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AMERICA'S NEW WELCOME MAT: A LOOK AT THE GOALS AND CHALLENGES OF THE US-VISIT PROGRAM

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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AMERICA'S NEW WELCOME MAT: A LOOK AT THE GOALS AND CHALLENGES OF THE US-VISIT PROGRAM

THURSDAY, MARCH 4, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 2:08 p.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis of Virginia (chairman of the committee) presiding.

Present: Representatives Tom Davis of Virginia, Schrock, Duncan, Turner, Maloney, Tierney, Clay, Watson, Van Hollen, Ruppersberger, and Norton.

Staff present: Melissa Wojciak, staff director; David Marin, deputy staff director and communications director; Drew Crocket, deputy communications director; David Young, counsel; John Cuaderes, professional staff member; Jason Chung, legislative assistant; Teresa Austin, clerk; Brien Beattie, deputy clerk; Michael Yeager, minority deputy chief counsel; Denise Wilson, minority professional staff member; Cecelia Morton, minority office manager; and Jean Gosa, minority assistant clerk.

Chairman TOM DAVIS. Good afternoon. A quorum being present, the Committee on Government Reform will come to order.

We meet today to look into the implementation of the US-VISIT program by the Department of Homeland Security. US-VISIT stands for the U.S. Visitor and Immigrant Status Indicator Technology Program. When completed the program will track the entry and exit of most non-immigrant visa holders who enter the United States. At the outset it is important to acknowledge the scope of this undertaking.

In 2003 there were over 427 million inspections at U.S. ports of entry. Of these inspections, 62 percent involved people from other countries. There are over 300 land, air, and seaports of entry in the United States, from Dulles International Airport to the land crossing at Del Rio, TX.

The vast majority of these inspections, 79 percent, take place at land border crossings. Unfortunately, it is at these crossings where the constraints of space and time combine to place a potentially dangerous burden on legitimate travelers to the United States. Even though only 18 percent of all travelers seek entry at airports, the interrelated nature of our domestic hub system creates special problems for airports as well.

At the same time, the implementation of US-VISIT thus far has not resulted in significant waiting time increases for the traveling public. Although these efforts have achieved some success and government agencies are enthusiastically looking for feedback in improving technology and management methods, US-VISIT faces immense challenges as additional consular posts, land border crossing points, and exit points begin to collect biometric data.

Some would say the risks associated with these challenges suggest that this sort of nationwide integrated reform of our border control system is too ambitious. But those people underestimate the damage even one more terrorist event like September 11th could cause our Nation. People want to do business here because we provide a safe and stable commercial environment. Providing and maintaining this environment is one of the most important things this government can do.

Having said that, there are legitimate questions Congress should ask about the planning, acquisition, and implementation of US-VISIT. First, we would like an update on the effects of the Increment I implementation for entry at airports to date. Second, it would be helpful to have a brief description of the acquisition strategy you have put in place. It would be helpful to understand how DHS and the Department of State are working together to create an integrated visa issuance and border verification system that leverages all of the information gained at both the consulate and border.

This committee is also interested in how both DHS and the State Department are reaching out to domestic and foreign stakeholders. Is DHS applying the lessons learned from the TSA baggage screening implementation as it plans for the exit function of the US-VISIT program? How are DHS and State informing and educating the foreign business community about US-VISIT?

The multitude of questions surrounding this implementation creates a nexus of issues that the Committee on Government Reform is uniquely positioned to discuss. The need for the various related agencies involved to not only cooperate but to allow their internal data bases to talk to each other on a minute-by-minute basis worldwide marks a new standard for interagency collaboration. The effort to use next generation technologies in a real world environment is both laudable and worthy of study. Can DHS institute a system that works today and will be flexible to change in the coming years? Is DHS' acquisition plan and schedule reasonable and realistic? Can government effect a nationwide integration while truly exploring and identifying the best solution possible?

As the Nation anticipates the next phases of DHS' US-VISIT program, we need to recognize that this new system is being implemented in a time when this Nation faces a continuing terrorist threat. Today's terrorists have decided to engage in asymmetrical warfare by attacking our people and institutions instead of our military. Simply following the old best practices model will not provide an effective defense of our homeland. As a Congress we have to give our most talented Federal employees the authority to tear down stovepipes and create a flexible, scaleable solution for tracking activity at our Nation's borders. This is a monumental task, and there is no room for error.

We welcome today the Honorable Asa Hutchinson from the Department of Homeland Security and the Honorable Maura Harty from the Department of State. We also have a second panel, which I will introduce later. We believe all of these witnesses will provide the committee with a diverse set of opinions and viewpoints, and I very much look forward to today's hearing.

I now yield to any other Members who wish to make opening statements. The gentlelady from the District of Columbia, Ms. Norton.

[The prepared statement of Chairman Tom Davis follows:]

Opening Statement of Chairman Tom Davis
Government Reform Committee Hearing
America's New Welcome Mat: A Look at the Goals and Challenges of the US-VISIT Program
March 4, 2004

We meet today to look into the implementation of the US VISIT program by the Department of Homeland Security. US VISIT stands for the U.S. Visitor and Immigrant Status Indicator Technology Program. When completed the program will track the entry and exit of most non-immigrant visa holders who enter the United States. At the outset it is important to acknowledge the scope of this undertaking.

In 2003 there were over 427 million inspections at U.S. ports of entry. Of these inspections 62% involved people from other countries. There are over 300 land, air and seaports of entries in the United States, from Dulles International Airport to the land crossing at Del Rio, Texas.

The vast majority of these inspections, 79%, take place at land border crossings. Unfortunately it is at these crossings where the constraints of space and time combine to place a potentially dangerous burden on legitimate travelers to the United States. Even though only 18% of all travelers seek entry at airports, the interrelated nature of our domestic hub system creates special problems for airports as well.

At the same time, the implementation of US VISIT thus far has not resulted in significant waiting time increases for the traveling public. Although these efforts have achieved some success and government agencies are enthusiastically looking for feedback in improving technology and management methods, US VISIT faces immense challenges as additional consular posts, land border crossing points, and exit points begin to collect biometric data.

Some would say the risk associated with these challenges suggest that this sort of nationwide integrated reform of our border control system is too ambitious. But those people underestimate the damage even one more terrorist event like September 11th could cause to our nation. People want to do business here because we provide a safe and stable commercial environment. Providing and maintaining this environment is one of the most important things this government can do.

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The multitude of questions surrounding this implementation creates a nexus of issues that the Committee on Government Reform is uniquely positioned to discuss. The need for the various related agencies involved to not only cooperate but to allow their internal databases to talk to each other on a minute-by-minute basis worldwide marks a new standard for inter-agency collaboration. The effort to use next-generation technologies in a real world environment is both laudable and worthy of study. Can DHS institute a system that works today and will be flexible to change in the coming years? Is DHS's acquisition plan and schedule reasonable and realistic? Can government effect a nationwide integration while truly exploring and identifying the best solution available?

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Ms. NORTON. Mr. Chairman, I appreciate this hearing. I am going to try to stay as long as I can, probably not the entire time. I do want to say that on my way to Guantanamo this past weekend we stopped in Miami and had the US-VISIT demonstrated to us. At one level, it is very impressive, putting your finger up and then a bunch of data is retrieved. We also saw foreign visitors who seemed to be getting through fairly quickly. We noted, though, that we were not at the height of the season when these foreign visitors come. The time it took was more than we were told it would. Nevertheless, when you see all the information come up quickly, it encouraged us.

At the same time, obviously, it is the first time we have done this kind of intrusive investigation of people as they come in. The first thing that crossed my mind was that there would be visitors, particularly from Latin America or from Europe, who would find an easier way to get where they wanted to get. Many of our visitors come through the United States. I was concerned about that. My other concern would be whether we are going to make at the ports what we now have at the airports. We have not found a way to get around the long lines. We know it is necessary to look closely at people and at their luggage and everything they are carrying with them. We know that perhaps technology will get us to the point where that is done more efficiently and more quickly.

Now that we are doing an analog of that at the ports, I think we have to be mindful of the concerns that we have had in our domestic airlines, and particularly when foreign visitors, who may be precisely the kind of visitors we want to come to this country with revenue from abroad and leaving here, may decide that we make it so difficult that there are other ways to get where they are going besides through the United States. At the same time, I am the first to say that these folks coming from abroad are the ones we want to look at more closely. So I do not envy those who have to come up with a system that both keeps us secure and makes sure that our enviable tourism and commerce proceeds as before. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. Any other Members wish to make statements?

[No response.]

Chairman TOM DAVIS. If not, we will proceed to our first panel. As you know, it is the rule of the committee that I have to swear you in. Asa, let me just say welcome back to this committee. I will tell you I feel a lot better about the reorganization at DHS with Governor Ridge and having you there. We are very proud of the job you are doing there. So, welcome back. Ms. Harty, thank you for being with us as well.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you very much. The record will reflect that both witnesses answered in the affirmative.

Asa, we will start with you.

STATEMENTS OF ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, DEPARTMENT OF HOMELAND SECURITY; AND MAURA HARTY, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. HUTCHINSON. Thank you, Mr. Chairman. It is good to be with you and other members of the committee. Thank you for your leadership and partnership in this important effort. US-VISIT represents the greatest advance in border technology in three decades. It is a historic achievement in which we, for the first time in history, can use a biometric ability to confirm the identity of those traveling to our country with visas. The Department of Homeland Security deployed the first increment of US-VISIT on time, within budget, and has exceeded the mandate established by Congress. We also met the challenge that was given to us by Secretary Ridge to include biometrics ahead of schedule.

US-VISIT also delivers the ability to have security without sacrificing the flow of legitimate travel through our borders. US-VISIT entry procedures are currently deployed at 115 airports and 14 seaports. As of today, almost 2 million foreign visitors have been processed under the new US-VISIT entry procedures with no measurable increase in wait times. And even more importantly, we have prevented over 60 criminals from entering the country. Without the biometric capabilities US-VISIT delivers, we would not have caught these people.

We are currently meeting the deadline for exit as well. Our exit procedures are based upon passenger departure information shared with us by carriers. We match this information with the visa information and this allows us to identify visa overstays. We currently have, let me emphasize, the biographic data that will allow us to determine visa overstays. We want to be able to enhance this with the biometric feature and we are testing this with various pilots, one of them being at the Baltimore-Washington International Airport.

I think there is a PowerPoint presentation. But I want to explain how US-VISIT works. The biographic and biometric information is collected overseas at the visa issuing post and then verified at the port of entry. And from the standpoint of customs and border protection, the example I am using is a visitor who has had their finger scanned and digital photo taken at an overseas post.

The visitor arrives at the inspection booth and provides their travel documents, passport and visa to the officer. The officer swipes the machine-readable part of the visa. The system immediately selects the correct files from the State Department's data base to display and this information is seen on the officer's monitor. The officer asks the visitor to place first their left index finger and then their right index finger on the finger scanner device that captures their finger scans. The officer then takes a digital photograph of the visitor. While the officer continues the entry questioning, the finger scans are compared against a criminal and terrorist watch list and the biographic and biometric data are matched against the data captured by the State Department. This ensures that the person entering the country is the same person who received a visa. In addition, the digital picture that was taken of the

visitor at the visa issuing post is displayed on the inspector's screen for visual comparison.

Of course, the biometric checking is only a tool that the officer uses to determine admissibility, not the entire process. And this biometric check through the select watch list takes a matter of seconds.

When the system has completed its check, the officer sees a response that says either "No Hit" or "Hit." If a "No Hit" is received, the officer completes the interview, updates the screen with the duration of the visitor's stay and, unless other questions arise, welcomes the visitor into the United States. The addition of biometrics collected abroad and verified at the port of entry is one of the many tools that Customs Border Protection Officers use to make their decision to admit a visitor into the country.

Mr. Chairman, since the US-VISIT entry procedures were implemented, we have caught a fugitive who escaped from prison 20 years ago. We have caught and extradited a felon who was wanted for manslaughter. We stopped a drug dealer who had entered our country more than 60 times in the past 4 years using different names and dates of birth. And just this Monday a woman attempted to enter through Puerto Rico and though there was a lookout for her in the Interagency Border Inspection System [IBIS], because she had a fairly common surname her biographic information did not give us a match, but the US-VISIT biometric check allowed officers to confirm that she was the same person wanted in New Jersey for possession of stolen property. The US-VISIT biometric match also tied her to an additional 17 aliases and 7 different dates of birth. Her criminal history dates back to 1994 and includes multiple arrests in New York for larceny, in Maryland for theft, an arrest in New Jersey, I do not think I have covered all the States yet, but it was a very significant arrest record. She, of course, has been deported from the United States in 1998 and now is waiting extradition. It is important to note that this serves as a deterrent as the word goes out that we have this capability.

Another huge accomplishment is that we have published a privacy policy and Privacy Impact Statement. And we have, in response to the question, worked very closely with the State Department. I want to compliment my partner, Maura Harty, Assistant Secretary at State, who has done such an outstanding job in developing this program in partnership with us. We also have worked with the airlines and airports and those in the private sector.

But our job is not finished. We have submitted the 2004 spending plan. And as has been expressed, one of the concerns is what are we going to do for the land borders. US-VISIT will apply to visitors with visas crossing our land borders just like our air and seaports. What is different from our air and seaports is that on the land borders the US-VISIT process of finger scanning and digital photo will be taken at the secondary inspection area and not primary. This is where visitors with visas go today so this is not a change. What is new is that our visitors will have their identity verified using US-VISIT procedures and this process will add up to less than 15 seconds to the overall secondary inspection. Again, the current process is for visitors with visas to go immediately to sec-

ondary inspection, so US-VISIT is not adding any time to the primary process.

Our remaining issue is the 104 million Mexican citizens who are holders of border crossing cards. Mr. Chairman, on the chart that is over here you can see the breakdown by volume of those that are crossing our land borders: U.S. citizens, legal permanent residents, visa exempt, visa waiver, regular visa, and the Mexican border crossing card of 104 million, totaling 440 million that come across our land borders. We have not made any final decisions in this regard on the border crossing cards, but obviously this presents a unique challenge to us that we will have to address.

We also intend to look at radio frequency [RF] technology to aid in the processing of visitors across the land borders at the 50 busiest ports of entry and exit. We are optimistic that we can develop a procedure at our land borders that is just as accommodating and facilitating as what we have done at our air and seaports as well.

I want to thank again this committee for its partnership in this endeavor. I look forward to answering questions. We are committed to building this system that adds to our security and ultimately will help us to facilitate those legitimate travelers into our country.

[The prepared statement of Mr. Hutchinson follows:]

TESTIMONY OF ASA HUTCHINSON
UNDER SECRETARY
DEPARTMENT OF HOMELAND SECURITY
DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM
March 4, 2004

Chairman Davis, Ranking Member Waxman and other distinguished Members, it is a pleasure to appear before you today to discuss the Department of Homeland Security's US-VISIT program and how this fits in with our commitment to protect the homeland.

US-VISIT represents yet another major milestone in enhancing our nation's security and our efforts to reform our borders. It is a major step towards bringing integrity back to our immigration and border enforcement systems.

US-VISIT procedures are clear, simple, and fast for foreign nationals. Upon arrival at the air or seaport, visitors see signs that clearly explain the US-VISIT procedures. These signs, as well as explanatory boarding cards that many airlines are distributing to their passengers, are translated into multiple languages and feature symbols and diagrams to show people what to do when they get to the primary inspection booth.

For foreign visitors traveling with visas, the additional US-VISIT steps are simple. First, the officer directs the visitor to place his or her left index finger on the small red window of the digital fingerscanning device. The procedure is repeated for the right index finger. The officer then takes a digital photograph of the visitor. These procedures add, on average, 15 seconds to the overall inspection process. There is no ink involved in the digital fingerscanning process. The biometric data and biographic information are electronically compared to a series of watchlists and databases. Using the few seconds it takes for a response from the system, the officer asks the visitor standard, routine questions about his or her visit. Then the officer has the information he or she needs to admit the visitor into the country or refer the visitor to secondary inspection for further review.

The Department of Homeland Security (DHS) deployed US-VISIT on time, on budget, and has met the mandates established by Congress as well as the challenge by the Secretary of Homeland Security to incorporate biometrics (fingerscans) into US-VISIT ahead of schedule. Senior U.S. Customs and Border Protection (CBP) management has hailed it as the biggest improvement to border inspection in more than three decades. By January 5, 2004, US-VISIT entry procedures were operational at 115 airports (covering 99% of air travelers who use visas to enter the United States) and 14 seaports, and we began pilot testing biometric exit procedures at one airport and one seaport. As of February 26, more than 1,500,000 entries by foreign visitors have been processed under the new US-VISIT entry procedures.

Our border management system impacts the security of our citizens and our visitors, affects billions of dollars in trade and travel and helps define relations with our international partners. There is a need to improve this system and bring it into the 21st century with a new integrated system of technological processes that will keep our country's economic and national security strong. This 21st century technology will provide an important step toward achieving the President's goal of secure U.S. borders.

In just a few months, the first release of US-VISIT has improved the security of our citizens and visitors. Our Customs and Border Protection Officers are saying that the new tools we have put in place truly help them do their jobs more effectively and are a major advancement in border control. US-VISIT integrates multiple sources of information spanning multiple agencies and departments in order to identify visitors who may pose a threat to the security of this country. US-VISIT adds, on average, only fifteen seconds to the average inspection time. Included in this processing time are the collection of the biometric and biographic information, the comparison of that information with that collected by the Department of State at the time of visa issuance, and the screening of the biographic and biometric information through watchlists and other criminal history information.

US-VISIT is working. We intercepted a fugitive who had escaped from prison over 20 years ago. We caught and extradited a felon wanted for manslaughter in San Diego. We finally stopped one drug dealer who had entered the U.S. more than 60 times in the past four years using different names and dates of birth. We continue to identify criminals every day at our borders, and since January 19, we have supplied crucial biometric information to our partners at the Department of State to help prevent ineligible visa applicants from obtaining a visa.

The increase in security has not had negative effect on our wait times or our commitment to service. But you don't have to take my word for it. Albert Park, a Korean visiting his sister and arriving at John F. Kennedy International Airport, told the New York Sun (January 6th edition): "I expected a lot more delays, but it was all pretty smooth." He went on to state that "[US-VISIT] definitely makes me feel safer."

"We at the airport believe that this is a true enhancement," said Bruce Drum, associate director of the Miami-Dade County Aviation Department." (The Associated Press, January 5th)

The Washington Post (January 6th) also reported on travelers' perceptions of the additional security measures: "Some travelers who were fingerprinted and photographed at airports across the country yesterday said the security procedures were swift, and most said they were resigned to the new rules. 'I don't really mind,' said D.C. resident Salome Nnanga, a native of Ethiopia. 'I think it's a very, very good idea to protect the country.'"

We want to ensure that we continue to be a welcoming nation, a nation that invites visitors to study, do business, and relax in our country. We also owe it to our citizens and

visitors to deny entry to persons wishing to do harm, or who are inadmissible to the U.S. Few would dispute that these steps are necessary.

As we evaluate the first two months of the program, it seems clear that visitors appreciate the effort we are making to deliver security while simultaneously facilitating the process for law-abiding, legitimate travelers. We must continue to respect our visitors' privacy, treat them fairly, and enable them to pass through inspection quickly so they can enjoy their visit in our country. As people attempt to enter our country, we must know who they are and whether we have information that they have committed a crime that would make them inadmissible to the U.S. The ability of US-VISIT to rapidly screen applicants' biometrics through watchlists and databases means we can have security and control without impeding legitimate travelers, and we can also help protect our welcomed visitors by drastically reducing the possibility of identity theft. Moreover, as visitors leave the country, we must know that they have not overstayed the duration of their visa.

But we are not finished. This is a complicated job that will take time to complete. In fact, US-VISIT is designed to be rolled out in increments to ensure that the foundation is strong and the building blocks are effective. With the deployment of the entry components at air and sea ports, we have made a strong beginning, and going into 2004, we are on track to meet the December 31, 2004 deadline to integrate entry-exit databases at the 50 busiest land border ports of entry. We also expect to deploy biometric capabilities at those ports of entry to allow DHS to check the identity of certain travelers against watchlists and databases. We are seeing that we can accomplish what we set out to do: keep out criminals and terrorists, enhance the integrity of our immigration system, facilitate legitimate travel and trade and help protect the privacy and identity of our visitors.

A Brief Overview

The US-VISIT program is a high-priority initiative of DHS. Working with the Department of State, the Department of Justice, and other federal agencies, we have made great strides in improving overall border management through the collection of pre-arrival, arrival, and departure information on foreign visitors and immigrants who apply for visas and travel through our nation's air and seaports. The program will ultimately record the entry and exit of persons at our land ports of entry as well. The information will be used to report on the numbers of aliens who have overstayed their periods of admission. Ultimately these reports will enable DHS to seek aliens who have not departed.

