ability to match departure records has improved since US-VISIT was established in 2004, this methodology does not account for foreign nationals who have not left the United States.

Moreover, DHS’s plans to certify the “97 percent” requirement will not further its efforts in responding to Congress’s longstanding calls for the development of an automated entry and exit control system to track visitors to the United States and identify those visitors who have remained in the country illegally.²⁰ We testified in June 2007 that the prospects for successfully delivering a biometric exit system were as uncertain then as

¹⁹See “United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Annual Report on the Integrated Entry and Exit Data System” as required by the Data Management Improvement Act of 2000, P.L. 106-215, and the Visa Waiver Permanent Program Act, P.L. 106-396.

²⁰In 1996, Congress called for such a system. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208. In 2000, Congress passed legislation requiring the establishment of an electronic system that would provide access to and integrate visitor arrival and departure data for all ports of entry by December 31, 2005. See The Immigration and Naturalization Service Data Management Improvement Act of 2000, P.L. 106-215.

they were when US-VISIT was first implemented in 2004.²¹ Without the capability to verify departures, DHS cannot ensure the integrity of the immigration system by identifying visitors who have overstayed their original period of admission.

In October 2007, DHS officials told us that data on overstay rates would be very useful for oversight of the Visa Waiver Program. As we have reported, overstays are a significant part of the larger problem of illegal immigration.²² For example, overstay rates would inform decision makers of illegal immigration risks associated with adding new countries to the program.²³ However, according to the department, it cannot generate accurate overstay rates for visitors from visa waiver countries due to weaknesses in the data that indicate who has departed the United States, as previously mentioned. Moreover, the department has not designated an office with the responsibility of developing such data for the purposes of this program. Nevertheless, we identified an office within US-VISIT, the Data Integrity Group, which develops limited data on overstay rates that may be useful information for oversight of the Visa Waiver Program. This office provides information to DHS's Immigration and Customs Enforcement on visitors who have potentially overstayed the terms of

²¹We have reported on how DHS has managed US-VISIT's exit capability. In particular, we reported that, beyond a high-level schedule, no other exit program plans are available that define what will be done by what entities and at what cost. See GAO, *Homeland Security: Prospects for US-VISIT Biometric Exit Capability Remain Unclear*, GAO-07-1044T (Washington, D.C.: June 28, 2007).

²²In 2000, the then-Immigration and Naturalization Service estimated that about one-third of illegal aliens in the United States were overstays. In 2004, we reported that three alternative estimates of overstays that we analyzed did not represent the illegal population, but did provide some evidence that a substantial proportion of illegal immigrants are likely overstays. These data demonstrated that preventing additional visitors from becoming overstays is in the national interest. See GAO, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82 (Washington, D.C.: May, 21, 2004).

²³In addition, a country must be terminated from the Visa Waiver Program if that country's disqualification rate for the most recent fiscal year for which data are available was more than 3.5 percent. The disqualification rate is the total for a given fiscal year, of (1) those nationals of the country who were admitted as nonimmigrants and violated the terms of their admission—this would include overstays—and (2) the number of foreign nationals who were denied admission upon arrival in the United States, as it compares to the total number of nationals of that country who applied for admission as nonimmigrant visitors during the same time period. According to the legislation, the country must be terminated at the beginning of the second fiscal year following the fiscal year in which the determination of the disqualification rate was made. See 8 USC § 1187 (f). We will be reporting on this issue later in the year as part of our overall work on the Visa Waiver Program for this subcommittee.

their admission into the country. Immigration enforcement officials told us they use these data regularly during investigations of potential illegal immigrants. The Data Integrity Group also provides similar information to the department's Office of Immigration Statistics, as well as the Visa Waiver Program Office. While these are positive actions, DHS acknowledges that there are significant limitations in these data because of weaknesses in the multiple systems that the Data Integrity Group uses. For example, an unknown portion of reported overstays may be false because DHS could not match an arrival record to a departure or change of status record (for example, a visitor may have departed via a land border and not generated a departure record).

Conclusion

An air exit system that facilitates the development of overstay rate data is important to managing potential risks in expanding the Visa Waiver Program. DHS's planned methodology for meeting the "97 percent provision" so it can move forward with program expansion will not demonstrate improvements in the air exit system or help the department identify overstays or develop overstay rates.

Chairman Feinstein, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

Contact and Acknowledgments

For further information about this statement, please contact Jess Ford at (202) 512-4128 or fordj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition, John Brunmet, Assistant Director; Teresa Abruzzo; Kathryn Bernet; Joseph Carney; Etana Finkler; and Eric Larson made key contributions to this statement.

Related GAO Reports

Homeland Security: U.S. Visitor and Immigrant Status Program's Long-standing Lack of Strategic Direction and Management Controls Needs to Be Addressed. GAO-07-1065. August 31, 2007.

Homeland Security: Prospects For Biometric US-VISIT Exit Capability Remain Unclear. GAO-07-1044T. June 28, 2007.

Homeland Security: US-VISIT Program Faces Operational, Technological, and Management Challenges. GAO-07-632T. March 20, 2007.

Homeland Security: US-VISIT Has Not Fully Met Expectations and Longstanding Program Management Challenges Need to Be Addressed. GAO-07-499T. February 16, 2007.

Homeland Security: Planned Expenditures for U.S. Visitor and Immigrant Status Program Need to Be Adequately Defined and Justified. GAO-07-278. February 14, 2007.

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**STATEMENT OF SUSAN GINSBURG
DIRECTOR, MOBILITY AND SECURITY PROGRAM
THE MIGRATION POLICY INSTITUTE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND
SECURITY
UNITED STATES SENATE**

CONCERNING

**"WEAKNESSES IN THE VISA WAIVER PROGRAM: ARE THE NEEDED
SAFEGUARDS IN PLACE TO PROTECT AMERICA?"**

FEBRUARY 28, 2008

Chairman Feinstein, Senator Kyl, thank you for the opportunity to testify today before this distinguished committee. I will summarize my formal written statement and provide my full testimony for the record.

Recognizing legitimate concerns that the Visa Waiver Program could pose security risks to the United States, it is important to explore ways in which the program's structure could be modified to maintain its considerable benefits while also limiting potential exposure.

Last year, with passage of the *Secure Travel and Counterterrorism Partnership Act of 2007*, Congress responded to pressing new security realities by adjusting the criteria of the visa-free travel system to reduce its vulnerability to terrorist exploitation, requiring closer security collaboration against terrorism with participating countries.

The new law attempts once again to mandate an exit system. Perhaps not everyone will recall that Congress first attempted to mandate an effective exit system as part of the Visa Waiver Pilot Program in 1986, and tried again subsequently.

This time around, the new law tries to cover two bases by mandating both a working biographic and biometric exit system.

To work, these protections must be developed with care — and must actually be implemented — to be effective. The United States must take reasonable risks because absolute protection against all risks is impossible. But it cannot rely on methods of protecting travel and homeland security that are invoked in principle but do not actually function.

In my view, the steps Congress authorized last year do have the potential to enable the Visa Waiver Program to be strengthened and expanded. Based on current assessments by homeland security and intelligence community officials, and the overall interests of the United States in deepening security collaboration with economic partners, designing a tailored response to the specific risks of visa-free travel seems far more appropriate than eliminating the program altogether.