By recording more complete arrival and departure information, the US-VISIT program will meet various Congressional mandates for an integrated, interoperable, and automated entry-exit system for foreign visitors. More than that, it will also enhance the security and safety of citizens, residents, and visitors by matching foreign national travelers' identities through the comparison of biometric identifiers, by authenticating their travel

documents, and by checking their data against appropriate law enforcement and intelligence systems.

The goals of US-VISIT are to:

Enhance the security of our citizens and visitors.
US-VISIT is a history-making achievement that begins overseas with our partners at the Department of State's visa-issuing posts, and continues upon entry at Customs and Border Protection inspection booths. Already US-VISIT has prevented over 140 people who matched law enforcement information from entering the U.S. – and identified another 73 who were applying for visas overseas. US-VISIT is an effective deterrent, for its biometric capabilities convince many criminals that they will not be able to hide their true identity.

Facilitate legitimate travel and trade.
The Department believes that, over time, US-VISIT will actually speed up the processing times. Reports indicate that capturing biometrics (two fingerscans and a digital photo) takes less then 15 seconds. Fewer people are being sent for secondary inspection, and the overall time to 'clear' a plane has not been significantly impacted. We have also developed responsible mitigation strategies if circumstances dictate that wait times have become unacceptable at a port of entry. All of these improvements help to keep trade booming and contribute to the economy of our nation.

Ensure the integrity of the immigration system.
Inherent in the US-VISIT program is its ability to identify inadmissible travelers and persons traveling on fraudulent documents. This tool aids in bolstering the integrity of the immigration system. As we test various exit components, we further strengthen the immigration system by identifying people who do not comply with the terms of their admission.

US-VISIT also allows DHS to identify those visitors who have overstayed their allotted time in the U.S., and that information will be available to determine the future admissibility of such visitors. US-VISIT information is compared with airline and ship manifests to determine who has arrived in and departed from the United States.

By providing vital data and assisting in the enforcement of immigration laws, US-VISIT strengthens the overall immigration process and ensures the integrity of our immigration system.

Safeguard the personal privacy of our visitors.
An obvious concern for all legitimate travelers is that criminals will use their lost or stolen travel documents to enter the United States. Biometric identifiers make it difficult for criminals to travel on someone else's travel documents. This is a significant benefit that US-VISIT delivers for the millions of legitimate travelers we welcome each year. In addition, we must continue to respect our visitors' privacy. We have a Privacy Impact Assessment (PIA) being reviewed by external audiences and DHS has the first statutorily created Chief Privacy Officer, Nuala O'Connor Kelly. Ms. O'Connor Kelly along with

the US-VISIT privacy officer has worked closely with privacy experts at the Office of Management and Budget, and with independent privacy consultants to prepare a PIA that addresses the beginning increments of this program.

The Identity Verification Continuum

The Department of Homeland Security and Department of State together have created an entire continuum of identity verification measures that begins overseas, when a traveler applies for a visa, and continues upon entry and exit from this country. Today, more than 80 visa-issuing posts have begun to capture fingerscans and photographs of foreign nationals when they apply for visas, regardless of their country of origin. This process will be in place at all 211 visa-issuing posts worldwide by October 2004.

US-VISIT supports pre-entry processes by using information from the Advance Passenger Information system (biographic, biometric, and previous travel and visa information) to match information to watchlists. This pre-entry processing establishes a single identity for each foreign national that will be used in all interactions with US-VISIT.

Program Implementation

In an effort to appropriately manage the program, US-VISIT is being implemented in increments, with the first on December 31 of last year. The increments are aligned with statuary requirements. The other increments will be deployed over the coming years with the ultimate goal of having a robust system that can deliver all of the US-VISIT goals. The steps to this program include:

Increment 1

- Collect and verify biometrics for foreign nationals arriving with nonimmigrant visas at air and seaports of entry by 12/31/03
- Check admissibility against watchlists using biographic and biometric data
- Establish exit pilots and complete testing by end of FY 2004 with implementation to occur in FY 2005.

Increment 2A – 10/26/04:

- Issue U.S. biometric travel documents following International Civil Aviation Organization (ICAO) standards (all countries)
- Visa Waiver Program applicants must have machine readable passports with biometric indicators in compliance with ICAO standards
- Deploy capability to read biometric travel documents at air and sea ports of entry.

Increment 2B – 12/31/04:

- Extend Increment 1 capability to 50 highest volume land POEs

Increment 3 – 12/31/05:

- Extend Increment 2B to remaining land POEs

Increment 4:

- Launch initial roll-out of US-VISIT envisioned system

US-VISIT's Budget

We deployed US-VISIT on budget. During Fiscal Year (FY) 2003 we used appropriated funds of $367 million to achieve successful deployment to 115 airports and 14 seaports. Specifically we have:

- Implemented/interfaced systems to reduce redundancy and make more information available
- Upgraded our infrastructure to support added biometrics
- Deployed the US-VISIT system to 115 airports and 14 seaports on January 5, 2004
- Initiated the exit pilot at one airport and one seaport
- Established the US-VISIT program office

During FY 2004, we have a total of $328 million plus an additional $10 million in no-year funds that we intend to use to continue meeting our goals. Currently, our FY 2004 and FY 2005 Expenditure Plan is in review; and when these funds are released we plan to:

- Analyze, field test, and initiate deployment of alternative approaches for verifying identity on exit at air and sea ports of entry

- Implement US-VISIT Increment 1 capabilities at the 50 busiest land border ports of entry by December 2004

- Install biometric readers at all air, sea, and land ports of entry

- Continue building our program management capabilities

In addition, we plan to award a contract to a prime contractor for further development of our end vision. This long-term vision will cover foreign nationals and their interactions with U.S. officials before they enter, when they enter, and when they exit. This comprehensive approach to border management will lead to the creation of a virtual border and will set the course for improved processes for management of data on foreign visitors.

We have requested that $25 million of the FY 2004 Expenditure Plan be released in the interim, while the current year expenditure plan is in review. This will allow us to continue our efforts without interruption and avoid impact to the program that delays in schedule may cause.

Entry Procedures

Biometric visa procedures are already in place at more than 80 visa-issuing posts, and all 211 visa-issuing posts will be using biometric visa technology by October 2004. By capturing biometrics overseas, before visas are issued, we are working together to strengthen national security.

Once at the port of entry, visitors will find that many of the procedures remain unchanged and are familiar to international travelers. For example, a U.S. Customs and Border Protection Officer still reviews each visitor's travel documents, such as a visa and passport. The officer still asks questions about the visitor's stay in the U.S.

What's new under US-VISIT is that the U.S. Customs and Border Protection Officer now uses the inkless, digital "fingerscanner" to capture two "fingerscans" of arriving nonimmigrant visitors holding visas. The visitor puts the left index finger and then the right index finger on the scanner. The officer also takes a digital photograph of the visitor.

The biographic and biometric data are used to check the identity of the visitor against the data captured by the State Department to ensure that the person entering the country is the same person who received the visa. Biometrics are also are compared against watchlists. At that point, the U.S. Customs and Border Protection Officer either admits the visitor or conducts additional inquiries based on the verification results. These procedures reduce fraud, identity theft, and the risk that terrorists and criminals will enter the U.S. undetected.

A True Partnership

The Department is not doing this alone. We are collaborating with other government agencies, most notably the Department of State, to implement US-VISIT and inform the traveling public. We are working closely with the air and sea travel industry regarding the requirements of the US-VISIT program, as well as speaking with constituencies along the land borders. We see our relationship with these groups as a partnership.

We are also partnering with private industry to develop the best technological solutions. In accordance with our published schedule, a Request for Proposals (RFP) was issued in November 2003. The RFP incorporates an acquisition strategy to ensure that the latest available technologies will be incorporated into US-VISIT. We expect to award the contract for this technology in May 2004.

An important part of the program is public education. Travelers are educated about the program before they arrive at the port of entry. We are engaged in a worldwide campaign to inform them. This campaign includes public service announcements, signage at ports of entry, explanatory cards on airplanes and cruise ships, news media coverage, and on-board explanatory videos.

Statutory Mandates

The principal law that mandates the creation of an automated entry exit system that integrates electronic alien arrival and departure information is the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215 (2000), 114 Stat. 339, codified as amended at 8 U.S.C. section 1365a.

But there are many other laws that also impact this program. In order to handle all of the legal requirements and be able to best monitor the progress, meet the requirements, and measure the success, Secretary Ridge established US-VISIT.

(See Appendix I for details of these statutory mandates.)

We have prepared a Privacy Impact Assessment (PIA), which is being reviewed by external audiences including several privacy advocacy groups. This process is being spearheaded by DHS's Chief Privacy Officer, Ms. O'Connor Kelly, the first statutorily mandated privacy officer, to ensure that US-VISIT is in compliance with the appropriate privacy rules and regulations. The PIA has been developed and published in the Federal Register, and DHS is currently considering all comments received.

We have also done extensive outreach, meeting with numerous advocacy, privacy and immigration groups to solicit input and hear concerns, which have been taken into account in the development of the program.

The US-VISIT PIA was hailed by many in the privacy community as an excellent model of transparency, including detailed information about the program, the technology and the privacy protections.

A copy of the PIA is attached as Appendix II.

Success Stories on Violators and Deployment of US-VISIT

Since US-VISIT entry procedures were implemented, it has resulted in the interception of dozens of individuals who matched various law enforcement information. These included rapists, drug traffickers, credit card and visa fraud criminals, and a convicted armed robber.

Here are details of a few examples.

1) Interception of Drug Trafficker who escaped from Prison
On January 14, 2004, at Miami International Airport, a man from Peru was traveling to the U.S. When he arrived at the CBP Officer's booth for admittance, he was enrolled in US-VISIT. His fingerprints matched the ones already in a federal criminal database. This man was wanted by the U.S. Marshals for escaping from Latuna Federal Correction Facility where he had been serving a

sentence for a conviction of dealing cocaine. After his escape, an arrest warrant was issued. In May of 2003 he re-entered the U.S. without incident. Now, with the help of US-VISIT biometric processes, this man was caught and extradited by U.S. Marshals for the warrant. US-VISIT prevented a drug trafficker from roaming the streets of Miami.

2) Closing a Deportation Loop Hole
On January 18, 2004, a man who has had four aliases tried to enter the U.S., even with a "failure to appear" warrant for him. DHS/ICE issued the warrant on August 8, 2003, and since then this man had entered the U.S. at least five times. Now, with the ability to match fingerscans with those in a criminal database, this man's luck ran out. He was removed from the U.S. and put on the next flight back to Columbia.

3) Passport Fraud Uncovered
On January 14, 2004, a British West Indies Airways flight arrived at JFK International Airport in New York carrying a woman from Trinidad. Because US-VISIT begins at the visa-issuing post, a photo of the visitor was on file and accessible by the Customs and Border Protection Officer, who determined that she had used a false name. In reality, the traveler was a woman who had been arrested in April 2000 in New Orleans and convicted of passport fraud. The woman was placed on five years' probation and ordered not to enter the U.S. without the attorney general's written permission. The woman, whose husband lives in the U.S., had obtained a passport and U.S. visa by fraud in Trinidad for $2,000. She was removed from the U.S.

4) Convicted Sexual Offender Identified
In New York City, on February 19, 2004, a native of Trinidad and Tobago attempted to enter the United States. He was not listed as wanted for any crimes after standard biographic criminal data systems checks, but a biometric check under US-VISIT uncovered a prior conviction for having sex with a minor in 2000, his registration as a convicted sex offender, and a removal from the United States in 2001 as an aggravated felon. He had also lived and worked illegally in the United States. He was given an expedited removal and a 10-year ban on re-entry.

5) Rape Suspect Caught
On February 22, 2004, at Miami International Airport, a man from Jamaica attempted to enter the United States after arriving on Air Jamaica flight 25. Biographic and US-VISIT biometric checks alerted officers to an active warrant from New York City for strong arm rape. Criminal history checks also uncovered 3 prior convictions for possession or sale of marijuana in 1994 and 1995, as well as a 1998 rape arrest. He was turned over to Miami-Dade police for extradition to New York.

A CBP Trainee Rises to the Occasion

U.S. Customs and Border Protection Officer Trainee Rafal Izycki was working at primary inspection at Chicago O'Hare International Airport. An Albanian national seeking admission into the U.S. appeared before him and presented an Albanian passport. When Inspector Izycki compared the State Department photo image provided by US-VISIT against the photographs on the passport and visa, he realized that the person in front of him was not the person who had obtained the visa. He immediately referred the Albanian national for a secondary inspection where it was determined that the passport had been photo-substituted and the non-immigrant visa had been altered. The capability to access the State Department photographs of visa applicants provides a powerful tool for inspectors working to protect the U.S.

Deployment to Land Borders

US-VISIT Increment 1 capabilities will be in place at the 50 busiest land ports of entry (POEs) by December 31, 2004, with processes in place at the remaining land borders by December 31, 2005. Land borders present a unique challenge in and of themselves, and each of the 165 land ports of entry is different and challenging. We do know that an inspection conducted at an air or sea entry point and one conducted at a land border will be different.

We are currently developing the best solution for a technology to be used at land borders to leverage biographic and biometric data.

US-VISIT Program Office Update

Secretary Ridge approved the creation of a US-VISIT program office, and positions have been approved to fill the organization and manage the program. The US-VISIT program team consists of representatives from the various components of DHS responsible for border security, including the U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and the Transportation Security Administration. U.S. Citizenship and Immigration Services is also represented. Other DHS components that assist the US-VISIT team include the Directorate for Management and the Science and Technology Division. In addition, outside DHS, the team consists of representatives from the Departments of Transportation, State, Commerce, Justice, and General Services Administration.

Conclusion

US-VISIT is critical to our national security as well as our economic security, and its introduction has been successful. But US-VISIT can not be left unfinished. We must build upon the initial framework and solid foundation to ensure that we continue to meet our goals to enhance the security of our citizens and visitors while facilitating travel for the millions of visitors we welcome each year. We are committed to building a system

that enhances the integrity of our immigration system by catching the few and expediting the many, and we recognize that the U.S. is leading the way in helping other countries around the world keep their borders secure and their doors open.

Appendix I
Statutory Mandates:

The principal law that mandates the creation of an automated entry exit system that integrates electronic alien arrival and departure information is the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Pub. Law No. 106-215 (2000), 114 Stat. 339, codified as amended at 8 U.S.C. section 1365a. DMIA amended previous legislative requirements for an entry exit system that would record the arrival and departure of every alien who crosses the U.S. borders. See section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C, Pub. Law No. 104-208 (1996), 110 Stat. 3009-558, codified in scattered sections of 8 U.S.C. (later amended by DMIA). DMIA requires that the entry exit system consist of the integration of all authorized or required alien arrival and departure data that is maintained in electronic format in Department of Justice (DOJ) (now DHS) or Department of State (DOS) databases. 8 U.S.C. section 1365a. This integrated entry exit system must be implemented at all air and sea ports of entry by December 31, 2003 using available air and sea alien arrival and departure data as described in the statute. DMIA also states that the system must be implemented at the 50 most highly trafficked land border ports of entry by December 31, 2004, and at all ports of entry by December 31, 2005, with all available electronic alien arrival and departure information. DMIA also requires DHS to use the entry exit system to match the available arrival and departure data on aliens and to prepare and submit to Congress various reports on the numbers of aliens who have overstayed their periods of admission and on implementation of the system. 8 U.S.C. section 1365a(e). DMIA authorizes the Secretary of Homeland Security, in his discretion, to permit other Federal, State, and local law enforcement officials to have access to the entry exit system for law enforcement purposes. 8 U.S.C. section 1365a(f).

In addition, section 217(h) of the Visa Waiver Permanent Program Act of 2000 (VWPPA), Pub. Law No. 106-396 (2000), 114 Stat. 1637, codified as amended at 8 U.S.C. section 1187(h), requires the creation of a system that contains a record of the arrival and departure of every alien admitted under the Visa Waiver Program (VWP) who arrives and departs by air or sea. The requirements of DMIA effectively result in the integration of this VWP arrival/departure information into the primary entry exit system component of the US-VISIT program.

In late 2001 and 2002, Congress passed two additional laws affecting the development of the entry exit system, partly in response to the events of September 11, 2001. Section 403(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act), Pub. Law No. 107-56 (2001), 115 Stat. 353, codified as amended at 8 U.S.C. section 1379, required the Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of Treasury and other appropriate Federal law enforcement and intelligence agencies, and in consultation with Congress, to develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of visa applicants and persons seeking to enter the United States pursuant to a visa and to do background checks on such aliens. In developing the entry exit system required by DMIA, section 414(b) of the USA PATRIOT Act directed the Attorney

General and the Secretary of State to "particularly focus on the utilization of biometric technology; and the development of tamper-resistant documents readable at ports of entry." 8 U.S.C. section 1365a note.

The legislative requirements for biometric identifiers to be utilized in the context of the entry exit system were significantly strengthened with passage of the Enhanced Border Security and Visa Entry Reform Act of 2002 ("Border Security Act" or EBSVERA), Pub. Law No. 107-173 (2002), 116 Stat. 553, codified in scattered sections of 8 U.S.C. Section 302(a)(1) of the Border Security Act states that the entry exit system must use the technology and biometric standards required to be certified by section 403(c) of the USA PATRIOT Act. Section 303(b)(1) requires that "[n]o later than October 26, 2004," only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers may be issued to aliens by DHS and DOS. 8 U.S.C. section 1732(b)(1). This section, however, does not invalidate unexpired travel documents that have been issued by the U.S. government that do not use biometrics. Section 303(b)(1) further states that the Secretaries of Homeland Security and State must jointly establish document authentication and biometric identifier standards for alien travel documents from among those recognized by domestic and international standards organizations. Id.

Section 303(b)(2) requires that "[n]o later than October 26, 2004," all ports of entry must have equipment and software installed "to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens, and passports" that are required to be issued by VWP countries. 8 U.S.C. section 1732(b)(2). The current statutory language also requires that by that same date, VWP countries must have a program in place to issue tamper-resistant, machine-readable, biometric passports that comply with biometric and document identifying standards established by the International Civil Aviation Organization (ICAO). 8 U.S.C. section 1732(c)(1). The statute also states that on or after October 26, 2004, any alien applying for admission under the VWP must present a passport that is machine-readable, tamper-resistant and that uses ICAO-compliant biometric identifiers, unless the unexpired passport was issued prior to that date. 8 U.S.C. section 1732(c)(2). The entry exit system must include a database that contains alien arrival and departure data from the machine-readable visas, passports, and other travel and entry documents. 8 U.S.C. section 1731(a)(2). In developing the entry exit system, the Secretaries of Homeland Security and State must also make interoperable all security databases relevant to making determinations of alien admissibility. 8 U.S.C. section 1731(a)(3).

In addition, the entry exit system component must share information with other systems required by the Border Security Act. Section 202 of the Border Security Act addresses requirements for an interoperable law enforcement and intelligence data system and requires the integration of all databases and data systems that process or contain information on aliens.

The US-VISIT program requirements that foreign nationals provide biometric identifiers when they seek admission to the United States are further supported by the Department's broad authority to inspect aliens contained in section 235 of the INA, 8 U.S.C. section 1225. Pursuant to section 215(a) of the INA, the President also has the authority to regulate the departure of aliens, as well as their arrival. President Bush has issued Executive Order titled Assignment of Functions Relating to Arrivals In and

Departures From the United States delegating his authority to promulgate regulations governing the departure of aliens from the United States. In accordance with section 215 and with this new Executive Order, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has the authority to issue this rule which requires certain aliens to provide requested biometric identifiers and other relevant identifying information as they depart the United States. For nonimmigrant aliens, the Department may also make compliance with the departure procedures a condition of their admission and maintenance of status while in the country under INA, section 214.

Many other provisions within the INA also support the implementation of the US-VISIT program, such as the grounds of inadmissibility in section 212, the grounds of removability in section 237, the requirements for the VWP program in section 217, the electronic passenger manifest requirements in section 231, and the authority for alternative inspection services in sections 286(q) and 235 of the INA and section 404 of the Border Security Act. These are but a few of the most significant provisions that support US-VISIT from among numerous other immigration and customs statutes.

US-VISIT Program, Increment 1
Privacy Impact Assessment
Executive Summary

December 18, 2003

Contact Point

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Reviewing Official

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US-VISIT Program, Increment 1
Privacy Impact Assessment

Executive Summary

Overview

US-VISIT, the United States Visitor and Immigrant Status Indicator Technology, is a legislatively-mandated DHS program that is designed to:

- Enhance the security of American citizens, permanent residents, and visitors
- Expedite legitimate travel and trade
- Ensure the integrity of the immigration system
- Safeguard the personal privacy of visitors

When fully implemented, US-VISIT will provide a dynamic, interoperable system involving numerous stakeholders across the government. Increment 1, as the name suggests, is the first step in the implementation process. Increment 1 proposes to integrate and modify the capabilities of several information systems in order to accomplish the mission of US-VISIT.

This Privacy Impact Assessment (PIA) focuses on Increment 1 of this entry exit system.

What Information is Collected

The US-VISIT program will collect and retain biographic, travel, and biometric information (i.e., photograph and fingerprints) pertaining to visitors.

Individuals covered by Increment 1 ("covered individuals") are nonimmigrant visa holders traveling through air and sea ports.[1] The DHS regulations and related Federal Register notice for US-VISIT Increment 1 will fully detail coverage of the program.

Why the Information is Being Collected and Intended Use of the Information

In accordance with Congressional mandates for an entry exit system, information is collected from and used to verify the identity of covered individuals who enter or leave the United States. This enables U.S. authorities to enhance the security of the United States by more effectively identifying covered individuals who are:

- Known to pose a threat or are suspected of posing a threat to the security of the United States;
- Known to have violated the terms of their admission to the United States; or
- Wanted for commission of a criminal act in the United States or elsewhere.

[1] Nonimmigrant visa entrants comprise a small percentage of the 330 million non-citizens admitted annually through ports of entry. Establishing US-VISIT incrementally with this population will allow DHS to test implementation of the system and to make revisions as needed for future increments.

Information Access and Sharing

Information collected and retained by US-VISIT will be accessed by employees of DHS components—Customs and Border Protection, Immigration and Customs Enforcement, Citizenship and Immigration Services, and the Transportation Security Administration—and by consular officers of the Department of State. Strict security controls will be put in place to ensure that only those personnel with a need for the information in the performance of their official duties will be able to access information in the system.

If necessary, the information that is collected will be shared with other law enforcement agencies at the federal, state, local, foreign, or tribal level, who are lawfully engaged in collecting law enforcement intelligence information and who need access to the information in order to carry out their law enforcement duties.

Consent Mechanisms

The admission into the United States of an individual subject to US-VISIT requirements will be contingent upon submission of the information required by US-VISIT, including biometric identifiers. A covered individual who declines to provide biometrics is inadmissible to the United States, unless a discretionary waiver is granted under section 212(d)(3) of the Immigration and Nationality Act. Such an individual may withdraw his or her application for admission, or be subject to removal proceedings.

Security

Information accessible to US-VISIT will be protected through multi-layer security mechanisms that are physical, technical, administrative and environmental and that are in compliance with the DHS IT Security Program Handbook and DHS Baseline Security Requirements for Automated Information Systems. These security mechanisms provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and careful screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

System of Records

A system of records notice (SORN)—normally required under the Privacy Act—is not necessary for US-VISIT because no new system is being developed for Increment 1. However, the ADIS and IDENT SORNs have been revised to reflect US-VISIT usage.

Although US-VISIT derives its capability from the integration and modification of existing systems, it nevertheless represents a new business process that involves new uses of existing data and the collection of new data items. As a result, there is a potential for new privacy risks, which are addressed in the PIA.

Privacy Controls

US-VISIT collects, integrates, and shares personal information of covered individuals. Covered individuals must consent to the collection, use, and disclosure of this personal information if they wish to enter or leave the U.S.

To address the privacy concerns associated with the program, US-VISIT will implement comprehensive privacy controls, which will be modified and updated as the system is revised and expanded. These controls consist of:

- Public education through transparency of the program, including development and publication of a Privacy Policy that will be disseminated prior to the time information is collected from potential visitors;[2]
- Establishment of privacy sensitivity awareness programs for US-VISIT operators[3];
- Establishment of a Privacy Officer for US-VISIT and implementation of an accountability program for those responsible for compliance with the US-VISIT Privacy Policy;
- Periodic strategic reviews of US-VISIT data to ascertain that the collection is limited to that which is necessary for US-VISIT stated purposes;
- Usage agreements between US-VISIT and other agencies authorized to have access to US-VISIT data;
- To the extent permitted by law, regulations, or policy, establishment of opportunity for covered individuals to have access to their information and/or allow them to challenge its completeness;
- Maintenance of security safeguards (physical, electronic and procedural) consistent with federal law and policy to limit access to personal information only to those with appropriate rights, and to protect information from unauthorized disclosure, modification, misuse, and disposal, whether intentional or unintentional; and
- Establishment of administrative controls to prevent improper actions due to data inconsistencies from multiple information sources.

Contact Point and Reviewing Official

Contact Point:	Steve Yonkers US-VISIT Privacy Officer (202) 298-5200
Reviewing Official:	Nuala O'Connor Kelly Chief Privacy Officer, DHS (202) 772-9848

Comments

We welcome your comments on this privacy impact assessment. Please write to: Privacy Office, Attn.: US-VISIT PIA, U.S. Department Of Homeland Security, Washington, DC 20528, or email privacy@dhs.gov. Please include US-VISIT PIA in the subject line of the email.

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[2] A copy of the Privacy Policy is appended to the full report.

[3] The legacy systems on which Increment 1 is built include privacy sensitivity training requirements. This training will be made mandatory for US-VISIT operators.

DEPARTMENT OF HOMELAND SECURITY

Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice states the requirements for the first phase of the US–VISIT program, implemented pursuant to a Department of Homeland Security (Department) interim rule (see Department interim rule published elsewhere in this issue of the **Federal Register**). This notice requires certain nonimmigrant aliens to provide fingerprints, photographs or other biometric identifiers if arriving in or departing from the United States through designated air or sea ports of entry on or after January 5, 2004. This Notice applies to aliens applying for admission or admitted pursuant to a nonimmigrant visa who arrive in or depart from an air or sea port of entry designated in this Notice. The requirements and exemptions are specified in this Notice.

EFFECTIVE DATES: This notice is effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Patrice Ward, Chief Inspector, Air and Sea Exit Manager, US–VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 5th Floor, Arlington, VA 22209, telephone (202) 298–5200.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (Department) has established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) in accordance with several Congressional mandates requiring that the Department create an integrated, automated entry exit system that records the arrival and departure of aliens; that equipment be deployed at all ports of entry to allow for the verification of aliens' identities and the authentication of their travel documents through the comparison of biometric identifiers; and that the entry exit system record alien arrival and departure information from these biometrically authenticated documents. 8 U.S.C. 1187, 1365a and note, 1379, 1731–31.

Concurrently with this Notice, the Department is amending several regulations to implement the first phase of US–VISIT. (See Department interim rule published elsewhere in this issue of the **Federal Register**.) Department regulation 8 CFR 214.1, as amended, states that a nonimmigrant alien's admission to the United States is conditioned on compliance with any inspection requirement in 8 CFR 235.1(d) of this chapter. New regulation 8 CFR 215.8 states that the Secretary of Homeland Security or his delegate may establish pilot programs at up to fifteen air or sea ports of entry through which the Secretary or his delegate may require an alien admitted pursuant to a nonimmigrant visa who is departing from the United State from a designated air or sea port of entry to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of their immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she had properly maintained his or her status while in the United States. Department regulation at 8 CFR 235.1(d)(1), as amended, provides that the Secretary of Homeland Security or his delegate may require nonimmigrant aliens seeking admission pursuant to a nonimmigrant visa at an air or sea port of entry designated by a notice in the Federal Register to provide fingerprints, photograph(s) or other specified biometric identifiers during the inspection process.

Notice of Requirements for Biometric Collection From Certain Nonimmigrant Aliens

Pursuant to 8 CFR 235.1(d)(1) and 215.8, I hereby order as follows:

(a) Aliens subject to Notice. Aliens applying for admission or admitted pursuant to a nonimmigrant visa are subject to this Notice and may be required to provide biometric information at time of application for admission to or departure from the United States.

(b) Aliens exempt. This Notice does not apply to (i) aliens admitted on a A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to this Notice, (ii) children under the age of 14, (iii) persons over the age of 79, (iv) classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt, or (v) an individual alien the Secretary of Homeland Security, the Secretary of State or the Director of Central Intelligence determines shall be exempt. Aliens admitted on an A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–5, or NATO–6 visas who are no longer in such status on date of departure, however, are subject to the departure requirements of this Notice.

(c) Biometric Information. All aliens subject to this Notice shall: (1) Upon arrival at designated air and seaports, submit fingerprints and photographs as requested by an immigration officer; and (2) at time of departure from designated air and sea ports, submit fingerprints and electronically scan their nonimmigrant visas or passport as requested at the departure inspection locations.

(d) Air ports of entry designated for US–VISIT inspection at time of alien arrival:

Agana, Guam (Agana International Airport)
Aguadilla, Puerto Rico (Rafael Hernandez Airport)
Albuquerque, New Mexico (Albuquerque International Airport)
Anchorage, Alaska (Anchorage International Airport)
Aruba (Pre-Flight Inspection)
Atlanta, Georgia (William B. Hartsfield International Airport)
Austin, Texas (Austin Bergstrom International Airport)
Baltimore, Maryland (Baltimore/Washington International Airport)
Bangor, Maine (Bangor International Airport)
Bellingham, Washington (Bellingham International Airport)
Boston, Massachusetts (General Edward Lawrence Logan International Airport)
Brownsville, Texas (Brownsville/South Padre Island Airport)
Buffalo, New York (Greater Buffalo International Airport)
Calgary, Canada (Pre-Flight Inspection)
Chantilly, Virginia (Washington Dulles International Airport)
Charleston, South Carolina (Charleston International Airport)
Charlotte, North Carolina (Charlotte/Douglas International Airport)
Chicago, Illinois (Chicago Midway Airport)
Chicago, Illinois (Chicago O'Hare International Airport)
Cincinnati, Ohio (Cincinnati/Northern Kentucky International Airport)
Cleveland, Ohio (Cleveland Hopkins International Airport)
Columbus, Ohio (Rickenbacker International Airport)
Columbus, Ohio (Port Columbus International Airport)
Dallas/Fort Worth, Texas (Dallas/Fort Worth International Airport)

Del Rio, Texas (Del Rio International Airport)
Denver, Colorado (Denver International Airport)
Detroit, Michigan (Detroit Metropolitan Wayne County Airport)
Dover/Cheswold, Delaware (Delaware Airpark)
Dublin, Ireland (Pre-Flight Inspection)
Edmonton, Canada (Pre-Flight Inspection)
El Paso, Texas (El Paso International Airport)
Erie, Pennsylvania (Erie International Airport)
Fairbanks, Alaska (Fairbanks International Airport)
Fajardo, Puerto Rico (Diego Jimenez Torres Airport)
Fort Lauderdale, Florida (Fort Lauderdale Executive Airport)
Fort Lauderdale, Florida (Fort Lauderdale/Hollywood International Airport)
Fort Myers, Florida (Fort Myers International Airport)
Freeport, Bahamas (Pre-Flight Inspection)
Greenville, South Carolina (Donaldson Center Airport)
Hamilton, Bermuda (Pre-Flight Inspection)
Hartford/Springfield, Connecticut (Bradley International Airport)
Honolulu, Hawaii (Honolulu International Airport)
Houston, Texas (Houston International Airport)
Indianapolis, Indiana (Indianapolis International Airport)
International Falls, Minnesota (Falls International Airport)
Isla Grande, Puerto Rico (Isla Grande Airport)
Jacksonville, Florida (Jacksonville International Airport)
Juneau, Alaska (Juneau International Airport)
Kansas City, Kansas (Kansas City International Airport)
Kenmore, Washington (Kenmore Air Harbor)
Key West, Florida (Key West International Airport)
King County, Washington (King County International Airport)
Kona, Hawaii (Kona International Airport)
Laredo, Texas (Laredo International Airport and Laredo Private Airport)
Las Vegas, Nevada (McCarren International Airport)
Los Angeles, California (Los Angeles International Airport)
Manchester, New Hampshire (Manchester Airport)
Mayaguez, Puerto Rico (Eugenio Maria de Hostos Airport)
McAllen, Texas (McAllen Miller International Airport)
Memphis, Tennessee (Memphis International Airport)
Miami, Florida (Kendall/Tamiami Executive Airport)
Miami, Florida (Miami International Airport)
Milwaukee, Wisconsin (General Mitchell International Airport)
Minneapolis/St. Paul, Minnesota (Montreal, Canada (Pre-Flight Inspection)
Nashville, Tennessee (Nashville International Airport)
Nassau, Bahamas (Pre-Flight Inspection)
New Orleans, Louisiana (New Orleans International Airport)
New York, New York (John F. Kennedy International Airport)
Newark, New Jersey (Newark International Airport)
Norfolk, Virginia (Norfolk International Airport and Norfolk Naval Air Station)
Oakland, California (Metropolitan Oakland International Airport)
Ontario, California (Ontario International Airport)
Opa Locka/Miami, Florida (Opa Locka Airport)
Orlando, Florida (Orlando International Airport)
Orlando/Sanford, Florida (Orlando/Sanford Airport)
Ottawa, Canada (Pre-Flight Inspection)
Philadelphia, Pennsylvania (Philadelphia International Airport)
Phoenix, Arizona (Phoenix Sky Harbor International Airport)
Pittsburgh, Pennsylvania (Pittsburgh International Airport)
Ponce, Puerto Rico (Mercedita Airport)
Portland, Maine (Portland International Jetport Airport)
Portland, Oregon (Portland International Airport)
Portsmouth, New Hampshire (Pease International Tradeport Airport)
Providence, Rhode Island (Theodore Francis Green State Airport)
Raleigh/Durham, North Carolina (Raleigh/Durham International Airport)
Reno, Arizona (Reno/Tahoe International Airport)
Richmond, Virginia (Richmond International Airport)
Sacramento, California (Sacramento International Airport)
Salt Lake City, Utah (Salt Lake City International Airport)
San Antonio, Texas (San Antonio International Airport)
San Diego, California (San Diego International Airport)
San Francisco, California (San Francisco International Airport)
San Jose, California (San Jose International Airport)
San Juan, Puerto Rico (Luis Muñoz Marin International Airport)
Sandusky, Ohio (Griffing Sandusky Airport)
Sarasota/Bradenton, Florida (Sarasota-Bradenton International Airport)
Seattle, Washington (Seattle/Tacoma International Airport)
Shannon, Ireland (Pre-Flight Inspection)
Spokane, Washington (Spokane International Airport)
St. Croix, Virgin Island (Alexander Hamilton International Airport)
St. Louis, Missouri (St. Louis International Airport)
St. Lucie, Florida (St. Lucie County International Airport)
St. Petersburg, Florida (Albert Whitted Airport)
St. Thomas, Virgin Island (Cyril E. King International Airport)
Tampa, Florida (Tampa International Airport)
Teterboro, New Jersey (Teleboro Airport)
Toronto, Canada (Pre-Flight Inspection)
Tucson, Arizona (Tucson International Airport)
Vancouver, Canada (Pre-Flight Inspection)
Victoria, Canada (Pre-Flight Inspection)
West Palm Beach, Florida (Palm Beach International Airport)
Wilmington, North Carolina (Wilmington International Airport)
Winnipeg, Canada (Pre-Flight Inspection)
Yuma, Arizona (Yuma International Airport)

(e) Air port of entry designated for US–VISIT inspection at time of alien departure:

Baltimore, Maryland

(f) Sea ports of entry designated for US–VISIT inspection at time of alien arrival:

Galveston, Texas
Jacksonville, Florida
Long Beach, California
Miami, Florida
Port Canaveral, Florida
San Juan, Puerto Rico
San Pedro, California
Seattle, Washington (Cruise Terminal)
Seattle, Washington
Tampa, Florida (Terminal 3)
Tampa, Florida (Terminal 7)
Vancouver, Canada (Ballantyne Pier)
Vancouver, Canada (Canada Place)
Victoria, Canada (Pre Inspection)
West Palm Beach, Florida

(g) Sea port of entry designated for US–VISIT inspection at time of alien departure:

Miami, Florida

The US–VISIT System Is Maintained Consistent With Privacy and Due Process Principles

The Department's Privacy Office, in conjunction with the US–VISIT Privacy

Officer, will exercise oversight of the US–VISIT program to ensure that the information collected and stored in systems associated with US–VISIT is being properly protected under the privacy laws and guidance (68 FR 69412, dated December 12, 2003).

The Department has the responsibility to ensure the security, accuracy, relevance, timeliness and completeness of the information maintained in the US–VISIT system. Information is safeguarded in terms of applicable rules and policies, including the Department's automated systems security and access policies. Only those individuals who have an official need for access to the system in the performance of their duties will, in fact, have access to the system. Records of those individuals who become U.S. citizens and legal permanent resident aliens will be protected in line with all applicable privacy laws and regulations. Those, including nonimmigrant aliens, who wish to contest or seek a change of their records should direct a written request to the US–VISIT Program Office at the following address: Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, Department of Homeland Security, Washington, DC 20528. Phone (202) 927–5200. Fax (202) 298–5201. The request should include the requestor's full name, current address and date of birth, and a detailed explanation of the change sought. If the matter cannot be resolved by the system manager, further appeal for resolution may be made to the DHS Privacy Officer at the following address: Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8000, facsimile (202) 772–5036.

Dated: December 30, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–32333 Filed 12–31–03; 11:51 am]

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Federal Register

Monday,
January 5, 2004

Part IV

Department of Homeland Security

8 CFR Parts 214, 215 and 235
Implementation of the United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT"); Biometric Requirements; Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System; Interim Final Rule and Notice

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214, 215 and 235

[BTS 03–01]

RIN 1651–AA54

Implementation of the United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT"); Biometric Requirements

AGENCY: Border and Transportation Security Directorate, Department of Homeland Security.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Homeland Security (Department or DHS) has established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) in accordance with several Congressional mandates requiring that the Department create an integrated, automated entry exit system that records the arrival and departure of aliens; that equipment be deployed at all ports of entry to allow for the verification of aliens' identities and the authentication of their travel documents through the comparison of biometric identifiers; and that the entry exit system record alien arrival and departure information from these biometrically authenticated documents. This rule provides that the Secretary of Homeland Security or his delegate may require aliens to provide fingerprints, photographs or other biometric identifiers upon arrival in or departure from the United States. The arrival and departure provisions are authorized by sections 214, 215 and 235 of the Immigration and Nationality Act (INA).

The Department will apply this rule's requirements only to aliens seeking to be admitted pursuant to a nonimmigrant visa who travel through designated air and sea ports. The rule exempts: aliens admitted on A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the rule; children under the age of 14; persons over the age of 79; classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt; and an individual alien the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt. A **Federal Register** notice identifying the air and sea ports where biometrics may be collected at time of entry and departure has been published simultaneously with this rule. This rule authorizes the Secretary to establish pilot programs for the collection of biometric information at time of departure and at a limited number of ports of entry, to be identified through notice in the **Federal Register**. The biometrics provided by the aliens will be entered into the automated identification system (IDENT) system, which will be integrated with the entry exit system component of US–VISIT. The alien's biometric and other information will be checked against law enforcement and intelligence data to determine whether the alien is a threat to national security or public safety, or is otherwise inadmissible. An alien's failure to comply with this rule's requirements may result in a finding that he or she is inadmissible to the United States, has violated the terms of his or her admission and maintenance of status, or is ineligible for future visas, admission or discretionary immigration benefits. Due to heightened security concerns related to a continued threat of terrorist acts in the United States, the Department has determined that immediate implementation of this rule is necessary with request for public comments.

DATES: Interim rule effective on January 5, 2004. Written comments must be submitted on or before February 4, 2004.

ADDRESSES: Written comments may be submitted to Patrice Ward, Chief Inspector, Air and Sea Exit Manager, US–VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 5th Floor, Arlington, VA 22209. Submitted comments may be inspected at 425 I St NW., Room 4034, Washington, DC 20536 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling (202) 298–5200. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552.

FOR FURTHER INFORMATION CONTACT: For US–VISIT requirements under this rule: Patrice Ward, Chief Inspector, Air and Sea Exit Manager, US–VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 5th Floor, Arlington, VA 22209, at (202) 927–5200.

SUPPLEMENTARY INFORMATION:

What Is the US–VISIT Program?

The US–VISIT program is a high priority initiative of the Department that is designed to improve overall border management through the collection of arrival and departure information on foreign visitors and immigrants who travel through our nation's air, sea and land ports. The goals of US–VISIT are to enhance the security of the United States, its citizens, permanent residents and visitors; to expedite legitimate travel and trade; to ensure the integrity of the U.S. immigration system; and to safeguard the personal privacy of foreign visitors and residents. By recording more complete arrival and departure information, the US–VISIT program will not only meet various Congressional mandates for an integrated, interoperable, and automated entry exit system for aliens as discussed below, but it will also enhance the security and safety of citizens, residents and visitors by verifying foreign national travelers' identities through the comparison of biometric identifiers, by authenticating their travel documents, and by checking their data against appropriate law enforcement and intelligence systems. The terrorist attacks of September 11, 2001, highlighted the need to improve national security by returning integrity to the U.S. immigration system. This requires developing better methods for identifying aliens who are inadmissible to the country as well as those who overstay their lawful admission periods. At the same time, the country needs procedures and systems that facilitate legitimate travel, commerce, tourism, education, international communication, and other benefits that flow from welcoming law-abiding citizens of other countries into the United States. The US–VISIT Program was created to help DHS meet all of these law enforcement and service goals.