To achieve an effective system, however, several points I consider critical must be addressed. These are, in order:

- information sharing relating to terrorism, including both information about individuals and about travel documents;
- a working Electronic Travel Authorization (ETA);
- a functioning exit system; and
- the ability of the Secretaries of Homeland Security and State to suspend the program with any individual country if the Director of National Intelligence provides threat information that warrants the suspension.

All of these can work together to raise the level of confidence in the visa-free travel system if they are properly implemented. My observations below point to the areas I believe are important in the implementation process.

Information sharing. Congress now requires the Secretary of Homeland Security to certify that the partner country cooperates with the United States on “counterterrorism initiatives, information sharing, and preventing terrorist travel” as one set of required risk-mitigation measures. This is the most important provision from a security perspective, but it is vague. It would be helpful if it clearly specified what the actual required security elements are.

The most important of them would be completed reciprocal agreements requiring any new partner country to provide information sufficient to screen for individuals that each government identifies as known or suspected terrorists. Governments should not join the Visa Waiver Program until the actual agreement is completed. That is, their expressed willingness to make an information-sharing agreement in the future is insufficient.

According to the Department of State, the United States has signed such agreements with seven countries and is in the process of negotiating another dozen or so. It matters how many partner information-sharing agreements with Visa Waiver Program countries have been completed, and how many others are being negotiated with countries already in the program or with those in the discussion process.

It would make sense to take up these agreements with partner governments in an order that reflects the locations of greatest risk — that is, where there is the greatest likelihood that citizens may pose a terrorist threat to the United States or to their own country.

As a risk-mitigation measure for the United States and its Visa Waiver Program partners, these information-sharing agreements also should be sought with countries that are not a part of the program but are necessary partners in efforts against terrorists, including by preventing terrorists from obtaining visas and detecting them during travel.

Another important information-sharing priority is for program partners to jointly improve the ability to detect dangerous individuals through screening and scrutiny of travel documents. Gleaning information from passports and other travel documents is one method by which officials can detect terrorists as they travel, including when their identities are not already known through prior information sharing.

Among the important factors in deriving the information potential of travel documents is the ability to confer in real time with the passport-issuing authority, to verify findings and enable legitimate travelers to continue on their journey. This is one arena in which the United States and its partners should consider providing assistance to other countries.

Both the screening information concerning known or suspected terrorists and the travel document information heighten the value of existing agreements to provide passenger information and any future reciprocal agreements exchanging passenger information. Passenger information has distinctly greater value if it can be checked against well-vetted information about known and suspected terrorists, and against lost and stolen passports data known to the issuing governments.

The Electronic Travel Authorization. Enacted as part of the new law last year, the ETA is a critical new function. It will allow the United States and other countries that may adopt an ETA the time to check travelers' biographic information to determine whether they should be permitted to travel. There is no reason to think such a system cannot work, as it is already in use in Australia. However, as I am not yet clear on the implementation plan, I will flag a few of the aspects I believe should be considered going forward.

The ETA system will require that any traveler who is not cleared immediately apply for and obtain a visa before departure. It is not certain what information will be sought. At least at this point, simply providing passport data and the minimal information included on I-94Ws would not be a significant burden on travelers and would enable an important check.

But depending on how that check is done, it could generate many rejections or fewer rejections. If it generates too many rejections, the consular sections in Visa Waiver Program countries would be overwhelmed. If it generates too few, travelers who should not be permitted to travel could travel anyway. The result: Inspectors and infrastructure at the ports of entry would be overwhelmed, with deleterious effects on the orderly and efficient flow of people at the ports of entry, and a higher likelihood that time pressure would lead to erroneous decisions. Either scenario would be troublesome.

Some scenarios should be run using current data to assess the impact of an ETA using different assumptions and screening methodologies. If the system cannot be expected to work consistent with resources and infrastructure, this needs to be considered early.

A more strategic security problem is that if the ETA system sends a notably large percentage of travelers with Arabic names to apply for visas, the resulting ill will might well overcome the critical operational advantages that pretravel screening clearly provides. In the long-term effort to reduce the lure of terrorism, it is important to make sure that discrimination against Muslims and Arabs is eliminated and opposed; that all citizens are able to fully enjoy the benefits of the countries in which they live; and that protective systems are perceived to be fair and reasonable, whether in the immigration and border systems or at the local police level. This is the only way to build trust and diminish the draw of terrorism. Therefore, it is important to make sure that the screening systems that support the ETA are as accurate and nondiscriminatory as possible.

In addition, potential problems with name recognition must be addressed carefully. If individual travelers are rejected through the ETA because of an initial name recognition problem and are later granted visas, there should be a way of ensuring that the next time they seek to travel they are not forced to reapply for a visa without additional reason.

The ability to refine systems sufficiently acutely to detect the dangerous few without undue errors, discrimination, and costly delays has presented a serious challenge to border screening. This same challenge exists in the construction of an ETA.

An exit system. The concept of an exit system has generally been seen as an immigration enforcement measure because that is how it was conceived when

Congress first authorized it in 1986. With respect to terrorism, the exit system is often viewed as unimportant for counterterrorism purposes because if a dangerous alien has departed the United States, the key security objective is achieved.

With Congress having pushed for an exit system for over 20 years, the time has come to take this mission seriously for immigration compliance, crime control, and counterterrorism purposes.

An exit system is self-evidently important for achieving a higher level of compliance with immigration laws, including identifying those who might overstay their visas to carry out criminal or terrorist activities. The well-known estimate is that 25 to 40 percent of unauthorized immigrants are visa overstayers. The 9/11 Commission Report and other reports have documented how the combination of complex immigration laws, ineffectual compliance systems, and weak enforcement have led to exploitation of the visa system by terrorists.

Congress has mandated that the exit system initially be required to be 97 percent effective in establishing who exits. Within a year, the system is required to include a biometric exit check for all departing air passengers. The 97 percent formula only makes sense as a compliance verification mechanism in the visa system if the effect is to match arrivals to departures for 97 percent of entering travelers.

A biometric exit system would allow for a higher rate of accuracy of identification, especially for people with common names or using multiple valid travel documents; a higher rate of accuracy for entry matching against arrival records; and the ability to establish a platform for a trusted traveler program that would speed previously approved travelers through the security process.

Such a system would also allow for detection of wanted individuals, for instance parents abducting children. However, this raises one important question about the exit system: the lack of a law enforcement capability to respond to information generated by the system. Establishing the exit system requires more than getting the technology right; it requires designing and building a related compliance and enforcement system.

As with illegal entry over land borders, fixing the illegal overstay problem will require considerably more effort than even designing and instituting a working exit system supported by a response capability. The United States has to redesign the visa laws so as to reduce the incentives to overstay valid visas by providing a foundation earlier in the process for transitioning to a status permitting a longer stay where it is in the interests of the United States. But if anything has been learned in the past year of immigration debate, it is that security confidence and confidence in enforcement systems is essential to

forward movement. Therefore, both legal reform and an exit system should be tackled.

In addition to deterring illegal conduct, an effective exit system can be directly useful to counterterrorism officials as a tool to track suspects and networks.

When an individual becomes a person of interest after arriving in the United States and surveillance authority is granted, officials will want to know if that person exits the United States and what their destination is. That individual may lead officials to a terrorist cell somewhere overseas. Officials notoriously missed spotting the U.S. entries of Khalid al-Mihdhar before the 9/11 operation. At any point, becoming aware of al-Mihdhar and being able to track his movements would have been helpful to investigators. And while a passenger manifest may be analyzed after departure, a real-time exit verification provides more options for intervention.

Lawful exit tracking is part of the apparatus that officials can employ to catch people. There is no longer a hard divide between internal security and global intelligence. Travel intelligence is one of the ways in which that divide must be bridged, including by sharing information with trusted allies while meeting all legal requirements.

Suspension authority. There is one final element of the visa waiver modernization law that makes the program workable in the new security environment. It is important to grant the Secretaries of State and Homeland Security the authority to suspend a visa-waiver agreement based on security threats rather than only on immigration law compliance measures. In particular, holding the Directorate of National Intelligence accountable for providing relevant threat information potentially adds a significant layer of security by reinforcing that the Department of Homeland Security is an important customer as well as a major source of intelligence for the rest of the intelligence community. It would, of course, be extremely costly if it were necessary to exercise such authority, but far more so if it were not exercised if appropriate, and crucial public confidence in the system were thereby lost.

LEVEL OF RISK

The governments participating in the Visa Waiver Program are allies or friends that do not overtly threaten each other's populations. However, it is clear that individual citizens of participating countries may be associated with terrorist organizations or beliefs, and are potentially able to pose a significant threat in the United States. Terrorism, therefore, partially undermines the security assumptions under which the United States and its partners entered into the visa-free travel program.

This is not only a theoretical concern. According to the intelligence community, al Qaeda figures in Afghanistan and Pakistan still strive to achieve a successful attack in the United States. Such an attempt was made in summer 2006, when a plot designed to take liquid explosives aboard flights from Britain to the United States was disrupted. Expert assessments of al Qaeda suggest that attacking the United States remains a plausible strategic choice. However, intelligence experts are currently focused on Europe as a primary concern. The European threat has two components: a possible attack on Europe, and the potential for exploitation by terrorists of the Visa Waiver Program to stage an attack on the United States.

The appeal of al Qaeda's message among European Muslims is real, and the intelligence community states that al Qaeda has recruited and trained a small number of Anglo-looking Europeans. Their methodology is to recruit from Western Europe, send the recruits to training in areas such as the tribal region of Pakistan, and then return them to Europe in order either to carry out missions there or to travel onward to the United States.

Al Qaeda has historically paid close attention to operational planning involving travel channels. It is therefore logical to expect al Qaeda to seek recruits who look European, particularly those with clean papers. These individuals may be able to make use of visa-free travel under the Visa Waiver Program to gain relatively easy access to the United States. They are less likely to trigger alarms once they arrive at the border, and can easily integrate into their destination communities without making mistakes that could draw attention to them. Given these assessments, there is continuing reason to take seriously the risk that terrorists may exploit the Visa Waiver Program.

VISA WAIVER PROGRAM'S OPPORTUNITIES

The original driving motivation for the Visa Waiver Program was economic. By dropping the visa requirement, the Department of State saved visa-processing staffing costs. And travelers saved time and money, encouraging tourism and a freer flow of commerce.

The benefits to the United States from the program are proven. In fiscal year 2006, citizens of the 27 countries participating in the U.S. Visa Waiver Program were admitted without visas approximately 15.2 million times. The largest numbers of visa-free admissions to the United States were from the United Kingdom, at almost 4.6 million recorded admissions; followed by Japan at 3.4 million; Germany at 1.5 million; and France at 1 million. Of those who were admitted under the Visa Waiver Program, 84.5 percent came for pleasure while the remaining 15.5 percent were on business.

Nonimmigrants arriving under the Visa Waiver Program constitute almost half of all nonimmigrant I-94 admissions to the United States. In fiscal year 2006, approximately 45 percent of all nonimmigrant I-94 admissions to the United

States were through the Visa Waiver Program. Furthermore, a large majority of citizens of countries participating in the Visa Waiver Program visit the United States via said program. Of all of the nonimmigrant I-94 admissions from Visa Waiver Program countries in fiscal year 2006, 87.4 percent were under the Visa Waiver Program.

A 2002 Government Accountability Office report estimated that a visa-waiver traveler on average spent \$2,253 in the United States in 2000, compared with \$1,274 for non-visa-waiver travelers. That same report noted that the direct and indirect spending among visa-waiver travelers added between \$75 billion and \$102 billion to the U.S. gross domestic product in 2000.

The GAO, relying on information from the Travel Industry Association of America, noted that international tourism provides more than 1 million U.S. jobs, of which more than 60 percent are located in Florida, California, New York, and Hawaii. The association also estimated that in 2001, U.S. spending generated from international tourism contributed \$16 billion in tax revenues. The Department of Commerce commissioned a study in 2002 on the economic effect of the Visa Waiver Program and estimated that, between 2003 and 2007, eliminating the program would result in a loss of 3 million visitors, \$28 billion in tourism exports, and 475,000 jobs.

Thus, the Visa Waiver Program is clearly fulfilling its original purpose by contributing significantly to the expansion of business and economic opportunity for the United States and its allies.

New political and security opportunities. It is also becoming increasingly clear that the Visa Waiver Program provides important potential political and security benefits, signifying a level of trust that symbolizes countries' acceptance in the Western alliance of states.

The United States initiated the Visa Waiver Program just before the fall of the Berlin Wall. The countries that joined in visa-waiver agreements with the United States were post-World War II allies and trading partners: the United Kingdom, France, Japan, Germany, Italy, the Netherlands, Switzerland, and Sweden. The security premise implicitly underpinning these agreements was that the future was without foreseeable conflict among the developed democracies. So, in effect, the Visa Waiver Program was a form of peace dividend. It allowed allies to deepen their economic relationships without major security concerns.

When the program's expansion was halted in 1999, the list of U.S. partners significantly overlapped membership in other post-World War II organizations. Of the 29 countries participating in the Visa Waiver Program at that time, nearly 70 percent were also members of the then 29-member Organization for Economic Cooperation and Development; over 40 percent were also members of the then 19-member North Atlantic Treaty Organization; nearly 76 percent were also

members of the then 54-member Organization for Security and Cooperation in Europe; and 48 percent were also members of the then 15-member European Union. Only four Visa Waiver Program countries — Argentina, Uruguay, San Marino, and Singapore — were not part of any of these other organizations in 1999. This snapshot shows an image of the alliance of Western and democratic states with firm or growing commitments to democracy, market economies, and individual rights, an alliance with a still limited membership.

The Visa Waiver Program partnerships provide a platform for enabling the United States to help sustain, protect, and further improve and expand the common global travel channels that provide benefits to law-abiding individuals. These travel and visitor arrangements help maintain and expand a global sphere of economic freedom, democracy, and individual rights. Continuing to expand and facilitate travel by law-abiding citizens is one of the ways by which the United States and friends around the world jointly project the greater appeal of societies that are open, democratic, and based on recognition of individual rights as against the visions perpetuated by terrorists.