What Is the Statutory Authority for the Entry Exit System Component of the US–VISIT Program and for the Collection of Biometric Identifiers From Aliens?

The principal law that mandates the creation of an automated entry exit system that integrates electronic alien arrival and departure information is the *Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA)*, Public Law 106–215 (2000), 114 Stat. 339, codified as amended at 8 U.S.C. 1365a. *DMIA* amended previous legislative requirements for an entry exit system that would record the arrival and departure of every alien who crosses the U.S. borders. *See* section 110 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996,*

Div. C, Public Law 104–208 (1996), 110 Stat. 3009–558, codified in scattered sections of 8 U.S.C. (later amended by *DMIA*). *DMIA* requires that the entry exit system consist of the integration of all authorized or required alien arrival and departure data that is maintained in electronic format in Department of Justice (DOJ) (now DHS) or Department of State (DOS) databases. 8 U.S.C. 1365a. This integrated entry exit system must be implemented at all air and sea ports of entry by December 31, 2003 using available air and sea alien arrival and departure data as described in the statute. *DMIA* also states that the system must be implemented at the 50 most highly trafficked land border ports of entry by December 31, 2004, and at all ports of entry by December 31, 2005 with all available electronic alien arrival and departure information. *DMIA* also requires DHS to use the entry exit system to match the available arrival and departure data on aliens and to prepare and submit to Congress various reports on the numbers of aliens who have overstayed their periods of admission and on implementation of the system. 8 U.S.C. 1365a(e). *DMIA* authorizes the Secretary of Homeland Security, in his discretion, to permit other Federal, State, and local law enforcement officials to have access to the entry exit system for law enforcement purposes. 8 U.S.C. 1365a(f).

In addition, section 217(h) of the *Visa Waiver Permanent Program Act* of 2000 (VWPPA), Public Law 106–396 (2000), 114 Stat. 1637, codified as amended at 8 U.S.C. 1187(h), requires the creation of a system that contains a record of the arrival and departure of every alien admitted under the Visa Waiver Program (VWP) who arrives and departs by air or sea. The requirements of *DMIA* effectively result in the integration of this VWP arrival/departure information into the primary entry exit system component of the US–VISIT program.

In late 2001 and 2002, Congress passed two additional laws affecting the development of the entry exit system, in part, in response to the events of September 11, 2001. Section 403(c) of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act)*, Public Law 107–56 (2001), 115 Stat. 353, codified as amended at 8 U.S.C. 1379, required the Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other appropriate Federal law enforcement and intelligence agencies, and in consultation with Congress, to develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of visa applicants and persons seeking to enter the United States pursuant to a visa and to do background checks on such aliens. In developing the entry exit system required by *DMIA*, section 414(b) of the *USA PATRIOT Act* directed the Attorney General and the Secretary of State to "particularly focus on the utilization of biometric technology; and the development of tamper-resistant documents readable at ports of entry." 8 U.S.C. 1365a note.

The legislative requirements for biometric identifiers to be utilized in the context of the entry exit system were significantly strengthened with passage of the *Enhanced Border Security and Visa Entry Reform Act of 2002 ("Border Security Act" or EBSVERA)*, Public Law 107–173 (2002), 116 Stat. 553, codified in scattered sections of 8 U.S.C. 302(a)(1) of the Border Security Act states that the entry exit system must use the technology and biometric standards required to be certified by section 403(c) of the USA PATRIOT Act. Section 303(b)(1) requires that "[n]o later than October 26, 2004," only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers may be issued to aliens by DHS and DOS. 8 U.S.C. 1732(b)(1). This section, however, does not invalidate unexpired travel documents that have been issued by the U.S. government that do not use biometrics. Section 303(b)(1) further states that the Secretaries of Homeland Security and State must jointly establish document authentication and biometric identifier standards for alien travel documents from among those recognized by domestic and international standards organizations. *Id.*

Section 303(b)(2) requires that "[n]o later than October 26, 2004," all ports of entry must have equipment and software installed "to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens, and passports" that are required to be issued by VWP countries. 8 U.S.C. 1732(b)(2). The current statutory language also requires that by that same date, VWP countries must have a program in place to issue tamper-resistant, machine-readable, biometric passports that comply with biometric and document identifying standards established by the International Civil Aviation Organization (ICAO). 8 U.S.C. 1732(c)(1). The statute also states that on or after October 26, 2004, any alien applying for admission under the VWP must present a passport that is machine-readable, tamper-resistant and that uses ICAO-compliant biometric identifiers, unless the unexpired passport was issued prior to that date. 8 U.S.C. 1732(c)(2). The entry exit system must include a database that contains alien arrival and departure data from the machine-readable visas, passports, and other travel and entry documents. 8 U.S.C. 1731(a)(2). In developing the entry exit system, the Secretaries of Homeland Security and State must also make interoperable all security databases relevant to making determinations of alien admissibility. 8 U.S.C. 1731(a)(3).

In addition, the entry exit system component must share information with other systems required by the *Border Security Act*. Section 202 of the *Border Security Act* addresses requirements for an interoperable law enforcement and intelligence data system and requires the integration of all databases and data systems that process or contain information on aliens.

The US–VISIT program requirements that foreign nationals provide biometric identifiers when they seek admission to the United States are further supported by the Department's broad authority to inspect aliens contained in section 235 of the *INA*, 8 U.S.C. 1225. Pursuant to section 215(a) of the INA, the President also has the authority to regulate the departure of aliens, as well as their arrival. President Bush has issued Executive Order titled Assignment of Functions Relating to Arrivals In and Departures From the United States delegating his authority to promulgate regulations governing the departure of aliens from the United States. In accordance with section 215 and with this new Executive Order, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has the authority to issue this rule which requires certain aliens to provide requested biometric identifiers and other relevant identifying information as they depart the United States. For nonimmigrant aliens, the Department may also make compliance with the departure procedures a condition of their admission and maintenance of status while in the country under INA, section 214.

Many other provisions within the INA also support the implementation of the US–VISIT program, such as the grounds of inadmissibility in section 212, the grounds of removability in section 237, the requirements for the VWP program in section 217, the electronic passenger manifest requirements in section 231,

and the authority for alternative inspection services in sections 286(q) and 235 of the INA and section 404 of the *Border Security Act*. These are but a few of the most significant provisions that support US–VISIT from among numerous other immigration and customs statutes.

Is DHS Meeting the December 31, 2003 *DMIA* Deadline for Implementing the Integrated Entry Exit System at the Air and Sea Ports of Entry?

Yes. By integrating all the available arrival and departure data on aliens who arrive through the air and sea ports of entry that currently exists in the electronic systems of DHS and DOS and deploying the integrated system at those ports of entry, the Department has met the first *DMIA* deadline of December 31, 2003. The Department is accomplishing this first phase through the integration of the arrival and departure data contained in the Advance Passenger Information System (APIS) and the Arrival Departure Information System (ADIS), as well as other systems related to air and sea inspections. APIS and ADIS include the information captured from electronic passenger manifest data received from carriers, information on VWP aliens, and information on visa applicants and recipients received through the DataShare program with DOS.

What Changes Does This Interim Rule Make?

Through an amendment to 8 CFR 235.1(d), the Department may require aliens who are arriving at United States air and sea ports of entry to provide fingerprints, photographs, or other biometric identifiers to the inspecting officer. The Department will collect fingerprints and photographs from aliens applying for admission pursuant to a nonimmigrant visa upon their arrival at air and sea ports of entry and upon departure if they exit through certain locations. Departure inspection will be conducted through pilot programs at a limited number of departure ports, identified by notice in the **Federal Register**. The rule exempts: (i) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the rule, (ii) children under the age of 14, (iii) persons over the age of 79, (iv) classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt, and (v) an individual alien the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt. Although the biometric requirements in this rule will initially only apply to nonimmigrant visa-holders who travel through designated air and sea ports, the Department anticipates expanding the program, through separate rulemaking to include other groups of aliens and more ports in order to eventually have the capability to verify the identities of most foreign national travelers through biometric comparisons as envisioned by the *USA PATRIOT Act* and the *Border Security Act*.

At amended 8 CFR 235.1(d)(ii), the rule states that failure by an alien to provide the requested biometrics necessary to verify his or her identity and to authenticate travel documents may result in a determination that the alien is inadmissible under section 212(a)(7) of the INA for lack of proper documents, or other relevant grounds in section 212 of the Act.

New rule 8 CFR 215.8 states that the Secretary of Homeland Security may establish pilot programs at up to fifteen air or sea ports of entry, designated through notice in the **Federal Register**, through which the Secretary may require aliens who are departing from the United States from those ports to provide fingerprints, photographs, or other biometric identifiers, documentation, and such other such evidence as may be requested to determine an alien's identity and whether he or she has properly maintained his or her status while in the United States.

This rule also amends 8 CFR 214.1(a) to state that if a nonimmigrant alien is required under section 235.1(d) to provide biometric identifiers, the alien's admission is conditioned on compliance with any such requirements. Similarly, if the alien is required to provide biometrics and other information upon departure pursuant to 8 CFR 215.8, the nonimmigrant alien's failure to comply may constitute a failure of the alien to maintain the terms of his or her immigration status.

Finally, the rule makes clear by amending 8 CFR 235.1(f) that all nonimmigrant aliens will be issued the Form I–94, Arrival Departure Record regardless of whether they come through an air, sea or land port of entry, unless they are otherwise exempted from the I–94 requirement. This amendment clarifies that air and sea carrier passengers will continue to be issued I–94s which must be surrendered upon departure unless the I–94 was issued for multiple entries by the alien.

What Is a "Biometric Identifier?"

As used in this rule, a "biometric identifier" is a physical characteristic or other attribute unique to an individual that can be collected, stored, and used to verify the claimed identity of a person who presents himself or herself to a border inspector. To verify identity, a similar physical characteristic or attribute is taken from the person who presents himself or herself and it is compared against the previously collected identifier. Examples of biometric identifiers include, but are not limited to, the face (*i.e.*, captured in a photograph), fingerprints, hand geometry measurements, handwriting samples, iris scans, retina scans, voice patterns, and other unique characteristics.

Why Is This Interim Final Rule Necessary and Why Was It Not Issued as a Proposed Rule for Notice and Comment?

The Department has determined that the national security and public safety interests of the nation necessitate the implementation of this rule as an immediately effective interim rule with provision for public comment after the effective date. The collection of biometrics from foreign nationals seeking to enter or depart the United States will greatly enhance the Government's ability to identify persons who are a threat to the public and to national security. The longer the Department delays in collecting biometrics from visa-holders and eventually other foreign nationals, the greater chance that a person who has been previously identified as a threat to the public may not be timely identified through his fingerprints, photographs or other biometrics and may enter the United States without his true identity being detected.

The Department has further determined that this rule is necessary to give effect to the legislative mandates for utilization of biometric identifiers in the entry exit system component of the US–VISIT program as described in the *USA PATRIOT Act* and the *Border Security Act*, as previously discussed. Unless it collects biometric identifiers from the aliens who present themselves at inspection and on departure, the Department would be unable to compare the biometrics associated with the travel document presented (*e.g.*, a visa) against the bearer's characteristics or against DHS or DOS records of any previously taken biometrics associated with the alien's name. In other words,

the Department would not be able to verify the alien's identity fully or authenticate his documents as envisioned by Congress when it passed the two laws.

Congress has stated that "no later than October 26, 2004," biometrics must be utilized with all travel and entry documents that DHS and DOS issue to aliens and that machines capable of verifying the identities of foreign travelers and authenticating their documents through biometrics must be at all ports of entry. 8 U.S.C. 1732(b). The Secretary of Homeland Security has determined that waiting until the last minute (*i.e.*, October 26, 2004) to begin collecting biometrics and verifying the documents and identities of aliens who cross our borders would be highly detrimental to the security of the country. Moreover, the Department believes that it makes practical sense to implement the integrated entry exit system with air and sea arrival/departure data on foreign travelers at the same time as a biometric component is introduced to the system to provide the enhanced security benefits that biometrics will provide to verify identity. For these reasons, the Department has determined that it must immediately begin collecting biometrics from a limited group of aliens, *i.e.*, nonimmigrant visa holders who enter through the air and sea ports, and expand to other categories and locations as rapidly as possible.

The Department does encourage and welcome public comments on this rule and the manner in which it will be implemented. The Department will fully consider all comments submitted by the comment period as it prepares a final rule and before it expands the program to other categories of foreign nationals. See discussion of the "Good Cause Exceptions" below.

What Categories of Aliens Are Affected by This Rule?

This interim rule applies only to aliens applying for admission pursuant to a nonimmigrant visa who arrive in or depart from the United States through designated air and sea ports. The rule exempts: (i) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the rule, (ii) children under the age of 14, (iii) persons over the age of 79, (iv) classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt, and (v) an individual alien the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt. However, as a routine matter, only nonimmigrant visa-holders will be affected by this rule.

What Biometrics Will Be Collected and Will They Ever Change?

The Department initially plans to take a digital photograph and two fingerprints from each nonimmigrant alien who presents a visa at designated air or sea ports of entry. The Department, however, reserves its right to expand the types of biometric identifiers required in the future where doing so will improve the border management, national security, and public safety purposes of the entry exit system. Additional biometric requirements will be implemented in compliance with section 403(c) of the *USA PATRIOT Act*.

How Did DHS Determine Which Biometric Identifiers Would Be Collected for US–VISIT Purposes?

The Department has chosen to collect two fingerprints and photographs, in part, because they currently are less intrusive than other forms of biometric collections and because the combination of these biometric identifiers are an effective means for verifying a person's identity. Also, historically fingerprints and photographs have been the biometrics of choice within the law enforcement communities and the travel industry. As the deployment of more comprehensive technologies becomes feasible, however, the Department may collect additional biometric data to improve its ability to verify the identity and determine the admissibility of nonimmigrant aliens.

As required by section 403(c) of the *USA PATRIOT Act* and section 302(a)(1) of the *Border Security Act*, the Department of Justice and the former Immigration and Naturalization Service (INS) worked closely with NIST, DOS, other agencies and Congress to study and select fingerprints and digital photographs as the biometric identifiers that will be used in conjunction with the entry exit system. A report on the biometric standards selected was delivered to Congress in January 2003. *See* "Use of Technology Standards and Interoperable Databases with Machine-Readable, Tamper-Resistant Travel Documents," Report to Congress from U.S. Department of Justice, U.S. Department of State, and the National Institute of Standards and Technology (January 2003).

How Will a Person's Fingerprints and Photographs Be Collected?

On arrival at air and sea ports of entry, inspectors will scan two fingerprints of the foreign national with an inkless device and will take a digital photograph of the person. This information, as well as other information that the person provides, will then be used to assist the border inspector in determining whether or not to admit the traveler. Upon exit from the United States at designated air and sea ports, the foreign national traveler will go to a work station or kiosk to scan his travel documents, have his photograph compared, and to provide his fingerprints on the same type of inkless device that is used at entry.

What If an Individual Cannot Provide Clear Fingerprints or Photographs or Is Disabled in Such a Way That He or She Is Unable To Provide the Biometric Information?

The Department will make reasonable efforts that are also consistent with the Government's need to verify an alien's identity to accommodate any person with disabilities which prevent him or her from complying with the requirements of this rule for fingerprinting, photographs or other biometric collections. We will follow all required procedures that are applicable to government action under the *Americans With Disabilities Act*, codified as amended at 42 U.S.C. 12101 *et seq.* and the *Federal Rehabilitation Act*, codified as amended at 29 U.S.C. 701 *et seq.* In cases where a satisfactory fingerprint, for example, cannot be taken, the inspecting officer may accept another biometric identifier that will reasonably identify the person or sufficient additional information from the alien from which the officer can determine the individual's identity. In some instances where the identity of a person with disabilities does not appear to be truly at issue, the requirement for fingerprints or other biometric identifier may be waived in the discretion of the inspecting officer. The Department will ensure that procedures for handling the collection of biometric information from persons with disabilities are covered in any internal field guidance it may issue to implement this rule. In addition, the Department welcomes public comment on methods for properly handling situations where persons with disabilities are not able to provide the requested biometrics, but that still permit the Department to make the necessary identity and admissibility determinations.

How Will the Biometric Information Be Used?

The fingerprints and photograph(s) of the alien will be entered initially into an existing system called IDENT The alien's fingerprints and photographs will be compared against the biometric information already stored in IDENT to determine whether there is any information that would indicate the alien is an imposter or otherwise inadmissible. In addition, IDENT and the other technology associated with US–VISIT will permit the inspecting officer to compare the alien's fingerprints and photographs with any such biometric information previously captured.

DOS is currently implementing a program on a phased-in basis for taking fingerprints of many categories of visa applicants who have been approved or denied and storing those fingerprints and photographs in IDENT. This DOS-collected biometric information may also be accessed through the Interagency Border Inspection System (IBIS) by inspectors at the ports of entry in the United States. The inspecting officer will be able to compare the biometrics associated with the person who applied for the visa at the consular office abroad against the biometrics of the person who is present at the port of entry. Once the machine readers are in place at the ports of entry, this process will be fully automated and the visas and certain other travel documents will be capable of being scanned and compared electronically. An alien's name, biometric information and other identifying information will also be checked against various law enforcement and intelligence data for information that may identify him or her as inadmissible to the United States or as a threat to national security or the public safety. In the air and sea context, much of the information on the alien is already collected via the electronic passenger manifest process required by section 402 of the *Border Security Act*, codified as amended at INA, section 231; 8 U.S.C. 1221. Customs and Border Protection (CBP) officers currently have access to the passenger's complete name, nationality, date of birth, citizenship, gender, passport number and country of issuance, U.S. visa number, if applicable, alien registration number, if applicable, country of residence, and complete address while in the United States. U.S. inspectors receive the information prior to the alien's arrival through the Advance Passenger Information System (APIS) and the Arrival Departure Information System (ADIS), and it is run against the IBIS which contains "lookouts" on individuals submitted by more than 20 law enforcement and intelligence agencies. Thus, by the time the person gets to an air or sea port of entry, inspectors have identified aliens that need to be scrutinized more closely as well as aliens who may be inadmissible and whether other law enforcement agencies should be notified of any individual's presence.

Are Travelers Who Come Under the Visa Waiver Program (VWP) Affected by This Rule?

At this time, travelers who seek to enter under the VWP are not affected by this rule. However, under current law, an alien will not be admitted under the VWP on or after October 26, 2004, without a machine-readable, tamper-resistant passport that meets ICAO biometric standards for photographs, unless his passport is unexpired and was issued prior to that date. 8 U.S.C. 1732(c)(2). The machines that DHS must have in place at all ports of entry by that same date will also be capable of reading the ICAO-compliant biometrics in any VWP alien's passport. 8 U.S.C. 1732(b)(2).

Will Canadian or Mexican Citizens Have To Provide Biometric Identifiers When They Travel To or From the United States?

This rule does not affect foreign nationals entering the U.S. through land ports of entry. Aliens entering through land ports of entry need only meet the current requirements in the law. However, the rule does apply to Canadian and Mexican citizens who enter through air and sea ports of entry as outlined below. At present, the Department will not apply the biometric collection requirements of this rule to those Canadian citizens who travel on temporary visits to the United States and who do not apply for admission pursuant to a nonimmigrant visa. As usual, Canadians who are lawful permanent residents of the United States must possess a Permanent Resident Card (PRC) or other evidence of their permanent resident status; they will not, however, be routinely fingerprinted or photographed. The Department, as it always has, reserves the right to require fingerprints or other identifying information from any individual whom it has reason to believe may not be who he or she claims.

Mexicans currently must present visas, Border Crossing Cards (BCC), or other appropriate evidence of their immigration status to enter the United States. Since October 1, 2002, the law has required that a biometric characteristic (*e.g.*, face, fingerprint) of a bearer of a BCC must be matched against the biometric on the BCC before the bearer may be admitted. *See* 8 CFR 212.1(c)(3). This requirement remains applicable at all ports of entry. Machines have been deployed at the ports of entry to allow for the automated comparison of the fingerprints of BCC bearers against their documents. Under this rule and the Department's first implementation phase for US–VISIT biometrics collection, nonimmigrant Mexican visa holders will be required to provide fingerprints and photographs if they enter or exit at the designated ports.

Which United States Ports of Entry Will Be Involved in the Collection of Biometrics and in Verifying the Identities of Aliens and Authenticating Their Documents?

The notice that is published elsewhere in this issue of the **Federal Register** identifies the airports and the seaports where nonimmigrants who apply for admission pursuant to a nonimmigrant visa will be required to provide biometric information at time of arrival and departure. The names of all the affected ports of entry will not be repeated here for the sake of brevity.

The Department intends to implement departure inspection through pilot programs at a limited number of departure ports. The Department has identified thirty departure ports as candidates at which it will next implement biometric collection. The Department anticipates that, within the next few months, it will implement departure biometric collection at approximately fifteen of those ports of entry. This rule therefore authorizes the Secretary to establish pilot programs for departure inspection at up to fifteen air and sea ports, to be identified through notice in the **Federal Register**.

Through those pilot programs, the Department will test different methods to collect the required information from nonimmigrant aliens as they depart the United States through the designated ports of entry. The Department is currently exploring several different methods and processes, including but not limited to self-serve kiosks and hand-held scanners. The pilot program will enable the Department to conduct a cost benefit analysis of the different processes. The Department welcomes comments on how to implement biometric collection at time of departure. After reviewing the reliability, efficiency, and cost of those pilot programs, and receiving comments from the public regarding the departure

inspection process, the Department will undertake new rulemaking to allow the Secretary to expand biometric collection to all departure ports.

Will Foreign Travelers' Biometrics Be Collected, Their Identities Verified, and Their Documents Authenticated on Departure From the United States?

Yes. Aliens subject to this rule who exit through designated air and sea ports where pilot programs are implemented will be required to "check out" at work stations in those air and sea ports and to provide requested information and biometrics. The information that a traveler provides on departure will be verified and matched against any available information that he or she provided upon inspection and that was stored in the systems that comprise US–VISIT. This information will also be used to identify persons who have overstayed their authorized periods of admission, to compile the overstay reports required by *DMIA*, and where applicable, considered in DOS and DHS determinations on whether the person is eligible for future visas, admission or other discretionary immigration benefits.

Will There Be Any Assistance for Travelers During the Exit Process?

The exit collection mechanism at special work stations or kiosks will be structured to include international instructional icons, illustrating how the alien will submit biometrics and travel documents for scanning. DHS or contract personnel will be available, at initial stages, to assist travelers covered by the first increment of US–VISIT in learning how the exit process works.

Is a Nonimmigrant Visa Holder Required To Enter or Exit Through One of the Ports Designated for Biometric Processing in the Federal Register Notice?

Certain individuals remain subject to the National Security Entry Exit Registration System (NSEERS) regulations to depart through specific ports and undergo special departure procedures. *See* 8 CFR 264.1(f)(8). The most recent **Federal Register** notice listing the NSEERS ports of departure can be found at 68 FR 8967. This rule does not alter or amend that list.

Nonimmigrant visa holders, except those subject to NSEERS, may continue to depart the United States through any port, even those locations where biometrics are not currently being collected on exit. The Department recommends that any alien whom the Secretary designates to be covered by this rule's departure requirements and who chooses to depart from a location where US–VISIT departure procedures are not in place may wish to preserve any evidence that he or she did indeed depart the United States. Such evidence could include a passport stamp of admission to another country or a used airline ticket showing the person left the United States in a timely manner. Such information may be useful to show to a consular or immigration officer in case there is ever any future question about whether the alien properly left the United States. Individuals who have an I–94 Arrival Departure Record that must be surrendered upon departure should be certain to return this form promptly to the appropriate DHS division as required on the form to ensure that the individual's departure will be entered into appropriate DHS systems. In addition, the departure of individuals who leave on air or sea carriers that submit electronic passenger departure manifests to DHS/CBP will be recorded in DHS systems and should help to prove when the alien departed. However, not all carriers are currently able to submit this information electronically. The Department recognizes that there may be some interim confusion about whether covered foreign nationals overstayed their last periods of admission where there is no evidence in the US–VISIT systems of their departure. The Department anticipates that as departure procedures are expanded to all air, sea and land border ports, such confusion and potential for inaccurate determinations that a person overstayed will be significantly reduced.

Are There Any Additional Fees Imposed Upon Travelers as a Result of This Rule?

No, there are no additional fees for travelers required by this interim rule. DOS and DHS may need to adjust the fees for visas and other immigration documents that utilize biometrics in the future, but the Departments will follow all required *Administrative Procedure Act (APA)* procedures for notice and comment and any other applicable legal requirements if the fees change.

How Much Will the Biometric Collection Procedures Cost DHS and What Is the Source of the Funding?

In FY 2003, the US–VISIT program spent $190 million for the biometrics portion of the program. For FY 2004, the cost of implementing the biometric collection and verification procedures at air and sea ports of entry and departure locations is anticipated to be approximately $103 million. The funds for the equipment and other requirements to support the biometric procedures come from the approximately $380 million that Congress appropriated in FY 2003 for development of the entry exit system component of US–VISIT and from the $330 million total appropriated for FY 2004.

What May Happen If an Alien Refuses To Provide the Required Biometric Identifiers at Time of Entry?

This rule provides that an alien who refuses to provide biometric identifiers when seeking admission to the United States in order to assist inspectors in verifying his or her identity and authenticating his or her travel documents may be deemed inadmissible under INA, section 212(a)(7) (failure to provide appropriate documents), or other applicable grounds of inadmissibility in INA, section 212. For example, the inspector may deny admission under INA, section 212(a)(7) if he or she is unable to determine whether the applicant is presenting a document that is truly his and the inspector is unable to collect a biometric that can be verified against the fingerprints and photographs associated with the document. The rule does not attempt to identify every ground of inadmissibility that may apply because each case may present different circumstances that skilled inspectors are trained to assess and adjudicate. The rule does not change any of the existing criteria for inadmissibility, but allows inspectors to consider a failure to provide requested biometric identifiers as a factor in their admissibility determinations. In some circumstances, such as an individual who cannot physically provide clear fingerprints, a failure to do so will not necessarily result in an inadmissibility determination, provided that the inspector is otherwise satisfied that the person is who he claims to be and has appropriate authorization to enter the country. This rule also amends 8 CFR 214.1(a) to state that if a nonimmigrant alien is required under 8 CFR 235.1(d) to provide biometric identifiers, the alien's admission is conditioned on compliance with any such requirements.

What May Happen If an Alien Fails To Provide the Required Biometric Identifiers at the Time of Departure From the United States?

An alien who fails to comply with the departure requirements may be found in violation of the terms of his or her admission, parole, or other immigration status. This rule states that an alien who is covered by the requirements to

provide biometrics on departure at new 8 CFR 215.8 may be found to have overstayed the period of his or her last admission if the available evidence indicates that he or she did not leave the United States when required to do so. A determination that the alien previously overstayed may result in a finding of inadmissibility for accruing prior unlawful presence in the United States under section 212(a)(9) of the INA, provided that the accrued unlawful time and other prerequisites of that statute are met, or that the alien is otherwise ineligible for a visa or other authorization to reenter the United States. An overstay finding could also trigger consequences for a nonimmigrant visa holder under section 222(g) of the INA. If the person is deemed to have overstayed his authorized period of admission, his visa (including a multiple entry visa) would be deemed void under section 222(g). Section 222(g) further states that where a visa is void because the alien overstayed, he or she is ineligible to be readmitted to the United States as a nonimmigrant except on another visa issued in the consular office located in the country of the alien's nationality, or where there is no DOS office in the country, in such other consular office as the Secretary of State shall specify. The requirement of obtaining a new visa from the consular office in the country of the alien's nationality may be waived where extraordinary circumstances are found. 8 U.S.C. 1202(g).

The Department intends to focus its enforcement of departure requirements in this rule on cases where the alien willfully and unreasonably fails to comply with this regulation. The rule provides that an alien's failure to follow the departure procedures may be considered by an immigration or consular officer in making a discretionary decision on whether to approve or deny the alien's application for a future immigration benefit. The rule does *not*, however, state that an alien's failure to comply with departure procedures in every instance will necessarily result in a denial of a future visa, admission or other immigration benefit. For example, no alien will be penalized for failing to provide biometrics on departure where the Department has not yet implemented the departure facilities or procedures at the specific port where the person chooses to depart. There may well be instances where a consular officer or inspector, in his or her discretion and after reviewing the totality of the circumstances, determines that an alien's previous failure to comply with the departure procedures does not result in a finding of inadmissibility or the denial of an immigration benefit.

Will Biometric Collection Create Inspection Delays at Ports of Entry and Departure?

The Department is aware of this concern and is taking all possible steps to prevent congestion and delays in immigration and customs processing at the ports of entry and the departure locations. On entry, the Department anticipates that an average of only 15 additional seconds per nonimmigrant visa holder will be needed to complete processing as a result of the added biometric procedures. The Department arrived at this estimate after piloting the process on a voluntary compliance basis at Atlanta's Hartsfield International Airport. Individuals who are not required to provide biometrics at this time (*e.g.*, U.S. citizens, permanent residents, persons not required to have visas) may be routed through separate processing lines at the air and seaports so as to further alleviate congestion. Individuals who require more in depth scrutiny will, as usual, be taken to secondary inspection areas so as not to delay primary inspection processing for other travelers. The Department does not believe that significant delays will occur at the air and sea ports as a result of the new biometric collection and verification procedures. The Department further believes that the limited departure processing at the air and sea ports can be accommodated within the pre-boarding time period that carriers currently recommend travelers allow before their scheduled departure and that their travel should not be delayed.

While the Department does not anticipate longer wait times at ports of entry due to US–VISIT processing, a number of mitigation strategies have been developed, not unlike those already available to CBP under other conditions which result in backups. However, as the US–VISIT program expands, the Department will continually reassess the issue of delays to reduce any negative effects.

Will Legitimate Travel, Commerce, and Tourism Be Negatively Affected by This Rule?

As noted above, the Department does not believe that immigration and customs processing will be significantly delayed at the ports of entry or the departure locations. The Department believes that over time, the US–VISIT system will facilitate travel for those with biometrically-enhanced travel documents and others for whom the system contains travel records. Public comments are invited on ways that delays and negative effects on travel, trade, commerce, tourism and other desired aspects of immigration can be alleviated or minimized.

Are United States Citizens and Lawful Permanent Residents Required To Provide Biometric Identifiers?

No, United States citizens and lawful permanent residents will not be required to provide biometric identifiers under this rule. U.S. citizens must continue to present passports as required by 22 CFR 53, unless an exception under that regulation applies. Lawful permanent residents must present documents evidencing their status as described in 8 CFR 211.

Will Other Countries Impose Similar Biometric Requirements on United States Citizens?

Each country maintains the right to establish its own procedures and requirements for entry by foreign visitors. The Department, in coordination with DOS, will work with other governments that wish to institute programs of biometric identification in order to ensure that they are fair, efficient, accurate and no more intrusive than necessary.

Will Any Visa-Holders Be Exempt From the Fingerprinting and Photographing Requirements of This Rule?

The rule exempts: (i) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the rule, (ii) children under the age of 14, (iii) persons over the age of 79, (iv) classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt, and (v) an individual alien the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt. An immigration inspector retains discretion to collect an alien's biometrics if, in the inspector's discretion, such action is necessary to determine the exact age of the alien and whether he or she is exempt from the requirements of this rule.

Will Other Nonimmigrants for Whom Ten-Print Fingerprinting for Registration Purposes Has Been Waived by Existing Regulations be Required to Provide Two-Print Fingerprints and a Photograph Under This Rule Governing Identity Verification on Arrival and Departure From the United States?

The Department has determined that most nonimmigrant visa-holders for whom ten-print fingerprinting has been waived for registration purposes under 8 CFR 264.1(e)(1–2) must nevertheless comply with the requirements of this interim rule for the collection of biometrics (two fingerprints and a photograph) for purposes of entry and exit inspection. This includes nonimmigrants who are in the United States for less than one year, as well as nonimmigrants who are citizens of countries that do not fingerprint U.S. citizens who temporarily reside in their countries.

The ten-print fingerprinting that has been waived for these categories of nonimmigrants under 8 CFR 264.1(e)(1–2) is done for purposes of alien registration under INA, sections 262–266 and is *not* the same as the collection of two fingerprints and a photograph for identity verification and document authentication at arrival and departure inspection that is required under this interim rule. The biometric collections for arrival and departure inspection purposes are authorized instead by INA, section 235, 214, 215, and are further supported by the mandates for biometrics in section 303 of the *Border Security Act* and sections 403(c) and 414 of the *USA PATRIOT Act*.

DHS believes that the national security of the country, public safety and the integrity of the immigration system necessitate requiring most nonimmigrant visa holders to provide fingerprints and photographs for identity checks, law enforcement background checks, and determinations of admissibility.

Do the Requirements for the Collection of Biometric Identifiers Violate the Statutory "No New Documents or Data Collection" Prohibition in the DMIA?

No, the Department has determined that there is no conflict between this rule and *DMIA*. *DMIA* does state that "[n]othing in this section [codified at 8 U.S.C. 1365a] may be construed "to permit the [Secretary of Homeland Security] or the Secretary of State to impose any new documentary or data collection requirements on any person in order to satisfy the requirements of this section * * *." 8 U.S.C. 1365a(c)(1). However, the provision in *DMIA* that immediately follows that subsection states that "[n]othing in this section shall be construed to reduce or curtail any authority of the [Secretary of Homeland Security] or the Secretary of State under any other provision of law." 8 U.S.C. 1365a(c)(2)(emphasis added). The biometric requirements of this interim rule are supported by statutory authority outside of the four corners of *DMIA* and thus fall within *DMIA's* own "no reduction of authority" provision. Most importantly, Congress has expressly stated in sections 403(c) and 414 of the USA PATRIOT Act and sections 302–303 of the *Border Security Act*, laws passed after *DMIA* and after the terrorist attacks on September 11, 2001, that DHS and DOS should "particularly focus on the utilization of biometric technology" in developing the entry exit system; that alien identities be verified through biometric comparisons based on certified biometric standards developed through NIST; that travel and entry documents issued to aliens utilize biometrics; and that those documents be authenticated by machine-readers at ports of entry that will capture information on the aliens' arrival and departure for inclusion in the entry exit system. In addition, this rule is supported by other authority in sections 214, 215 and 235 of the INA, which has not been curtailed or reduced by *DMIA*. For these reasons, this rule does not violate the proscription against new documentary or data collections in *DMIA*.

What Persons or Entities Will Have Access to the Biometric and Other Information Collected on Aliens Under the US–VISIT Program?

The biometric and other information available in IDENT, APIS, ADIT and the other systems associated with the US–VISIT program will be available to CBP officers at ports of entry, special agents in the Bureau of Immigration and Customs Enforcement (ICE), adjudications staff at U.S. Citizenship and Immigration Services (USCIS), to DOS consular officers and other staff involved with the adjudication of visa applications at overseas posts, and to other DHS, BTS, ICE, CIS, CBP, appropriate officers of the United States Intelligence Community, and DOS personnel and attorneys when needed for the performance of their duties. Other employees and divisions of DHS, such as the Transportation Security Administration (TSA), may also have access to the biometric and other information on aliens. In addition, section 414(c) of the *USA PATRIOT Act* directs that the information in the entry exit system component of the US–VISIT program must be available to other federal law enforcement officers, such as agents of the Federal Bureau of Investigation (FBI), through system interfaces or other technology means for purposes of identifying and detaining individuals who are threats to United States national security. The Secretary of Homeland Security, in his discretion, may also make the information available to State and local law enforcement agencies, to assist them in carrying out their law enforcement responsibilities. *See* 8 U.S.C. 1365a(f); *see also* 8 U.S.C. 1722(a)(5). The Department will only share biometric information with other foreign governments where permitted by law and necessary for intelligence and law enforcement interests consistent with United States interests.

How Will DHS Protect the Biometric and Other Information Provided by Foreign Travelers and Ensure That Their Privacy Interests Are Not Violated?

US–VISIT records will be protected consistent with all applicable privacy laws and regulations. Personal information will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside the US–VISIT program other than as authorized by law and as required for the performance of official duties. In addition, careful safeguards, including appropriate security controls, will ensure that the data is not used or accessed improperly. The DHS Chief Privacy Officer will review pertinent aspects of the program to ensure that these proper safeguards and security controls are in place. The information will also be protected in accordance with the Department's published privacy policy for US–VISIT.

The Department's Privacy Office will exercise oversight of the US–VISIT program to ensure that the information collected and stored in IDENT and other systems associated with US–VISIT is being properly protected under the privacy laws and guidance. US–VISIT will also have its own Privacy Officer to handle specific inquiries and to provide additional oversight of the program.

Finally, the Department will maintain secure computer systems that will ensure that the confidentiality of individuals' personal information is maintained. In doing so, the Department and its information technology personnel will comply with all laws and regulations governing government systems, such as the *Federal Information Security Management Act of 2002*, Title X, Public Law 107–296, 116 Stat. 2259–2273 (2002) (codified in scattered sections of 6, 10, 15, 40, and

44 U.S.C.); *Information Management Technology Reform Act (Clinger-Cohen Act)*, Public Law 104–106, Div. E, codified at 40 U.S.C. 11101 *et seq.*; *Computer Security Act of 1987*, Public Law 100–235, 40 U.S.C. 1441 *et seq.* (as amended); *Government Paperwork Elimination Act*, Title XVII, Public Law 105–277, 112 Stat. 2681–749—2681–751 (1998) (codified, as amended, at 44 U.S.C. 101; 3504 note); and *Electronic Freedom of Information Act of 1996*, Public Law 104–231, 110 Stat. 3048 (1996) (codified, as amended, at 5 U.S.C. 552.)

How Is the US–VISIT Program Different From the National Security Entry Exit Registration System (NSEERS) Program and Are Any Aspects of NSEERS Continued Under US–VISIT?

Foreign nationals who are subject to the US–VISIT biometric collection requirements of this rule are only required to follow the specified procedures on entry and exit where the Department has implemented the procedures and publicly announced them, as it has with respect to nonimmigrant visa-holders who travel through designated air and sea ports. Certain aliens whose presence in the United States warrants monitoring for national security or law enforcement reasons remain subject to the NSEERS special registration procedures at 8 CFR 264.1(f) and its implementing notices. *See* 68 FR 67578. The special entry and exit registration procedures under NSEERS will meet the requirements of this US–VISIT rule for entry and exit inspection for persons who are also subject to NSEERS.

Under the original NSEERS program, special registrants had to comply with both arrival and departure requirements for biometrics collection and additional questioning, and also with a requirement to re-register after 30 days and on an annual basis. The mandatory 30-day and annual re-registrations were suspended on December 2, 2003. *See* 68 FR 67578. In addition, when the NSEERS program began, it included a requirement that foreign nationals from NSEERS-delineated countries already in the United States comply with a domestic or "call-up" registration. The "call-up" component has expired. Neither the re-registration or "call-up" registration is relevant to the US–VISIT program at this time.

However, nonimmigrants subject to NSEERS and to this US–VISIT rule who do not comply with the procedures for fingerprinting and photographing run similar risks that they could be deemed ineligible for future visas, admission or other discretionary immigration benefits. Compliance with this rule, as with the NSEERS regulations, is deemed a condition of a nonimmigrant's admission and maintenance of status for purposes of INA, section 214. The information that NSEERS aliens provide on arrival and departure is kept in IDENT and a special NSEERS system that will be integrated with all of the other foreign national arrival and departure data that are required to be kept in the entry exit system component of US–VISIT.

Will the Public Be Permitted To Comment on This Rule and Its Implementation?

Yes. The Department welcomes and encourages the public to comment on all aspects of this rule and its implementation, as well as other aspects of the US–VISIT program that may not be covered by the rule itself. We will consider all comments carefully and anticipate that many of them will help us to improve the program. The Department is particularly interested in comments on the clarity of this rule and how it may be made easier to understand; methods for meeting the US–VISIT program goals; means to communicate the procedures to the public, including any expansions in the application of this rule; ways to reduce any potentially negative effects of the rule on legitimate travel, trade and tourism; uses for the biometric information to be collected; privacy protections for the information; methods for ensuring accuracy of the information collected; procedures for situations where persons with disabilities cannot provide the requested biometric identifiers; and ways to enhance national security and public safety interests.

Members of the public may also wish to follow the activities and recommendations of the congressionally-mandated DMIA Task Force through its Web site at *http://uscis.gov/graphics/shared/lawenfor/bmgmt/inspect/dmia.htm*. The DMIA Task Force, which is comprised of 17 public and private representatives from government, industry, tourism, air and sea carriers, and other areas, makes regular reports on its recommendations for the entry exit system component of US–VISIT, and these reports are transmitted to Congress by the Secretary of Homeland Security in accordance with 8 U.S.C. 1365a(g). The DMIA Task Force also welcomes regular public comments. In addition, members of the public may keep up to date on the progress of the US–VISIT program through the DHS Web site at *www.dhs.gov/us-visit*.