Many of the governments participating in the Visa Waiver Program as members of NATO and OSCE, through other multilateral commitments, and as individual entities have committed to working with the United States against terror networks directly, and in formulating and carrying out policies to address states that safeguard, sponsor, or facilitate terrorist organizations or networks. Building new protections into common travel channels is an important dimension of that joint security and economic agenda.

CONCLUSION

From a security perspective, what seems most important in examining the new Visa Waiver Program law is an essential marriage of elements: establishing information-sharing agreements; building an ETA and making it work fairly and transparently; delivering on the long-awaited promise of an exit system that can become the basis for an improved compliance system, serve a travel intelligence function, and be paired with visa law reform; and operating the program with the assistance of a threat-based suspension authority. The fundamental principle of the program is reciprocity with allies and trading partners, and this linkage to support travel and commerce, and effectively counter terrorism and crime, needs to be more fully acknowledged and more deeply developed.

STATEMENT OF PAUL ROSENZWEIG
ACTING ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS
AND DEPUTY ASSISTANT SECRETARY FOR POLICY
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE UNITED STATES SENATE JUDICIARY
SUBCOMMITTEE ON HOMELAND SECURITY, TECHNOLOGY, AND TERRORISM

IMPACT OF THE "IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION
ACT OF 2007" ON THE VISA WAIVER PROGRAM AND THE EXECUTIVE BRANCH'S
PROGRESS IN APPLYING THESE REFORMS

THURSDAY, FEBRUARY 28, 2008
226 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC

Chairman Feinstein, Senator Kyl, and Members of the Subcommittee on Terrorism,
Technology, and Homeland Security: I would like to thank you for the opportunity to appear
before you today as you examine how the Department of Homeland Security (DHS or the
Department) is responding to Visa Waiver Program (VWP) modifications in the "Implementing
Recommendations of the 9/11 Commission Act of 2007" (P.L. 110-53).

A VWP that promotes legitimate travel to the United States without compromising, and
even strengthening, our country's national security, law enforcement, or immigration interests is
a clear top priority for the Administration. Section 711 of the Act accomplishes this objective by
concurrently enhancing the VWP's security requirements and creating flexibility that expands
opportunities for new countries to become VWP members. These twin goals of security and
flexibility are complementary: the prospect of VWP membership creates tremendous incentives
for improved security postures in aspirant or "Roadmap" countries. In many respects, we will
end up with stronger travel security cooperation with VWP countries than with non-VWP
countries.

Let me spend a few moments updating you on the steps the Department has taken to further strengthen the VWP's security features and expand the program's membership.

As you know, Section 711 provides four mandatory security enhancements to the VWP which affect both current VWP countries and those that aspire to participate in the VWP through the waiver of the 3% visa denial rate requirement: (1) an Electronic Travel Authorization (ETA) system; (2) more robust data sharing efforts; (3) requirements for timely reporting of blank as well as issued lost and stolen passports; and (4) guarantees that VWP countries accept the repatriation of their nationals ordered removed from the United States. There are also three discretionary enhanced security factors to be taken into consideration when determining whether the 3% visa denial rate requirement can be waived: (1) airport security standards; (2) air marshals programs; and (3) standards for national travel documents.

To ensure both current VWP members and Roadmap countries understand the legislative changes and enhanced security standards, DHS has implemented an aggressive outreach and engagement strategy. This strategy will allow the new standards to be brought online expeditiously.

Since summer 2007, DHS has informally met with current and aspirant VWP countries alike to explain exactly what the enhanced security measures entail. This outreach effort involves both high-level consultation and working-level technical conversations between DHS personnel, in partnership with our colleagues in the Department of State, and their foreign counterparts. More recently, the Department has formalized all seven of the security enhancements into draft memoranda of understanding (MOUs) and is working to finalize associated implementing arrangements that will detail the terms of the new security measures. DHS is requiring each member and aspirant country to sign an MOU as well as the appropriate

implementing arrangements (once those have been finalized), unless other arrangements or agreements already in place fulfill the new security requirements of the VWP legislation. Those countries seeking to join the VWP will have to comply with all of the new security measures upon admission; current participants will have to meet those new requirements, including discretionary requirements, by October 2009. Staggering the times for compliance in this way best enables us to ensure a smooth and efficient path to uniform security standards for all VWP members. As we've stated before, uniform security standards are essential because the terrorist threat is not confined to particular corners of the globe.

To enable the expeditious adoption of these new security requirements, DHS-led interagency teams have begun intensive dialogue with multiple countries, including: the Czech Republic, Estonia, Germany, Greece, South Korea, and the United Kingdom. Earlier this month, a DHS-led delegation visited Athens, Prague, Berlin, and Tallinn for MOU negotiations. And, at the end of January, a Korean delegation was here in Washington for a second round of MOU discussions. We will soon begin formal consultations with Hungary, Slovakia, Latvia, and Lithuania, and expect to travel to their respective capitals for negotiations next month. Among others, Germany and the United Kingdom have a history of pursuing innovative bilateral security initiatives with the United States. The eight aspirant countries in the above list have met or are close to meeting the program's technical requirements. Equally important, they have strong incentives to commit to implementing the full suite of security standards, and each has indicated a willingness to do so.

As most of you are probably aware, Secretary Chertoff had the pleasure of signing the MOU with the Prime Minister of the Czech Republic earlier this week. We believe that the information sharing arrangements detailed in the MOUs and which will be further detailed in the

related implementing arrangements—which may include enhanced access to passenger information for those traveling to the U.S.; information on those engaged in significant criminal activity in VWP countries; information on asylum denials, fraudulent asylum claims, and immigration violations; and the timely reporting of all lost and stolen passport data— will provide our operators and analysts with new tools to secure our nation as well as help prevent terrorist and criminal activities in our VWP partner nations. As such, they will go a long way toward mitigating risks of the VWP program.

The MOU signed with the Czechs establishes a new security framework for our nations. We look forward in the coming months to signing similar MOUs with all current and prospective VWP nations. This success is the result of both Czech leadership working diligently towards this goal and engagement with the European Union. While the extension of visa free travel privileges must always remain a bilateral matter for very practical purposes - simply because we must measure the concrete actions of those countries whose citizens may receive this benefit - outreach to the EU has been vital. The United States and European Union have a common vision in which transatlantic travel is greatly facilitated for the vast majority of travelers who pose no security or law enforcement risks but is increasingly difficult for terrorists and other criminals.

Although DHS is actively engaged with each of the Roadmap countries listed above, Greece is the only VWP-candidate country that has been formally nominated for designation by the Department of State. As you know, initial designation (as well as continuing designation) depends on a determination by DHS, in consultation with the Department of State, that such designation would not negatively impact U.S. security, law enforcement, and immigration interests. To that end, a DHS-led interagency team traveled to Greece late last year to comprehensively review its counterterrorism capabilities; immigration, citizenship and

naturalization laws; passport production and issuance controls; efforts to combat organized criminal activities; general law enforcement cooperation with the United States; and border control mechanisms. DHS will undertake a similar assessment of all countries prior to admission, just as we do at least biennially for all current participants.

As noted earlier in this testimony, the twin goals of security and flexibility are mutually reinforcing. The law gives the Secretary greater flexibility with regard to aspirant countries' nonimmigrant visa refusal rate provided the Department: (1) certifies that an air exit system is in place that can verify the departure of at least 97% of the foreign nationals who exit through U.S. airports and (2) implements an Electronic Travel Authorization (ETA) system.

The Department is well on its way to being able to verify a 97% biographical match for the departure of foreign nationals exiting through U.S. airports. I should note that there are several different methods that may be used for verifying the departures of foreign nationals through U.S. airports and that in response to different requests over the past several years, DHS has identified various methodologies and statistics when asked for information on the air exit program. No final decision has been made as to precisely which methodology DHS will use in calculating the 97% match. The Department continues to evaluate and look for ways to improve the methodology underpinning the air exit calculations. To that end, US-VISIT has contracted with Lawrence Livermore National Laboratory (LLNL) to improve the matching algorithm. DHS will receive feedback from LLNL throughout FY 2008.

In addition to working through questions of methodology, DHS is also working with air carriers to ensure that they are providing accurate passenger manifest information. Improved airline data collection has increased compliance rates, which in turn has led to a positive impact on matching records. CBP will continue to work with carriers to improve both the timeliness

and comprehensiveness of the records. With the implementation of the APIS Pre-Departure, commercial carriers will be required to transmit manifest information for each traveler prior to issuing a boarding pass. Once the aircraft departs, the air carriers will be required to provide a close-out transmission that will confirm on-board passengers or reconcile the manifest to account for those passengers that did not board. This again will improve DHS' final calculations for air departure rates of foreign nationals.

Finally, when DHS implements biometric air exit processes, the Department expects the biometric data it collects to improve the match rate. This increase in matching accuracy was demonstrated in the Department's biometric exit pilot program at 14 ports of entry, which recently concluded. While DHS was collecting biometrics during the exit pilot, it used the biometric matching capability of the IDENT system to increasing the accuracy of the matches of departure records to other records.

Section 711 also requires the implementation of the ETA system prior to the Secretary's exercise of his visa refusal rate waiver authority. The ETA system will substantially strengthen the security of the VWP by providing DHS with the capability to conduct enhanced advance vetting of VWP travelers. It is essential to transforming the VWP from a program that evaluates security threats on a country-by-country basis to one that is capable of making traveler-by-traveler judgments. Under the ETA, VWP travelers will be required to electronically submit biographic and other information that is largely the same as that currently collected via the I-94W Nonimmigrant Alien Arrival/Departure Form (I-94W) to DHS prior to their departure for the United States. ETA applications will then be queried against a limited number of appropriate law enforcement databases and watchlists, enabling DHS to make a determination on each

individual's eligibility to travel to the United States under the VWP. Travelers denied an ETA will be referred to the U.S. embassy or consulate to apply for a non-immigrant visa.

In support of ETA, DHS is developing a web-based application and screening mechanism for direct access by VWP travelers. The system will be designed for future volume increases and for peak periods of travel. DHS expects that the ETA system will be online during the summer of 2008; DHS will commence an overlapping rollout of the ETA program for all VWP travelers. With support from the Department of State, DHS will initiate a public outreach campaign to promote awareness among affected VWP travelers as well as within the travel and tourism industries. In addition to enhancing security, ETA should provide for greater efficiencies in the screening of international travelers by reducing traveler delays at the ports of entry.

DHS is committed to strengthening the VWP in a substantive way and to bringing new members into the program. Ensuring that secure, legitimate visa-free travel to the United States is available to our allies is a goal we can all agree on.

Madam Chairman and Members of the Subcommittee, I want to thank you for the opportunity to present this testimony today. I would be pleased to respond to any questions you might have at this time.

What the US Government should consider in designing an Electronic Travel Authorization (ETA) Program

Executive Summary

SITA welcomes the opportunity to provide its comments and questions to Senate Judiciary Committee on the Department of Homeland Security's draft Interim Final Rule (IFR) on an Electronic Travel Authorization system. SITA recommends that the Department consider a system that affords passengers the greatest number of options to apply for and obtain an ETA, including on-line via the internet, as well as via travel agents and airline check in systems. The Department should be encouraged first to consider commercially available, currently deployed systems in order to ensure compatibility with existing industry systems and business processes, and to minimize the cost burden placed on industry, government budgets, and travelers. We make our recommendations in the belief that they will accelerate deployment and minimize cost and disruption to the industry as a whole.

US Electronic Travel Authorization – SITA Comments & Recommendations:

In a series of policy announcements which began last year, and culminated in the recent draft Interim Final Rule on Electronic Travel Authorizations, the Secretary of Homeland Security announced the Department's intention to launch an ETA system in 2008. We understand that the 2008 appropriations bill includes funds to finance the design and deployment of such a system.

- SITA welcomes this initiative as it promises to support the airline industry's vision, led by the International Air Transport Association (IATA), of "Simplifying Passenger Travel" (Ref. www.spt.aero), which makes specific reference to the benefits of providing Electronic Travel Authorization systems for passengers, industry and governments.
- SITA recommends that any Electronic Travel Authorization (ETA) system adopted in the US afford passengers the greatest number of options to apply for and obtain an ETA. With the rapid adoption of self-service, passengers must be able to obtain an ETA on-line via the internet, as well as via air transport specific communication systems and business processes, such as part of a typical travel booking (e.g. via a travel agent) and/or via airline ticketing desk or check in facilities in the airport / city office.
- SITA recommends that any ETA system should be directly linked to relevant API/PNR systems, including the interactive APIS Advanced Quick Query system when it is fully functional. This will permit efficient border controls at the earliest possible opportunity, and provide the possibility to deny boarding, in real-time, of those passenger not in possession of an ETA (or not eligible to be given an ETA) prior to boarding the aircraft bound for the United States. This would also alleviate the new burden placed on airlines of verifying that travelers are in fact in possession of any

required electronic visas (which by definition would not be reflected by a “stamp” in the passport).

- SITA’s experience in designing and delivering the ETA system in use in Australia indicates that most travelers to Australia apply for, and obtain, ETAs from travel agents at booking, or from the airlines at check in. In fact, despite significant expenditure and efforts by the Australian government, the percentage of ETAs applied for via the Internet has never risen above 16%. Reasons ascribed to this include lack of Internet literacy, security or access, complex travel itineraries, and group travel.
- SITA recommends that the Committee encourage the Department to consider commercially available, current deployed solutions in place today in such countries as Australia, that would enable Member States to comply with existing standards familiar to the airline industry, ensure a rapid deployment of any such system, and to minimize to the greatest possible extent any additional financial or operation burden to the airline industry.
- SITA suggests that ETAs be linked with the intended itinerary of visitors to the US. This will enable the Department to factor in PNR information when deciding to issue the ETA. Moreover the ETA application itself can be a vehicle to gather the informed consent of the travel agent and the passenger for PNR analysis.