Good Cause Exceptions for Implementation of Interim Final Rule

Implementation of this rule as an interim final rule with a request for post-effective date public comments is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). Pursuant to the provisions of 5 U.S.C. 553(b)(3)(B), the Department has determined that delaying implementation of this rule to await public notice and comment is unnecessary, as well as contrary to the public interest and the national security of the nation. It is in the public interest and furthers our national security to implement requirements immediately that will allow for the collection and comparison of biometrics of aliens seeking admission in to the United States. These requirements will greatly enhance the ability of the Department to confirm the identities of nonimmigrant aliens seeking admission into the United States, and will allow for improved biometrics-based searches of watch lists, including law enforcement and intelligence data bases containing information on known and suspected terrorists. Such tools will increase the border security of the United States by helping DHS officers to identify persons who pose a threat to the nation. Before further expansion of the rule's implementation to more categories of aliens, the Department anticipates that it will have sufficient opportunity to consider the public comments generated by this interim rule, as well as to publish a final rule. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), the Department finds that there is good cause for making the rule immediately effective. Therefore this rule is immediately effective upon publication in the **Federal Register.** Although the Department has determined that pre-effective date public notice and comment would be contrary to national security and public safety, the Department strongly encourages the public to comment on the provisions of this rule so that such comments may be carefully considered in the drafting of a final rule.

Executive Order 12866

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), requires a determination as to whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Department has determined that this rule is a "significant regulatory action" under Executive Order 12866,

section 3(f) because there is significant public interest in security issues. Accordingly, this rule has been reviewed and approved by the OMB.

The Department has performed a preliminary analysis of the expected costs and benefits of this interim final rule. The anticipated benefits of the rule include: (1) Improved biometric identification of foreign national travelers who may present threats to public safety and the national security of the United States; (2) enhancement of the Government's ability to match an alien's fingerprints and photographs to other law enforcement or intelligence data associated with identical biometrics; (3) improved identification of individuals who may be inadmissible to the United States; (4) improved cooperation across international, Federal, State, and local agencies through better access to data on foreign nationals; (5) facilitation of legitimate travel and commerce by improving the timeliness and accuracy of the determination of a traveler's immigration status or his or her inadmissibility; (6) ensuring the integrity of the United States immigration system through enhanced enforcement of immigration laws, including collection of more complete arrival and departure data on aliens; and (7) reductions in fraud, undetected imposters and identity theft.

The costs associated with implementation of this rule for nonimmigrant visa holders at air and sea ports of entry include an increase of approximately 15 seconds in inspection processing time per nonimmigrant visa holder over the current approximately one minute. By December 31, 2004, approximately 24 million nonimmigrant visa holders are anticipated to be affected at air and sea ports. This number is comprised of approximately 19.3 million air travelers and approximately 4.5 million sea travelers. The limited 15 second time increase is not anticipated to delay significantly the overall processing of air and sea passengers because persons not required to provide biometrics (*e.g.*, U.S. citizens, lawful permanent residents, and visa-exempt nonimmigrants) may be routed through different inspection lines, thereby easing any impact of the biometrics collection process. While the Department does not anticipate longer wait times at ports of entry due to US–VISIT processing, a number of mitigation strategies have been developed, not unlike those already available to CBP under other conditions which result in backups. The additional costs to the Government and the taxpayers of implementing the requirements of this rule for the pilot period are estimated to be $28.5 million for FY 2004. These costs include operation and maintenance for the entry program for three months and the cost of developing ten to fifteen exit sites. The Department believes that the costs described above are outweighed by the benefits of the rule's biometric requirements for immigration enforcement and the potential reduction in threats to national security and public safety. The Department will continually assess its procedures to ensure that any negative effects on legitimate travel, commerce and law abiding foreign visitors and permanent residents will be minimized.

The Department conducted analyses for both the entry and exit components. Based on those analyses, the Department determined which alternatives were best suited for this initial increment of the program.

Entry

Benefits: The goals and benefits of this rule have been defined as:

- Enhance National Security by (1) preventing entry of high-threat or inadmissible nonimmigrant aliens through improved and/or advanced access to data prior to the nonimmigrant's arrival; (2) reducing threat of terrorist attack and illegal immigration through improved identification of national security threats and inadmissible aliens; and (3) improving cooperation across federal, state and local agencies through improved access to nonimmigrant alien data.
- Facilitate legitimate trade and travel through (1) improved facilitation of legitimate travel and commerce by improved timeliness and accuracy of determination of nonimmigrant traveler status; and (2) improved accuracy and timeliness of the determination of nonimmigrant alien's inadmissibility.
- Ensure integrity of our immigration system through (1) improved enforcement of immigration laws through improved data accuracy and completeness; (2) reduction in nonimmigrant aliens remaining in the country under unauthorized circumstances; and (3) utilization of existing IT systems (no new systems) and enhancing information exchanges with federal, state, and local law enforcement and intelligence communities.
- Deploy the Program in accordance with existing privacy laws and policies.

Impact

The impact this rule on the traveling public has been measured by (1) the number of foreign national travelers affected, (2) the expected average processing time, (3) travelers which are not affected, (4) the effects on the ability of airlines to off-load passengers and assist them through immigration processing, and (5) the additional costs to the traveling public. The number of foreign national travelers affected by implementation of this regulation will be approximately 3 million nonimmigrant visa travelers.

This rule will affect only all travelers who apply for admission or are admitted pursuant to a nonimmigrant visa, subject to the exemptions outlined in this preamble and the codified text of the rule. Additionally, where possible and practical, aliens subject to this rule will be routed through separate lines. Overall, the processing time for aliens subject to this rule will not impact significantly the processing time for the traveling public. There will be little effect on the airlines' abilities to off-load passengers and get these travelers processed through immigration resulting from implementation of this rule. Moreover, there will be no additional costs to the traveling public, airlines or airports resulting from the implementation of this rule.

The expected average processing time per person for whom biometrics will be taken is approximately one minute and fifteen seconds at entry. This compares to one minute for travelers not being processed through the biometric requirements of US–VISIT. The average processing time upon exit is approximately one minute. DHS does not anticipate significant delays in processing on arrival or departure for the traveling public.

Cost Benefit Analysis

Entry

A Cost Benefit Analysis (CBA) was completed in February 2003 and will be updated in February 2004. This update will incorporate lessons learned about any benefits recognized from the initial operating capability provided by Increment 1, implemented pursuant to this rule.

Increment 1, Full Air and Sea and Limited Land Performance with Biographic and Biometric Capabilities, delivers air and sea entry capabilities, constrained by budgetary resources, in accordance with the law and on time. Other alternatives that were examined were (1) Full Operating Capability with Unlimited Budgetary Resources, (2) Full Air and Sea with Biographic Capabilities Only, and (3) Air and Sea Entry and Exit Capabilities Constrained by Budgetary Resources. This

alternative was chosen, because it provides the best capabilities within the funding constraints. Additionally, it was selected because it:

1. Implements Increment 1 capability to air and sea POEs within the statutory timeframe;
2. Delivers biographic to all primary points of inspection and biometric data to all secondary POEs points of inspection;
3. Meets budgetary constraints; and
4. Is more desirable because the data collection includes both biographic and biometric data collection that provides for a more thorough identity review than biographic data alone.

Exit

The US–VISIT Program wishes to pilot alternative information collection systems at selected air and seaports in FY 2004. Three alternative systems have been:

- *Alternative 1*

Gate Solution: Staffing and equipment would be located at all international departure gates. The estimated costs include $43 million for implementation plus $72 million annually for system maintenance including 1,350 additional TSA employees.

- *Alternative 2*

Checkpoint Solution: Staffing and equipment located at airport security checkpoints (746 nationwide). The estimated costs include $62 million for implementation plus $109 million for system maintenance, including 1,800 TSA employees.

- *Alternative 3*

Workstation (Kiosk) Solution: Equipment and contractors to provide travelers assistance located in departure areas after the security checkpoint. The estimated costs include $22 million for implementation plus $37 million for system maintenance including contractor costs.

Alternative 3, Workstation (Kiosk) Solution, was selected as the initial pilot because it was significantly more cost effective than the other two, was less manpower intensive, and eliminated the major concerns of airlines and airport authorities about boarding processes and time issues at gates.

Quantitative Benefits

The intent of this rule is to address identified operational deficiencies and legislative mandates associated with management of the entry and exit of international travelers through the U.S. ports. Among its qualitative benefits, the US–VISIT System will improve the accuracy and consistency of detecting fraudulent travel documents, verifying traveler identity, determining traveler admissibility, and determining the status of aliens through the use of more complete and accurate data to include the use of biometric data.

The quantitative benefits are targeted as a more effective solution that will allow the most optimal level of throughput and security for travelers. Some of these benefits can be measured, but not in financial terms. We will begin to quantify these benefits as we develop our performance analysis system for delivery in February 2004.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the Department to develop a process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The Department has analyzed this interim final rule in accordance with the principles and criteria in the Executive Order and has determined that it does not have federalism implications or a substantial direct effect on the States. This rule provides for the collection by the federal Government of biometric identifiers from nonimmigrant aliens with visas seeking to enter or depart the United States for purposes of improving the administration of federal immigration laws. States do not conduct activities with which this rule would interfere. For these reasons, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 (Civil Justice Reform)

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews on civil justice and litigation impact issues before proposing legislation or issuing proposed regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, and other matters. The Department has determined that this regulation meets the requirements of E.O. 12988 because it does not involve retroactive effects, preemptive effects, or the other matters addressed in the Executive Order.

Unfunded Mandates Reform Act of 1995

Section 202 of the *Unfunded Mandates Reform Act of 1995* (*UMRA*), 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of the *UMRA* generally requires DHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. Section 205 allows the Department to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes an explanation with the final rule. This interim final rule will not result in the expenditure by State, local, or tribal governments, or by the private sector, of more than $100 million annually. Thus, the Department is not required to prepare a written assessment under the *UMRA*.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the *Small Business Regulatory Enforcement Fairness Act of 1996*, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Environmental Analysis

The Department has analyzed this interim final rule for purposes of compliance with the *National Environmental Policy Act* (*NEPA*), 42 U.S.C. 4321 *et seq.* The Department has prepared a nationwide environmental assessment for the implementation of this program at airports and has determined that it will not result in any significant environmental impacts. The

Department has also prepared a nationwide environmental assessment for seaports. The analysis of potential impacts at seaports indicated that the proposed action is not likely to result in significant environmental impacts. The Department is initially implementing this rule only at air and sea ports, as indicated in the first **Federal Register** notice that accompanies publication of this rule. The Department will comply with any applicable *NEPA* and any other applicable environmental requirements prior to the implementation of this rule at the land ports of entry.

Trade Impact Assessment

The *Trade Agreement Act of 1979*, 19 U.S.C. 2531–2533, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The Department has determined that this rule will not create unnecessary obstacles to the foreign commerce of the United States and that any minimal impact on trade that may occur is legitimate in light of this rule's benefits for the national security and public safety interests of the United States.

Paperwork Reduction Act

This rule permits the Secretary of Homeland Security or his delegate to require that aliens who cross United States borders must provide fingerprints, photograph(s), and potentially other biometric identifiers upon their arrival in or departure from this country. These requirements constitute an information collection under the *Paperwork Reduction Act* (*PRA*), 44 U.S.C. 507 *et seq.*, and OMB's implementing regulations at 5 CFR 1320. Accordingly, the Department has submitted an information collection request to OMB for emergency review and clearance under the *PRA*. If granted, the emergency approval is only valid for 180 days. Under the *PRA*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The OMB control number for the biometric information that will be collected pursuant to this rule is OMB 1600–0006.

Overview of this information collection:

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* No form. Collection of biometrics will be in electronic or photographic format.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No form number 1600–0006, Border and Transportation Security Directorate, DHS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individual aliens. The categories of aliens are identified in this rule. The first group of affected aliens is nonimmigrant visa holders who seek admission to the United States at the air and sea ports of entry, and certain departure locations, designated in the notice published elsewhere in this issue of the **Federal Register**. The biometric information to be collected is necessary for the Department to begin its compliance with the mandates in section 303 of the *Border Security Act*, 8 U.S.C. 1732 and sections 403(c) and 414(b) of the *USA PATRIOT Act*, 8 U.S.C. 1365a note and 1379, for biometric verification of the identities of alien travelers and authentication of their biometric travel documents through the use of machine readers installed at all ports of entry. The arrival and departure inspection procedures are authorized by 8 U.S.C. 1225 and 1185.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: From January 5, 2004 to January 5, 2005 the number of nonimmigrant visa-holders required to provide biometrics at the air and sea ports of entry is anticipated to be approximately 24 million, comprised of approximately 19.3 million air travelers and 4.5 million sea travelers. The expected average processing time per person for whom biometrics will be collected is approximately one minute and fifteen seconds at entry, with the fifteen seconds being the additional time added for biometric collection over and above the normal inspection processing time. The average additional processing time upon exit is estimated at one minute per person. There are no additional fees for the traveling aliens to pay.

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 100,800 burden hours.

If additional information is required contact Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, Department of Homeland Security; 1616 North Fort Myer Drive, 5th Floor, Arlington, VA 22209 at (202) 927–5200.

During the first 60 days of the period authorized by OMB for this information collection under emergency procedures, the Department will undertake a regular review of the collection pursuant to the *PRA*. Written comments from the public are encouraged and will be accepted until March 5, 2004. Your comments should address one or more of the following points: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. Comments should be directed to Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, Department of Homeland Security; 1616 North Fort Myer Drive, 5th Floor, Arlington, VA 22209 at (202) 927–5200.

List of Subjects

8 CFR Part 214

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

8 CFR Part 215

Control of Aliens Departing from the United States.

8 CFR Part 235

Aliens, Immigration, Registration, Reporting and Recordkeeping Requirements.

Amendments to the Regulations

■ For the reasons set forth in the Supplementary Information section, parts 214, 215, and 235 of Title 8 of the Code of Federal Regulations are amended as set forth below:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–1305; 1372; 1379; 1731–32; sec. 643, Pub. L. 104–208; 110 Stat. 3009–708; section 141 of the

Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively.

■ 2. Part 214.1(a)(3) is revised to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(3) *General requirements.* (i) Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien must present a valid passport and valid visa unless either or both documents have been waived. A nonimmigrant alien's admission to the United States is conditioned on compliance with any inspection requirement in § 235.1(d) or of this chapter. The passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien must agree to abide by the terms and conditions of his or her admission. An alien applying for extension of stay must present a passport only if requested to do so by the Department of Homeland Security. The passport of an alien applying for extension of stay must be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien must agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension.

(ii) At the time of admission or extension of stay, every nonimmigrant alien must also agree to depart the United States at the expiration of his or her authorized period of admission or extension of stay, or upon abandonment of his or her authorized nonimmigrant status, and to comply with the departure procedures at section 215.8 of this chapter if such procedures apply to the particular alien. The nonimmigrant alien's failure to comply with those departure requirements, including any requirement that the alien provide biometric identifiers, may constitute a failure of the alien to maintain the terms of his or her nonimmigrant status.

(iii) At the time a nonimmigrant alien applies for admission or extension of stay, he or she must post a bond on Form I–352 in the sum of not less than $500, to ensure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the Commissioner of CBP, the Director of U.S. Citizenship and Immigration Services, an immigration judge, or the Board of Immigration Appeals.

* * * * *

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

■ 3. The authority citation for part 215 is revised to read as follows:

Authority: 8 U.S.C. 1104; 1184; 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1365a note, 1379, 1731–32.

■ 4. Part 215 is amended by adding new § 215.8, to read as follows:

§ 215.8 Requirements for biometric identifiers from aliens on departure from the United States.

(a)(1) The Secretary of Homeland Security may establish pilot programs at up to fifteen air or sea ports of entry, designated through notice in the **Federal Register**, through which the Secretary or his delegate may require an alien admitted pursuant to a nonimmigrant visa who departs the United States from a designated air or sea port of entry to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States.

(2) The requirements of paragraph (a)(1) shall not apply to:

(i) Aliens younger than 14 or older than 79 on date of departure;

(ii) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 or NATO–6 visas and maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirements of paragraph (a)(1);

(iii) Classes of aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not apply; or

(iv) An individual alien to whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines it shall not apply.

(b) An alien who is required to provide biometric identifiers at departure pursuant to paragraph (a)(1) and who fails to comply with the departure requirements may be found in violation of the terms of his or her admission, parole, or other immigration status. In addition, failure of a covered alien to comply with the departure requirements could be a factor in support of a determination that the alien is ineligible to receive a future visa or other immigration status documentation, or to be admitted to the United States. In making this determination, the officer will consider the totality of the circumstances, including, but not limited to, all positive and negative factors related to the alien's ability to comply with the departure procedures.

(c) A covered alien who leaves the United States without complying with the departure requirements in this section may be found to have overstayed the period of his or her last admission where the available evidence clearly indicates that the alien did not depart the United States within the time period authorized at his or her last admission or extension of stay. A determination that the alien previously overstayed the terms of his admission may result in a finding of inadmissibility for accruing prior unlawful presence in the United States under section 212(a)(9) of the Immigration and Nationality Act or that the alien is otherwise ineligible for a visa or other authorization to reenter the United States, provided that all other requirements of section 212(a)(9) have been met. A determination that an alien who was admitted on the basis of a nonimmigrant visa has remained in the United States beyond his or her authorized period of stay may result in such visa being deemed void pursuant to section 222(g) of the Act (8 U.S.C. 1202(g)) where all other requirements of that section are also met.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 5. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.

■ 6. Section 235.1(d)(1) and (f)(1) introductory text are revised to read as follows:

§ 235.1 Scope of examination.

* * * * *

(d) *Alien applicants for admission.* (1) Each alien seeking admission at a United States port-of-entry must present whatever documents are required and must establish to the satisfaction of the

inspecting officer that the alien is not subject to removal under the immigration laws, Executive Orders, or Presidential Proclamations, and is entitled, under all of the applicable provisions of the immigration laws and this chapter, to enter the United States.

(i) A person claiming to have been lawfully admitted for permanent residence must establish that fact to the satisfaction of the inspecting officer and must present proper documents in accordance with § 211.1 of this chapter.

(ii) The Secretary of Homeland Security or his delegate may require nonimmigrant aliens seeking admission pursuant to a nonimmigrant visa at an air or sea port of entry designated by a notice in the **Federal Register** to provide fingerprints, photograph(s) or other specified biometric identifiers during the inspection process. The failure of an applicant for admission to comply with any requirement to provide biometric identifiers may result in a determination that the alien is inadmissible under section 212(a)(7) of the Immigration and Nationality Act, or other relevant grounds in section 212 of the Act.

(iii) Aliens who are required under paragraph (d)(1)(ii) to provide biometric identifier(s) at inspection may also be subject to the departure requirements for biometrics contained in § 215.8 of this chapter, unless otherwise exempted.

(iv) The requirements of paragraph (d)(1)(ii) shall not apply to:

(A) Aliens younger than 14 or older than 79 on date of admission;

(B) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirements of paragraph (d)(1)(ii);

(C) Classes of aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not apply; or

(D) An individual alien to whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines it shall not apply.

* * * * *

(f) *Form I–94, Arrival-Departure Record.* (1) Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States will be issued a Form I–94 as evidence of the terms of admission. For land border admission, a Form I–94 will be issued only upon payment of a fee, and will be considered issued for multiple entries unless specifically annotated for a limited number of entries. A Form I–94 issued at other than a land border port-of-entry, unless issued for multiple entries, must be surrendered upon departure from the United States in accordance with the instructions on the form. Form I–94 is not required by:

* * * * *

Dated: December 30, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–32331 Filed 12–31–03; 11:51 am]

BILLING CODE 4410–10–U

Homeland Security

US-VISIT

FY02 Crossing Volume Statistics (U.S. and Non-U.S. Citizens)

Traveler Population	Air	Sea	Land	Totals
U.S. Citizen	33.0 M	7.4 M	120.7 M	161.1M
Legal Permanent Resident (LPR)	4.4 M	0.2 M	75.0 M	79.6M
Visa Exempt			52.2 M	52.2M
Visa Waiver	13.0 M	0.3 M	1.8 M	15.1M
Regular Visa	19.3 M	4.5 M	4.5 M	28.3M
Mexican Border Crossing Card			104.1 M	104.1M
Totals	**67.7M**	**12.4M**	**358.3M**	**440.4M**

Chairman TOM DAVIS. Thank you very much.

Ms. Harty.