Electronic Travel Authorizations – a Case Study (Australia)

SITA understands that the Department is considering an internet only system for applying for and granting ETAs. We believe this is a mistake.

Put yourself in the shoes of the foreign traveller who will be required to make use of this ETA system. He/she is not American, does not think like an American, does not arrange travel like an American, and in many cases is not Internet literate and does not speak English. Consider the travel industry (i.e. the 300,000 travel agents arranging travel to the US and the hundreds of airlines flying to the US) and their existing business processes and technology.

Thus, the introduction of an ETA system that is web-based only will be disadvantageous to travel. By neglecting foreign travel patterns, it could lead to a decrease in tourism and failure to relieve the burden of workload at US Consular Posts abroad. As well, and as noted above, despite substantial investment and advertising by the Australian government, who first implemented ETAs in 1996, the percentage of Australian ETAs issued through the Internet has never risen above 16% of the total. Thus, more than 10 years after the introduction of the Australian ETA, more than 80% of ETA applications are still handled by the travel industry through the travel industry information technology infrastructure. It would seem reasonable that the US ETA system be designed to be compatible with existing infrastructure and travel patterns.

Electronic Travel Authorizations – Arguments against and Internet only system

- Relying only on the internet for submission of applications does not give sufficient reach for foreigners. Taking into account that this is a mandatory requirement, the burden on travellers who are not internet-connected or internet-literate will be high.
- Many applicants will not be sufficiently proficient in English to understand the requirements on an internet site. Even a sophisticated site in a number of languages will not cater for all applicants. Some applicants will need the assistance of travel agents.
- Many foreign travellers are suspicious of the internet and reluctant to provide credit card details directly to a site purporting to be an official site but without any ability to prove this.
- Most itineraries that include travel to the US involve multiple flight segments. Complex itineraries cannot readily or economically be booked over the internet. Most will probably be booked through travel agents.
- A large proportion of foreigners travel primarily in groups (e.g. Japanese, Korean, etc). All travel arrangements are then made through travel agents.
- Not all foreign travel agents have internet access and even if they do it typically means a loss of productivity in having to move backwards and forwards between a reservations terminal and an internet terminal to execute the booking and ETA.
- For the ETA program to be effective, airlines must be able to perform checks at check-in to ensure passengers have successfully applied for an ETA as no physical evidence will be available. Check-in agents do not have access to the internet.
- APIS-Quick Query (AQQ) was not originally designed to check for the existence of a visa (or in future an ETA) for a passenger. It was planned to check against watch lists only. If an ETA check is included in the AQQ transaction (as recommended above), to enable airlines to check the existence of a valid ETA, then AQQ will have to be introduced prior to the introduction of an ETA system. AQQ is already significantly behind schedule in its introduction even in the original form.
- Even in the future it is believed that AQQ will not be mandatory in that airlines can elect to use APIS-30. This could result in increased airport disruption as identification of passengers without valid travel documents will only occur well after check-in, when the passenger is in the sterile area, and intervention will have to take place at the departure gate during boarding.

Follow-up Questions the Committee may consider posing to the Department during testimony

1. Is CBP planning to offer travellers the sort of options available with comparable systems deployed in other countries to include application via the internet, via travel agents' systems when travellers book their tickets, or via airline check in terminals? If not, why not?
2. Has CBP performed any market research as to the percentage of travellers entering the United States that have / or will use an on-line system to make their travel arrangements?
3. With the submitted Interim Final Rule, will CBP be able to comply with the statutory mandate in Title VII, section 711 "Implementing Recommendations of the 9/11 Commission Act of 2007" for the June, 30 2009 implementation date?

Conclusion

In recent years, SITA has supported the efforts of numerous Governments agencies around the world, including the US Department of Homeland Security, in designing and deploying border management systems. SITA has over a decade of experience designing and delivering such systems worldwide, including ETA systems, API, interactive API, PNR, and biometric Entry/Exit systems such as Registered Traveler Programs. SITA operates the network used by the air transport industry –airlines and airports -- to exchange passenger data for passenger reservations and departure control in a secure, reliable manner. SITA welcomes the opportunity to share the practical experience and technical know-how it has acquired in order to support the Committee's effort to ensure DHS builds a coherent border management system to protect and promote air transport in a global context. The adoption of an effective ETA system as described above will bring real benefits to the traveling public and to the air transport industry by enhancing security, facilitating passenger movements and throughput, and permitting the automation of airline and airport business processes to reduce costs.

With respect to ETAs, SITA has a proven system for Australia that can be replicated on separate, scalable infrastructure and modified to support the processing of ETA applications for the USA ETA program. It provides, in addition to the internet-based service, for ETA application submission by travel agents and airlines and for checking for an ETA at check-in. No changes will be required to travel agent or airline computer systems. The system is self funding via the charges for (relatively small percentage of) ETAs issues over the internet.

Assuming interfaces to DHS systems can be provided by DHS, the SITA solution, for both internet and travel industry service, could be implemented within 6-9 months and does not require the prior commissioning of AQQ. SITA has submitted an unsolicited written proposal to the Department (Customs and Border Protection) outlining the technical specifications, timelines, and milestones required for design and deployment of a proven system that meets the legislative mandate set by Congress.

The European Union has recently announced a new package of Border Management initiatives, which include an Electronic Travel Authorization system. The Commissioner in charge of Justice, Freedom, and Security has solicited SITA's comments and recommendations for the design of such a system. The comments provided by SITA to the EU Commission with respect to an ETA system are substantially the same as the comments and recommendations made above.

Weaknesses in the Visa Waiver Program:
Are the Needed Safeguards in Place to Protect America?

U.S. Senate Judiciary Committee
Subcommittee on Terrorism, Technology and Homeland Security
Washington, DC

February 28, 2008

Statement of Jessica M. Vaughan
Senior Policy Analyst
Center for Immigration Studies

Chairman Feinstein, Ranking Member Kyl, and other subcommittee members, thank you for the opportunity to be here today to discuss weaknesses in the Visa Waiver Program (VWP), which are important to consider as the Department of Homeland Security (DHS) moves to expand the program rapidly. This expansion is proceeding before the needed tools are in place to manage the program effectively, and apparently without regard to legitimate security and law enforcement concerns about visitors from many of the countries in question. As a result, Americans will be more vulnerable to terrorist attack, more exposed to organized criminal enterprises, and will experience even more illegal immigration, all of which comes at enormous fiscal and social cost to the nation.

What is the hurry? The U.S. travel industry, which is one of the organized interests pushing for the expansion, is coming off of one of its most prosperous years ever, and is hardly an industry in crisis. Yet if another attack occurs because we have let our guard down, the travel industry will be particularly hard hit, as it was after 9/11. It is vitally important that Congress vigilantly exercise its oversight authority to ensure that DHS provides the missing security and enforcement pieces to minimize the inherent risk in this program.

Rudimentary Exit Recording, But Still No Overstay Reporting.

Immigration policymakers on the Hill and in the Executive Branch have understood for well over a decade that visa overstayers represent a significant share of the illegal alien population. Estimates range from one-third to one-half of the illegal alien population, or between four to six million illegal aliens. They present a possible national security risk -- several of the 9/11 hijackers were visa overstayers, and others have been caught working in critical infrastructure facilities or other sensitive locations. They commit crimes. For example, among the most violent criminal gangsters arrested under ICE's Operation Community Shield were several murderers who entered on non-immigrant visa. In addition, like other illegal immigrants, visa overstayers are costly to taxpayers. The total net cost of illegal immigration runs about \$10 billion per year, after taxes are accounted for, so the share of that cost attributable to visa overstayers is likely \$3-5 billion per year.

With all we know about the risks and costs associated with visa overstayers, it is hard to understand why DHS has displayed so little curiosity about this population. Most observers agree that collecting and analyzing information on visa overstayers is key to maintaining the integrity of the immigration system. Congress first mandated the development of an entry-exit system in 1996, after the first World Trade center bombing. In addition to producing actionable enforcement leads, a true entry-exit recording system would enable policymakers to assess which travelers are not complying with the

law. Visa overstay data provide information on how travelers actually behave, and are less speculative than refusal rates, which reflect the aggregate of consular officers' assessment of possible behavior. This data is important to consular officers, who crave better information to use in making visa issuance decisions. It is especially important in making an objective and sound determination of which countries might qualify for the Visa Waiver Program. How DHS can contemplate expanding the system before the entry-exit system is ready is beyond my comprehension, but that is exactly what is happening.

As a condition for granting DHS the sole authority and discretion for determining membership in the Visa Waiver Program, last year Congress directed the agency to establish an exit recording system for air travelers that can account for at least 97% of those who depart by air. This is in addition to long-standing requirements for DHS to implement an exit recording system as part of US-VISIT, and long-ignored requirements for DHS to produce annual estimates of how many travelers have overstayed visas and the nationality of visa overstayers (the Data Management Improvement Act of 2000 and the Visa Waiver Permanent Program Act).

DHS has made good progress in establishing the entry system (US-VISIT). But not only has DHS failed to move forward on establishing a true exit system, it has not made full use of those tools already in place, specifically the biographic matching system based on information collected by airlines on passenger manifests. Essentially, DHS is trying to eat its cake and hide it too -- it claims that the biographic matching system fulfills the requirements of the VWP expansion law, but will not produce any reports from the system to inform the selection of countries to be included in the expansion, or to meet its obligations under the law.

The biographic matching system has been in place since the beginning of 2004. It has a number of limitations. First of all, it is maintained by the airlines, and there is no way to verify the accuracy of the information. Since it is biographic, not biometric, it cannot authenticate the identity of departing passengers. This means it would be easy for someone to create a record of leaving the country without actually leaving. Finally, DHS is not attempting to match records to determine compliance with the terms of the visa, only to any previous departures or adjustments.

It's fair for Congress to ask why, after all these years, is DHS still unable to fulfill this requirement? Since 2004, DHS has operated the Compliance Enforcement Unit (CEU), which receives and analyzes information from US-VISIT, SEVIS, NSEERS, and other sources to generate enforcement leads for ICE. CEU has provided data to the State Department for an evaluation of overstays in the H-2B guestworker program. It provides data to FBI agents in Philadelphia, who map the location of overstayers, along with other lawbreakers, as part of a local crime-solving effort known as Project Pinpoint. If DHS can manage to provide information of this level of detail to other agencies to use in very specific ways, why can they not produce even a basic report on the estimated number and citizenship of overstayer to help establish if certain countries are a good bet for the Visa Waiver Program?

Electronic Travel Authorization of Limited Use in Detecting Unqualified Travelers.

The implementation of the Electronic Travel Authorization (ETA) process has been touted as a major security enhancement to the Visa Waiver Program. It is important to recognize that while this process will provide the opportunity for advance database checks on travelers before they arrive, and may succeed in alerting officials to the pending arrival of people who may be of interest, the ETA tool is really of very limited utility in determining the eligibility of travelers or screening out terrorists and criminals. As far as I can tell, the ETA process is simply an advance automated name check. Certainly this adds another layer and another opportunity for screening, but not much more than would be accomplished anyway at the port of entry. The port of entry screening is much more thorough because it authenticates

the traveler's identity using fingerprint and digital photo matching, checks an array of security and crime databases, and includes verbal questioning.

The ETA is certainly no substitute for a consular interview. Much as a doctor can best make a diagnosis by seeing and talking with the patient, the consular interview is the best tool for evaluating the qualifications of prospective visitors. And qualifying for admission to the United States is not simply a matter of not being a known terrorist or criminal. To be admitted, visitors need to demonstrate that they have a legitimate reason for travel and that they are likely to return home. That determination simply cannot be done electronically.

Some Proposed Expansion Countries Raise Security and Law Enforcement Concerns.

The State Department once stated in a response to a GAO report, "The Department recognizes that a major reason for the [Visa Waiver] Program's success lies in the strict standards for participation."¹ DHS's move to designate as many as nine new VWP countries this year represents a marked deviation from what has been a reasonably successful approach. The nine countries being proposed are: South Korea, the Czech Republic, Greece, Malta, Slovakia, Hungary, Lithuania, Latvia, and Estonia. While some of these countries appear to meet the criteria for the program, even under the old, stricter rules, a number of them do not. Because we currently lack the safeguards to prevent large numbers of inadmissible travelers from entering, and because we lack the ability to identify and remove those who overstay, the expansion of the program to include more than the small handful of clearly-qualified countries is risky. A number of the countries on the DHS list are associated with serious law enforcement problems such as organized crime and visa fraud, and a number of the countries have large numbers of visa applicants who are not qualified and whose visitors have poor records of visa compliance.

While overstay rates in combination with other security requirements would be the best measure to determine if a country should be included in the Visa Waiver Program, in their absence DHS may continue to use refusal rates. Two of the nine proposed countries, Greece and Malta, have refusal rates below three percent, which is the old threshold for participation (along with other security factors). Another three countries have refusal rates under the new 10% threshold DHS is allowed to use: the Czech Republic (6.7%), Estonia (4%), and South Korea (4.4%). Each of these countries has its own unique problems to overcome, but on balance each presents a relatively reasonable case for consideration.

Four of the countries on the DHS list have refusal rates above the limit proscribed by the law: Lithuania (12.9%), Latvia (11.8%), Hungary (10.3%) and Slovakia (12%). Without data showing strong records of compliance, these four countries appear to be weak candidates for the VWP.