Ms. HARTY. Mr. Chairman and members of the committee, thank you very much for inviting me to testify before you today on the role of the Bureau of Consular Affairs in implementing biometric programs and U.S. visas and new passports. The inclusion of biometrics in international travel documents is an important step in enhancing the security of our Nation's borders.

The Department of State's visa work abroad constitutes a vital element in providing for our national border security. The consular officers of the Foreign Service who adjudicate visas at our embassies and consulates abroad are truly our first line of defense. Through them, our goal is to push the very borders of the United States out as far from our shores as possible to stop a problematic or a questionable traveler well before they reach our country.

The Border Security Act requires that no later than October 26 of this year the Secretary of State issue to aliens only visas that use biometric identifiers. To comply with this requirement, the State Department began deployment of the Biometric Visa Program last September. I am pleased to report that more than 80 posts are currently enrolling fingerprints, and the program will be in effect at all 212 visa-adjudicating posts by the October 26 deadline.

Under State's Biometric Visa Program, our consular officers by October 2004 will enroll applicants' fingerprints with electronic scanners as part of the visa application process. The scanner looks like this. I would like to call to your attention several slides that I have as well which demonstrate how we work in concert with our colleagues at DHS in seven pilot posts and how it will work in the future all around the world.

As we see in slide 1, the officer reviews biographic, address, and contact information for the applicant along with other specific application data. I should note that this is only a small part of the information that is available to an officer during the process.

The second slide demonstrates, and I realize it is much harder to see than the copy I have in front of me, but the second slide demonstrates how the officer marries up the applicant's photo with the finger biometric identifier he or she just in fact collected. I think we are a little bit out of order here. But the second slide in my presentation has both the photo and the fingerprints side-by-side so one is matched against the other. That is the second slide.

In the third slide, which we just saw, the officer reviews the IDENT check conducted on the applicant. In the case of this applicant, at this time there is no response from the IDENT record. That means there is no print at all available through the IDENT data base.

The fourth slide is what the consular officer sees upon receipt of the results of the class name check for the applicant. In this example, there is a previous refusal under the same name. The officer will now need to further examine this case to determine if the refusal actually pertains to the applicant in front of them or if it is in fact simply someone with a similar or the same name. At this point in the process there are naturally two ways to go. If the offi-

cer decides to issue a visa, our non-immigrant visa system sends the issued visa data including the applicant's photo to DHS.

The fifth and final slide is the data at ports of entry, as currently seen. It looks quite a bit like the first slide that Under Secretary Hutchinson showed you. In the future, when a visa applicant arrives at a port of entry the US-VISIT system will use the fingerprint identification number to match the visa with the file in IDENT and compare the visa holder's fingerprints with those on file. This one-to-one photo and fingerprint comparison will ensure that the person presenting the visa at the port of entry is the same person to whom the visa was issued abroad. If the applicant's fingerprints do not match fingerprints provided by the FBI and the IDENT data base we will not issue a visa until a consular officer reviews the information regarding that individual. The point I would really like to underscore here is that an IDENT hit overseas will freeze the visa process until that hit is resolved. We are currently piloting the IDENT match program at seven overseas posts and we will continue to add new posts as quickly as possible to meet that October deadline.

The Border Security Act also established October 26, 2004, as the date by which Visa Waiver Program countries must issue to their nationals only machine-readable passports incorporating biometric identifiers that comply with the standards established by ICAO. ICAO's decision to make facial recognition technology the standard passport biometric was made in May 2003, leaving VWP countries approximately 17 months to bring a biometric passport from design to production, a process that normally takes several years. Although VWP country governments share a commitment to making this change, and all are to varying degrees making progress toward complying with the requirement, virtually all visa waiver countries have indicated they will be unable to meet the deadline.

The legislative requirements of the Border Security Act which I just described apply only to passports issued by Visa Waiver Program countries, not the U.S. passport, which I firmly believe is the most valuable travel document on the planet. Although our law does not require of us what it requires of the VWP, we nevertheless have a program that will produce the first biometric U.S. passports using the ICAO standard of facial recognition by October of this year. We hope to complete the transition to biometric passports by the end of 2005.

The Department of State is working hand in hand with our colleagues and friends at the Department of Homeland Security to ensure that we together have a system that facilitates legitimate international travelers and properly identifies those who pose a threat to prevent them from entering the country. Our continued commitment to ensuring the sanctity and security of our borders and our Nation is our No. 1 priority. I would like to thank Under Secretary Hutchinson and his team for the very collaborative effort we have. And I am happy to answer any questions that you might have this afternoon.

[The prepared statement of Ms. Harty follows:]

Statement by Assistant Secretary of State for Consular Affairs
Maura Harty
Before the House Committee on Government Reform
"A Look at the Goals and Challenges of the US-VISIT Program"
March 4, 2004

Mr. Chairman and Members of the Committee:

Thank you for inviting me to testify before you today on the Bureau of Consular Affairs' Visa Biometric Program and our role in implementing Section 303 of the Enhanced Border Security and Visa Entry Reform Act. The Department of State's visa work abroad constitutes a vital element in providing for our national border security. We have no higher responsibility than the protection of our citizens and safeguarding our country's borders through the visa process. The consular officers of the Foreign Service who adjudicate visas at our embassies and consulates abroad are truly our first line of defense. Through them, our goal is to push the very borders of the United States out as far from our shores as possible to stop a problematic or questionable traveler overseas. The Biometric Visa Program allows us to do just that by enhancing the integrity of the visa process and by helping consular officers identify visa applicants already known to U.S. law enforcement.

As you know, Section 303 of the Enhanced Border Security and Visa Entry Reform Act requires that no later than October 26, 2004, the Secretary of State issue to aliens only visas that use biometric identifiers. To comply with this requirement with respect to nonimmigrant visas, the State Department began deployment of the Biometric Visa Program on September 22, 2003. I am pleased to report that the program is now operational at more than 80 visa-adjudicating posts. The program will be in effect at all visa-adjudicating posts by October 26 of this year. We also began issuing biometric immigrant visas last month and will have this program operational at all immigrant visa-adjudicating posts by the same date.

Our Biometric Visa Program complements and reinforces the Department of Homeland Security's US-VISIT Program, which tracks the entry and exit of foreign visitors by using electronically scanned fingerprints and photographs. Together this system, which begins with consular offices collecting electronically scanned fingerprints at consular sections abroad and continues with DHS's US-VISIT program at ports of entry and departure, will create a coordinated and interlocking network of border security in which the American people can have confidence.

Consular officers abroad oversee the fingerprint enrollment of the visa applicants with fingerprint scanners at the visa interview windows. Enrollment time averages about 30 seconds. As soon as the fingerprints are enrolled they are sent electronically, along with the photo of the applicant and biographic data, to the Consular Consolidated Database (CCD) in Washington. The CCD relays the fingerprint files to DHS's IDENT system over a reliable, direct transmission line, which sends the results back to the CCD for relay back to the post. To date, seven pilot posts (Sanaa, Riyadh, Kuwait City,

Jeddah, San Salvador, Hong Kong, and Recife) are checking against the IDENT database and we are bringing the others on-line as quickly as possible. For those pilot posts, no visa can be issued until a response of no derogatory information found is returned from the IDENT system. Until such information from IDENT is received, the visa system is locked with regards to that visa application. For the remaining posts, the IDENT checks are being reviewed in the Department and posts are notified of any hits.

If the fingerprints match fingerprints provided by the FBI in the IDENT lookout database, the IDENT system returns to the post an FBI file number. At present, Consular officers have no easy access to the FBI record associated with that file number. As an interim procedure, we are processing such cases through our National Visa Center, where an FBI official receives and analyzes the FBI's records and then forwards the information to post. We are discussing means to enhance the efficiency of the process with the FBI, so that consular officers in the field will have more direct access to National Crime Information Center (NCIC) information that will be of use in adjudicating the visa to conclusion.

If there is no match against the IDENT lookout database, then the visa applicant's fingerprints are stored in the US-VISIT database in IDENT, and a fingerprint identification number (FIN) is returned to the post. Once the visa has been issued, our nonimmigrant visa system sends to the DHS Interagency Border Inspection System (IBIS) the issued visa data, including the visa applicant's photo and the fingerprint identification number. When the visa applicant arrives at a port of entry, the US-VISIT system will use the fingerprint identification number to match the visa with the file in IDENT, and will compare the visa holder's fingerprints with those on file. This one-to-one fingerprint comparison ensures that the person presenting the visa at the port of entry is the same person to whom the visa was issued.

Since we have only recently begun to incorporate biometrics into the U.S. visa adjudicating process, we have taken steps to ensure the continued integrity of those visas issued without biometrics. There are currently some 20 million valid nonimmigrant visas that are not biometric visas. To ensure the integrity of these valid visas that do not have associated biometric data captured at visa issuance, we have upgraded our visa datashare program for use at primary inspection under US-VISIT. Under visa datashare, the biographic data and photo from the issued nonimmigrant visa are stored on the IBIS computer. When the DHS officer scans the visa at primary inspection, the photo and biographic data of the applicant are extracted from the database and projected on the screen. If the traveler has altered the photo on the visa, the DHS officer will be able to make a comparison with the original photo. In one such case under US-VISIT, a woman's photo appeared on the screen, but the traveler presenting the visa was a man. If the visa is a complete counterfeit, nothing will appear on the DHS officer's screen. In this way, US-VISIT is combating fraud and protecting the integrity of the U.S. visa. The process for the biometric immigrant visa will be very similar. The visa itself will be printed on a tamper-resistant document. There will be reliable datashare with DHS so that the DHS inspector at the port of entry can verify the identity of the traveler and the authenticity of that individual's status as a new immigrant.

Just as we are committed to the most secure adjudication process and documentation to support the visa process, the same is true in terms of what I consider to be the world's most valuable document--the U.S. passport. The legislative requirements of the Border Security Act apply only to passports issued by Visa Waiver Program (VWP) countries, but not the U.S. passport. We recognize that convincing other nations to improve their passport requires U.S. leadership both at the International Civil Aviation Organization (ICAO) and by taking such steps with the U.S. passport. Embedding biometrics into U.S. passports to establish a clear link between the person issued the passport and the user is an important step forward in the international effort to strengthen border security. To this end, we are introducing "contactless chips" into U.S. passports, electronic chips on which we will write the bearer's biographic information and photograph. Our program should produce the first biometric U.S. passports using ICAO's standard of facial recognition in October of this year and complete the transition to biometric passport by the end of 2005.

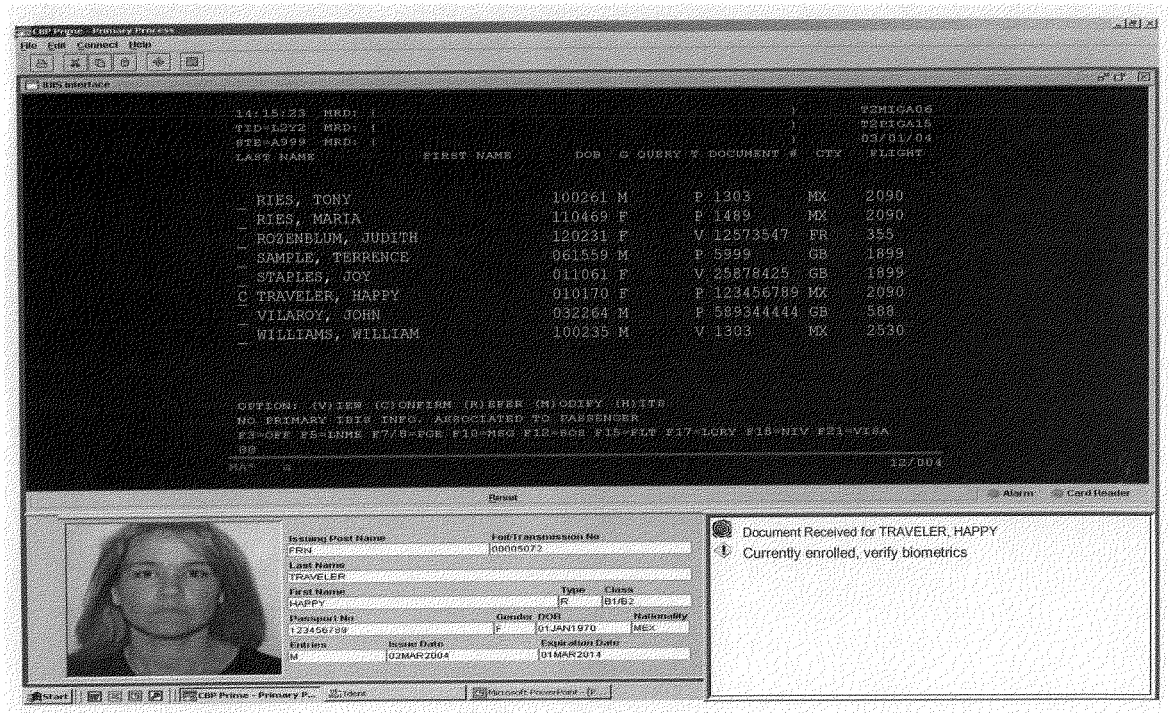
The Border Security Act also established October 26, 2004, as the date by which VWP countries must issue to their nationals only machine-readable passports (MRP) incorporating biometric identifiers that comply with the standards established by ICAO. ICAO's decision to make facial recognition technology the standard passport biometric was not made until May 2003, leaving VWP countries only 17 months to bring a biometric passport from design to production, a process that normally takes years. Very few, and potentially no, VWP countries will be able to meet the legislatively mandated deadline by which to issue to their nationals only machine-readable passports (MRP) incorporating biometric identifiers that comply with the standards established by the ICAO. Although the VWP country governments share a commitment to make this change, many of them are encountering the same problems being experienced by the Department of State in our effort to introduce embedded biometrics into the U.S. passport. These issues include ICAO resolution on security matters, interoperability of readers and passports, procurement and chip supply difficulties, as well as comprehensive testing to ensure that the chips work successfully and that they will continue to do so through the validity of the passport, which is 10 years in most cases.

We have vigorously encouraged VWP countries to issue biometric passports by the October 26, 2004, deadline. The U.S. has played a leadership role in ICAO working groups to advocate the successful inclusion of biometrics in travel documents. In the G8 we strongly advocated support for ICAO leadership in biometrics and participated fully in a special working group on biometrics established by the G8 ministers of Home and Justice Affairs. We are fully engaged in the group of 5 (US, UK, New Zealand, Australia, Canada) in which there are continuing discussions on progress reports on each country's efforts to produce the passport. On the margins of international conferences, we have had repeated meetings with VWP representatives to explain the process; at trade conferences, State Department officials have made many public appearances to educate VWP government representatives about the requirements and deadlines. Many VWP countries have sent representatives to Washington to meet with U.S. government representatives and had full and open discussions on the issue. In testament to our

efforts, all VWP countries are making varying degrees of progress toward complying with the biometric requirement. Despite our efforts, however, almost none will meet the October 26, 2004, deadline. None of the larger countries (Japan, the U.K., France, Germany, Ireland, Italy or Spain, for example) will begin issuing passports with biometrics by October 26. Japan and the United Kingdom say they will begin in late 2005; others may not come on-line until a year after that.

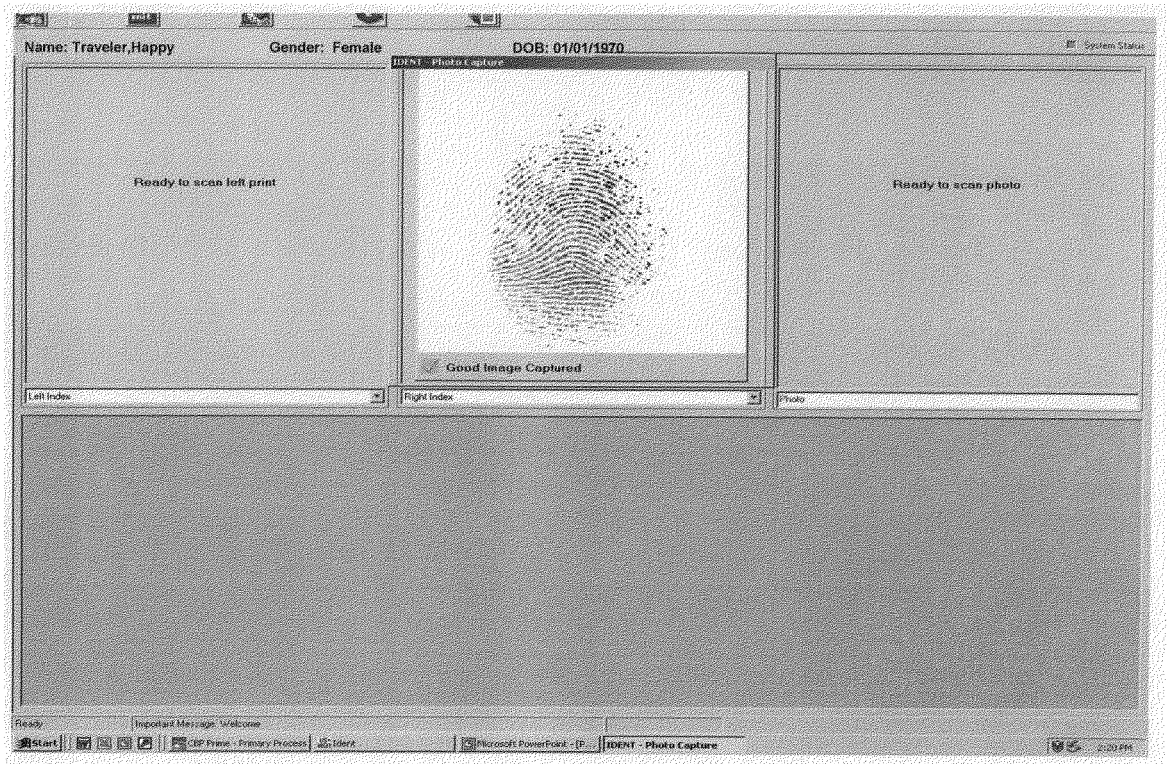
Since travelers from VWP countries with passports issued on or after October 26, 2004, that do not contain biometrics will need visas to travel to the U.S., we estimate that the demand for nonimmigrant visas will jump by over five million applications in FY 2005, nearly double last year's workload. Biometrically enhanced passports will add to border security, and we are heartened by the commitment by these countries to developing the passports as quickly as possible and by their progress to date.

The inclusion of biometrics in international travel documents is an important step in continuing to improve our ability to verify the identity of prospective travelers to the United States, especially individuals who might be terrorists, criminals, or other aliens who present a security risk to the United States. The Department of State is working hand in hand with our colleagues at the Department of Homeland Security to ensure that we have a system that facilitates legitimate international travelers and properly identifies those who pose a threat to prevent them from entering our country. The continued commitment to ensuring the sanctity and security of our borders and our nation is the number one priority. I am happy to answer any questions you may have.

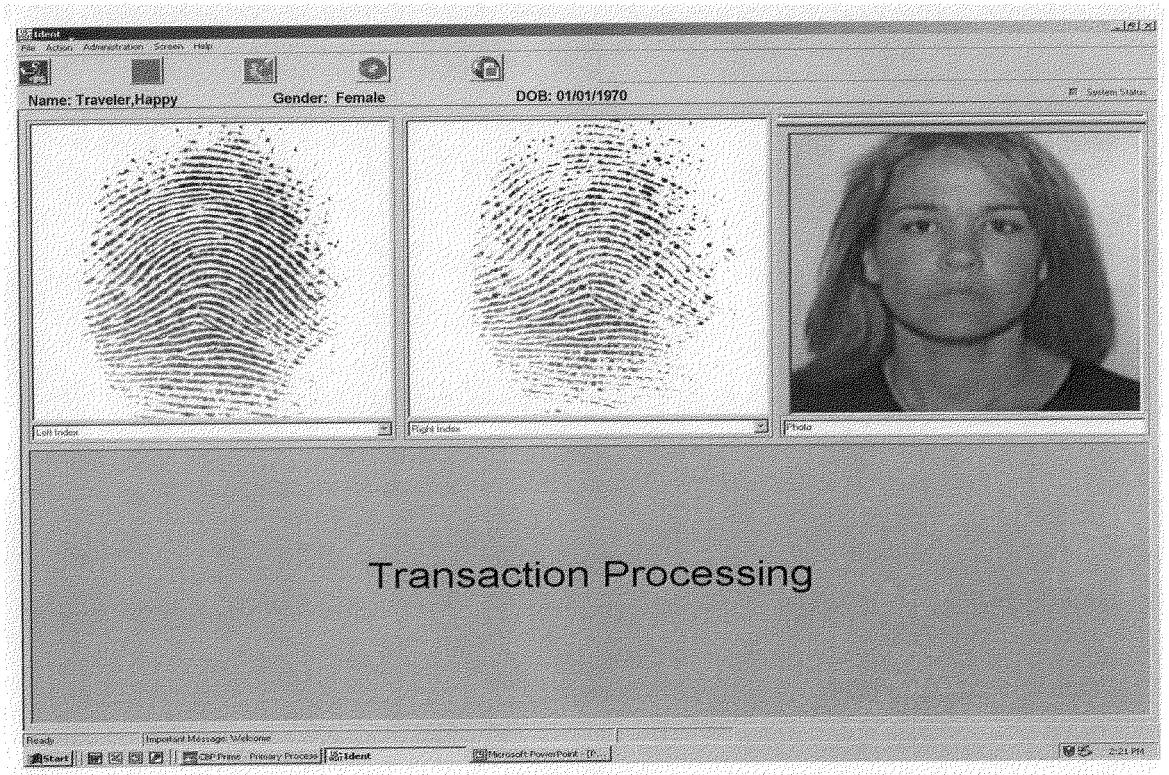


The visitor provides their travel documents -- passport and visa -- to the officer who swipes the machine readable part of the documents. The system selects the correct file from the State Department's database and displays it along with the air carriers manifest.