Some observers have suggested that the visa refusal rates are an unfair representation of a country's readiness for the Visa Waiver Program, and that consular officers judge applicants from these countries too harshly. Yet a new study by the Center for Immigration Studies finds the opposite – that consular officers are too lenient in issuing visas, and that issuance rates are much higher than conditions in many countries warrant, especially Eastern European countries. For one thing, the lack of feedback consular officers receive on travelers receiving visas who are later denied entry or caught overstaying causes many to underestimate the scale of the problem. In addition, many diplomats fail to appreciate the deep quality of life differences between the United States and the charming countries in which they serve – for example, a \$600 a month office clerk salary may seem comfortable for Prague or Budapest, especially relative to what others there earn, but is much less attractive than what that person can earn here. Finally, the "issuance" and "customer service" culture that prevailed in the consular corps before 9/11 is still dominant today. Consular officers have little incentive to be tough or even realistic in their

¹ "Process for Admitting Additional Countries into the Visa Waiver Program," GAO-06-835R, at www.gao.gov.

decisions, and face no accountability for repeatedly issuing visas to unqualified applicants. On the contrary, they are instructed to find excuses or reasons to issue, despite what the law requires.²

Pressure to help some of the VWP roadmap countries meet the refusal rate criteria could be one factor behind the recent drop in refusals in some of these countries (as happened with Ireland in the period before its acceptance). From 2006 to 2007, the refusal rates of Lithuania and Latvia dropped by about 50% (from 27.7% to 12.9% and from 21.6% to 11.8% respectively). Over the same period Hungary's dropped from 12.7% to 10.3%, and Slovakia's went from 16% to 12%. Meanwhile, validation studies and other reports suggest overstay rates may be as high as 25-30% for citizens of some of these countries.

It has been suggested that conditions have improved in these countries sufficiently so that fewer applicants would seek to overstay in the United States, or that those who wish to move would be more likely to relocate in other European Union countries, not the United States. These claims are speculative at best. For one thing, these countries have significant diasporas in the United States to attract and shelter new illegal immigrants. Even more important, the absence of a visa requirement will almost certainly cause far more people to consider illegal immigration as an option, as there will be virtually no chance of rejection at the port of entry, as long as the traveler is not a known terrorist or criminal.

Most of the visitors from the fast-track or "road map" countries certainly are not terrorists or criminals. However, reports from U.S. and international law enforcement agencies suggest that many of them do present significant law enforcement concerns that are sure to be exacerbated if travel to the United States is made easier. For instance:

- Greece is an important gateway for illegal drugs from the Middle East and Southwest Asia;
- Organized crime is rampant throughout Eastern Europe, and several of the crime syndicates headquartered in Russia and Budapest also have operations in Philadelphia, Miami, Los Angeles, New York, Boston, and Chicago. These groups, which include the notorious Semion Mogilevich Organization and the Solntsevskaya Organization, are involved in arms dealing, drug trafficking, uranium trafficking, murder, and visa and immigration fraud.³
- Estonia, the Czech Republic, Hungary, Lithuania, and Slovakia are all home to significant illegal drug production operations⁴;
- The Czech Republic, Estonia, Greece and Hungary all provide bases for major drug trafficking organizations⁵;
- A number of Lithuanians have been convicted recently in the United States in major immigration fraud-related conspiracies⁶.
- Korean criminal enterprises are known for trafficking crystal methamphetamine and heroin, extortion, gambling, alien smuggling, prostitution, and money laundering, and have established particularly strong footholds in Hawaii and the west coast.⁷

² See *No Coyote Needed: US Visas Still an Easy Ticket in Developing Countries*, by David Seminara, Center for Immigration Studies, March, 2008 (forthcoming) and *Shortcuts to Immigration: The Temporary Visa Program is Broken*, by Jessica M. Vaughan, Center for Immigration Studies, January, 2003, <http://www.cis.org/articles/2003/back103.html>.

³ Bruce G. Ohr, Chief, Organized Crime and Racketeering Section, US Department of Justice, "Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes, UNAFEI (2007), www.unafei.or.jp/english/pdf/PDF_rms/no58/58-05.pdf.

⁴ CIA World Factbook.

⁵ Ibid.

⁶ See FBI and ICE web sites (www.fbi.gov and www.ice.gov).

⁷ Ohr, loc cit.

In at least one Eastern European country, an organized crime syndicate has successfully hijacked the U.S. diversity visa, or visa lottery, application process. The syndicate used stolen data from a university student database to populate electronic visa lottery applications. Then it intercepted the winners' letters from a local post office, and coerced the unsuspecting winners into completing the green card applications, sometimes with new spouses provided by the syndicate. Upon arrival in the United States, the winners reportedly remained under the hold of the syndicate and were forced into ongoing criminal activity.

Although VWP countries are required to develop more secure passports and share data on lost and stolen passports, serious questions remain about the integrity of passports throughout the European Union, and especially in the "new" European countries. In 2006, a BBC reporter was able to obtain and use 20 different EU passports, (including Czech, Estonian and Latvian passports) paying between 250-1,500 pounds Sterling apiece. Her Estonian passport was registered on the Interpol database of stolen passports, but was not detected as stolen at a port of entry.⁸ It probably goes without saying that if a BBC reporter can travel at will on stolen or altered European passports, so can a terrorist.

The United States has long had a problem with prostitution sustained through human trafficking. It is worth noting that, according to government officials, some of the prostitution services trade is accomplished relatively openly, with prostitutes from Korea coming and going from the United States legally on regular B visas, rather than being trafficked in the traditional sense. Obviously Korea's membership in the VWP will facilitate this phenomenon.

All of these examples suggest that opening up admissions to the United States from this group of countries within a short time frame, without adequate safeguards in place, is inviting an increase in illegal immigration and organized criminal activity.

Interior Enforcement Lacking.

Besides lacking adequate screening to prevent the entry of terrorists, criminals and illegal immigrants, the United States devotes relatively few resources to identifying and removing illegal immigrants, or to keeping them from becoming established here. While many visitors lie through their teeth to the consular officer and port of entry inspector about their plans, others do not decide to stay until after they arrive and realize how easy it is to work and live as if they were here legally.⁹

The immigration enforcement agency (ICE) has just a few thousand special agents and deportation officers to cope with an illegal alien population of 12 million plus tens of thousands of criminal aliens who are not here illegally but are removable because they have committed serious crimes. Currently, the agency is capable of removing only about 200,000-250,000 illegal and criminal aliens per year. Only a handful of states require employers to verify the immigration status of new workers, and workplace enforcement is not the top priority for ICE, so few employers feel any urgency to comply voluntarily with the laws forbidding the hiring of illegal workers. A number of states still issue drivers licenses to illegal aliens and temporary visitors. These documents can be used to obtain employment, bank accounts, and firearms, among other trappings of a legal existence. Even if DHS is able to determine which visitors overstay, there is little chance that ICE will act on the information.

So while the expansion of the Visa Waiver Program may serve foreign policy goals and benefit certain foreign travelers, the expansion comes at a price. This price will be paid by those Americans who become victims of crimes committed by people taking advantage of the lack of visa controls, by those

⁸ From *My Fake Passports and Me*, broadcast on the BBC One *Panorama* program, December 4, 2006.

⁹ Seminara, loc cit.

who lose job opportunities to new illegal immigrants overstaying their welcome, and by taxpayers who must shoulder the burden of public services, criminal justice expenses, and increased immigration law enforcement that will be necessary as a result. Congress must do what it can to try to reduce the security and fiscal cost of the program by insisting that DHS fulfill its obligations to implement a genuine exit recording system, produce the best possible overstay estimates, along with the other security requirements in the authorizing legislation. In addition, while there is no statutory requirement for this, the pending expansion of the VWP should be accompanied by an infusion of additional resources for law enforcement as well as the implementation of measures, such as mandatory verification of immigration status in the workplace, that will discourage visa overstayers, and all prospective illegal immigrants, from settling here.

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