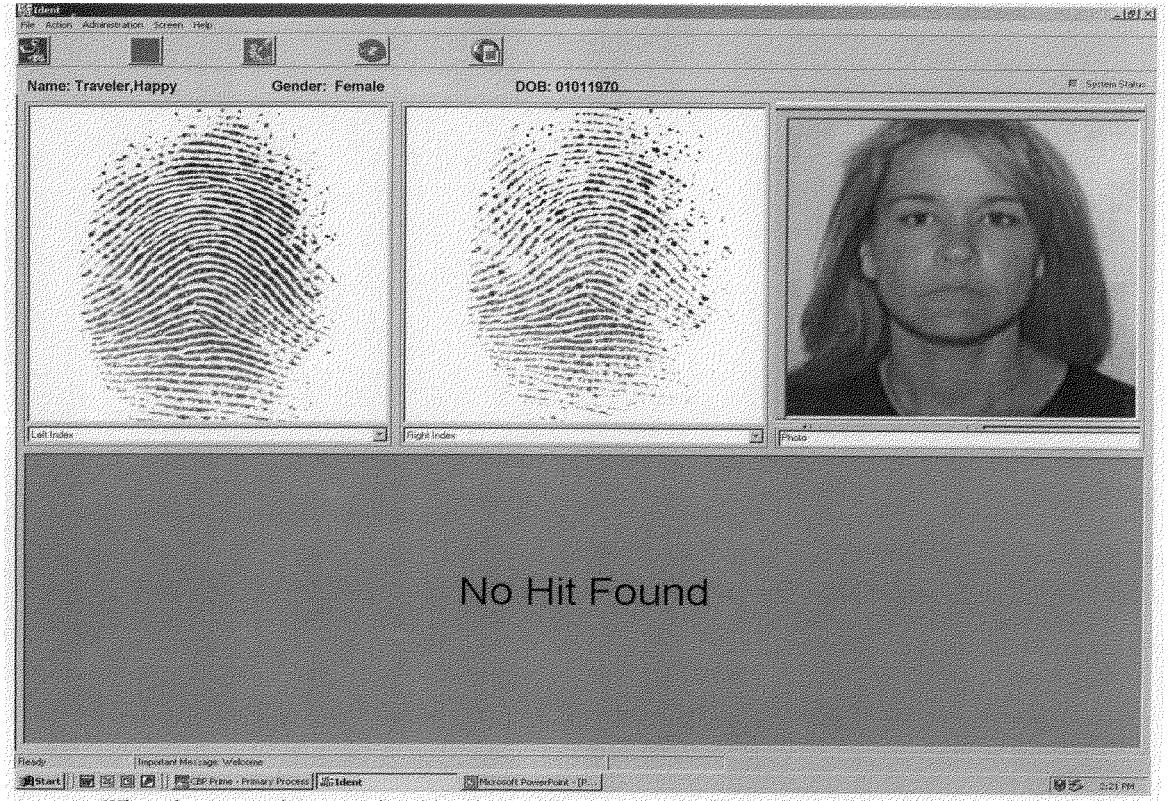
1



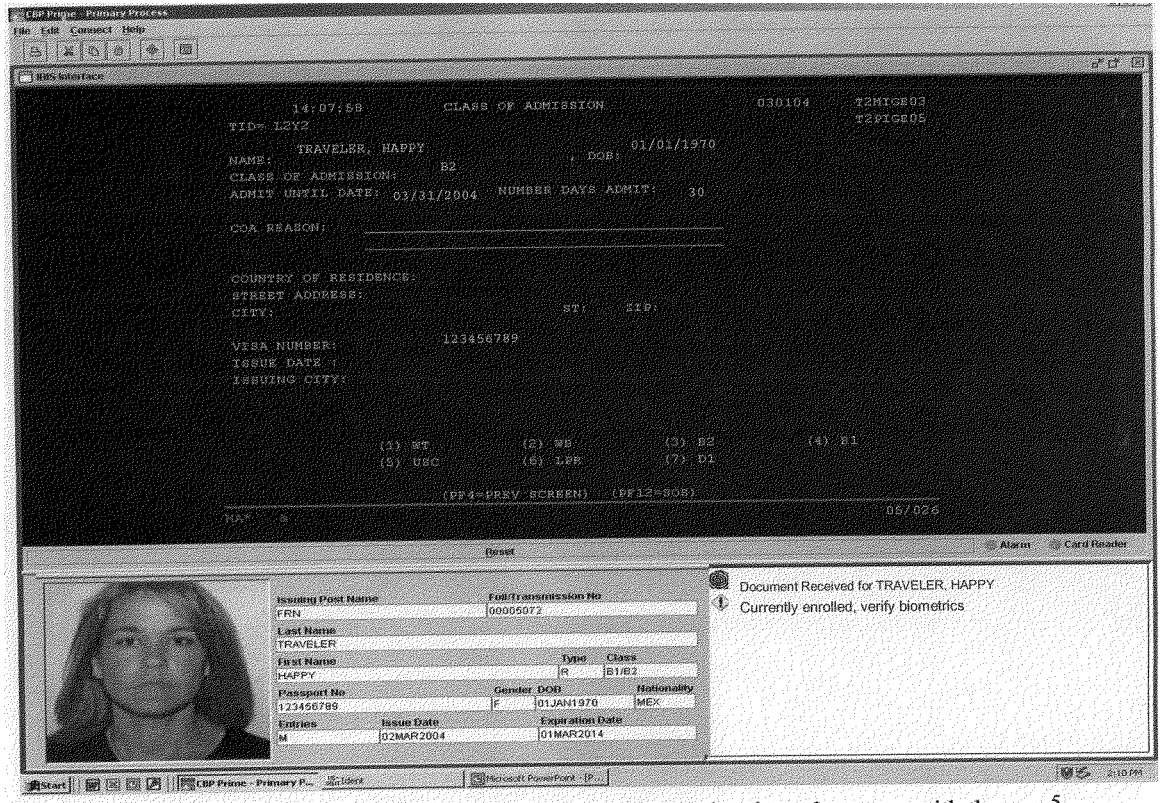
The officer asks the visitor to place first the left index finger and then right index finger on the inkless fingerscanner and then captures their fingerscans. 2



The officer then takes a digital photograph of the visitor.



When the system has completed its check, the officer sees a response that says either 'No Hit' or 'Hit'.



If a 'No Hit' is received, the officer completes the interview and updates the screen with the duration of the visitor's stay.

Chairman TOM DAVIS. Thank you very much. Ms. Harty, let me start with you. Many delays in obtaining visas have a profound effect, obviously, on business and educational institutions here in the United States. Members of the committee staff recently visited China and learned about the Beijing embassy's proposal for a 1-year multi-entry visa for Chinese visitors. Can you tell me about the status of this proposal. Any estimate when the decision might be made?

Ms. HARTY. Sure. Absolutely. I thank you for the question, sir. I think it is a good suggestion. One of the many changes in the September 11th world is that we have a much more collaborative interagency process on just such decisions. We received a cable from the post spelling out what they would like to do. We applaud it, and we are running it through the interagency process right now and I think it is fair to say that we will have an answer fairly quickly. I agree with you completely that facilitating legitimate travel is important to all of us and we would like to see that done.

Chairman TOM DAVIS. Also Ms. Harty, I understand October 26, 2004, is the implementation date for biometric-enabled travel documents for Visa Waiver countries as well as a U.S. intelligent passport system. It is going to be difficult to meet it. Any idea at this point as to whether that deadline will need to be extended?

Ms. HARTY. Sir, what I can say about that is that it is a frightening prospect. If the visa waiver countries are held to the deadline as the law currently requires, several things will happen. My job is to implement the law, and so I will do that. However, one of the consequences of so doing is that we will have an awful lot more visa applicants to converse with than we have had in the recent past. We estimate that there may be upwards of 5½ to 8 million additional visa applications that we would have to handle. Of course, sir, it is a relatively short term problem as the visa waiver countries begin to come on board with their biometrically enabled passports. But in the short term, we would see a serious impact on business travel, on academic institutions, on travel and tourism to this country. We will do our very best to facilitate the travel of those who are in emergency situation, those who have time-sensitive travel. But there will be a serious impact on the visa waiver countries and on our abilities to provide services to them in the short term.

Chairman TOM DAVIS. Thanks. Asa, last year GAO issued a report that characterized the US-VISIT program as a high risk endeavor. But the report was issued at a time when the US-VISIT office was still in the process of staffing and setting up the office. I know you are aware of the report. In the 5-months since that report was issued, can you give us an update on how the concerns that were laid out have been addressed.

Mr. HUTCHINSON. Absolutely. And the GAO report was really understandable because it is a risky endeavor when you are talking about $330 million of the taxpayers' money and a complicated system. But a couple of specific issues that they raised. One was the very beginning stage of the program office that was not fully developed that would provide oversight. Jim Williams, who is with me, who is the director of the program office, brings an extraordinary amount of expertise. He has set up a team, established an office.

They are very robust and are moving forward very aggressively. So I think that concern has been met.

The second one was that there was not any broad-based oversight in terms of the different agencies that might be impacted. That has been addressed. I am chairman of an advisory board and we have met, and so that interagency oversight has been met as well.

Chairman TOM DAVIS. Do you think the deadlines for US-VISIT allow for enough time for implementation, or do you think you will be asking for extensions, or is it just too early to say?

Mr. HUTCHINSON. I believe that is something that we need to continue our discussions with Congress on. Some of it is how robust the interpretations of the requirements are and the expectations of Congress. The 2004 spend plan that we presented, we can meet the 2004 deadline of integrating the data bases at the 50 busiest ports. And then if you look at the 2005 solutions, some of it will be the funding, how quickly we can move toward our solution. So I am optimistic that we can meet those deadlines that Congress has given to us. But we would certainly welcome a continued discussion with you and a partnership with you to make sure that we are going in the same direction.

Chairman TOM DAVIS. Thank you. The gentleman from Massachusetts?

Mr. TIERNEY. Thank you. Mr. Secretary, you made a passing comment about the Mexican border crossing card. So let me follow-up on that if I could. What was the original intention of the administration with respect to the Mexican border crossing card?

Mr. HUTCHINSON. Well, our intent was to fully satisfy the requirements of the congressional mandate for an entry/exit system and to build a strong, robust system there. So it is a matter of designing it. There has not been any change in position, it is a matter of developing the right process to handle those border crossing cards.

Mr. TIERNEY. Maybe I need to phrase it differently. What is it you expect the card to do, exactly?

Mr. HUTCHINSON. Thank you. The card, of course, there are 104 million of them already issued out there. They are used for frequent border crossers, they have fingerprints, they have a background check to a certain extent before those cards are issued. The question is whether we are going to take their biometrics when they come in. Obviously, that is difficult time-wise when you talk about 104 million of them. So we are looking at the right way to be able to track that, looking at radio frequency technology. One consideration is, but no decision has been made, but one consideration is that they should simply be processed through but not entered into US-VISIT. Obviously, that is a logical thing to consider because of the volume and the time it would take and potential for clogging our borders if you did try to enroll biometrically all of the border crossing cards. So we are still looking at that, the possibility of exempting them from the US-VISIT enrollment requirement when it is used as a crossing card. Now if it is used as a regular long term visa, like a B–1 visa, then they would go into secondary inspection and they would be enrolled in US-VISIT. So that is what we are looking at. But, again, no final decision has been made.

Mr. TIERNEY. And where are you in that? Are you slowing down your process on that or delaying it a little bit?

Mr. HUTCHINSON. No, absolutely not. We are on schedule in this regard and we expect the final decision to be made very quickly because we know it is of great concern to the border communities, particularly. Looking at what is ahead, they need to know. So we anticipate a decision very shortly.

Mr. TIERNEY. So you have no change in this process or no new news that you want to give us with respect to this border crossing card?

Mr. HUTCHINSON. Not other than we are working very hard on that and hope to be able to make a final decision very soon.

Mr. TIERNEY. So in a day or two we do not expect any news on that issue from the administration?

Mr. HUTCHINSON. I would not necessarily count on that. Obviously, whenever you are making a very substantial policy change, not change necessarily, but determining the direction as to how to handle this that impacts so many communities, you have to check with a lot in the interagency community, work with Congress on that. And that is the process that we are going through right now.

Mr. TIERNEY. And what is your current recommendation with regard to it?

Mr. HUTCHINSON. My current recommendation? My recommendation would be that the border crossing cards when they are used as the 72-hour permit, then they should be exempt from the enrollment in US-VISIT. That would be my current opinion. And then whenever they are used as a regular visa, they should be referred to secondary inspection for enrollment in US-VISIT.

Mr. TIERNEY. And what risks do we run in our security with respect to exempting on that short a period of time?

Mr. HUTCHINSON. Well, if you continue to handle the border crossing cards as they do now, you are not running any additional risk, you are simply not adding the significant security capabilities by having a biometric confirmation. Now, as we proceed and develop the US-VISIT more broadly and comprehensively, we want to bring the border crossing cards completely into US-VISIT in the right way. But it might be, again, radio frequency technology where you would have an imbedded chip in the card that would be waived just like an EZPass to a reader and that would come up for the inspector and that way you could travel almost up to 40 miles per hour. I would not suggest that going through our ports of entry, but the technology is capable of reading those type of cards through radio frequency technology even at that speed.

Mr. TIERNEY. So, if you are going to exempt a class of people there, you are going to exempt a good number of countries that are listed, everything from Angola to Switzerland. Is that to say there is no potential that anybody is going to have anybody from any one of those countries be involved with terrorism, they do not need to be checked, but every other country needs to be checked? I do not get how that enhances our security or how it does not leave gaping holes.

Mr. HUTCHINSON. Well, first of all, this is a system that is not a perfect system on day 1; you have phase I, phase II, phase III.

Those are the directions that Congress gave us. And so it is not going to be a perfect security on day 1; we build on it.

Second, the border crossing cards, you already have their fingerprint, you already have their check. They are not issued that card unless we are satisfied they are not a terrorist. And so these frequent crossers are coming across for economic interests. So we are not creating any security vulnerability if we make the decision to exempt those.

In reference to other countries such as visa waiver, that is obviously something, again, that we continue to look at. But on day 1 of our system we are adding 36 million travelers into our airports and seaports. That is a pretty big first mouthful. And then we see how this needs to be expanded to cover other security gaps.

Mr. TIERNEY. I have more questions but I will wait, Mr. Chairman. Thank you.

Chairman TOM DAVIS. The gentleman from Virginia is recognized for 5 minutes, Mr. Schrock.

Mr. SCHROCK. Thank you very much, Mr. Chairman. Let me thank both of you for testifying. Let me make a brief statement and then I have a couple of questions. And I am sorry I was late.

Clearly, today's testimony is going to be very beneficial to Congress and those of us charged with oversight of this incredibly important issue. The task set before all of us to protect our borders, a national interest, while preventing unnecessary delays to our flow of commence, trade, and tourism, is clearly a daunting task. The efforts to date by all of those involved in the guidance and direction of the DHS is clearly to be commended.

I realize the US-VISIT program is in its infancy and expect we will see it change and perform in due time as we realize future benefits from the lessons we have learned through its implementation. I am convinced that the American people and the tourist population will remain security-minded and we will be tolerant and patient as we experience growing pains as long as we maintain a focus on efficiency and effectiveness and never become complacent with this program. I say tolerant because I have gone through several airports in the last week and I really was and I really surprised myself.

I have a very deep concern and a personal stake in these efforts because the district I represent in Hampton Roads, Virginia Beach, and Norfolk has one of the largest commercial seaports, incredible military facilities, and major tourist attractions, and international airports. So I tell you, I pledge my support to whatever is necessary to provide maximum security for our ports and borders, ports being my No. 1 issue right now, while minimizing the obstacles to the reasonable flow of tourists and trade at our ports, and I thank you for what you are doing.

We understand that the statutory requirements have placed DHS officers in Riyadh and Jeddah, where I have spent a lot of time, to review visa adjudications and that more officers are coming. What value are these officers going to have to the visa adjudication process?

Mr. HUTCHINSON. Those visa security officers were deployed to Saudi Arabia in accordance with the mandate that Congress gave us in the Homeland Security Act. The value that they add, and

Congressman, I was there as well to see the kind of work that they do, they review every visa application in Saudi Arabia. They check directly with the law enforcement data bases, add a security perspective. And I think that is the specific value that the Homeland Security visa security officers would add is a security perspective to that issuance process. They are also engaged in training, coordination there on the ground, making recommendations on any policy changes that need to be made.

As time goes on I think their role will change somewhat. Maura and I have talked that eventually the consular offices should have access to all the data bases that we check so they can do all the checks there and then our visa security officers can look to having more liaison with the law enforcement community there, adding intelligence value on the ground.

Mr. SCHROCK. Do you have enough of them there?

Mr. HUTCHINSON. We have enough there at the present time. The problem is that a number of them are there TDY and we are going to have to get permanent deployment there. But we do have at the present time a sufficient number.

Mr. SCHROCK. Secretary Harty.

Ms. HARTY. Thank you, sir. I agree with Under Secretary Hutchinson completely in what he just said. I would like to add that I also have been there and our colleagues at both State and DHS are working very well together. We do look forward to the time, and we are working very, very carefully and assiduously on data share issues so that we can free up people from doing repetitive tasks. If our systems talked to each other completely, they would be freed up on the homeland security side to do a little bit more liaison, a little bit more intelligence work, and that will greatly enhance the level of play for one team and for both sets of things that need to be done.

Mr. SCHROCK. Great. I fear that we could be setting ourselves up for failure if the basics, such as the baseline data base, are not among our first priorities. I know the law enforcement information exchange program that is being piloted both in the district I represent and in the northwest is one such effort. Are we seeing some nationally implemented efforts like this to share criminal information and build greater data bases? The concern I had right after September 11 was that we had 47 Federal agencies doing intelligence and you would not talk to me, and you would not talk to him, and I would not talk to anybody because we were giving up power. I am just wondering if that is all coming together?

Mr. HUTCHINSON. It is. That is probably as high a priority as we have in the department is just to address the problem that you outlined. Both US-VISIT and our visa security officers are I think emblematic of some success in this area, particularly US-VISIT where we have brought together the data bases so that our inspectors at the entry points will have the same information that our consular officers will have and that it will be almost instantaneous transfer. We continue to buildupon that.

I will add that what we will bring in with the private sector contractor, the integrator of US-VISIT, what they will do is they will help us to modernize and to integrate all of the different data bases. That contract will go out this year. Last year the President

asked for $400 million and our US-VISIT I think was funded at $330 million. That difference makes a substantial impact on what we can do in that area.

Mr. SCHROCK. Secretary Harty?

Ms. HARTY. Sir, I agree completely again with Under Secretary Hutchinson. He mentioned Jim Williams' name already. We have a great partner and a great friend at State in Jim Williams. We have done a lot together already. Just a little bit earlier during my opening remarks I showed several slides that already show that when a consular officer issued a visa this morning in, say, Buenos Aires, within 5 minutes time the Consular Consolidated Data base refreshes itself and shares that information with inspectors at ports of entry. So that when that Argentine citizen travels to the United States even later the same day the inspector at the port of entry already has the photo and access to the same biographic information that we saw at the consular post overseas. That is a tremendous ability to spot and make sure that we do not see people engaged in photo substitution of passports. It is a tremendous ability for the inspector at a port of entry to know what we knew and to ask the appropriate questions to make sure there is not a gap there.

Mr. SCHROCK. And that has happened since September 11, that ability?

Ms. HARTY. I am sorry, sir?

Mr. SCHROCK. That ability to do that has happened since September 11?

Ms. HARTY. We introduced the data base ourselves in 1999 and we began rolling it out very, very slowly, regrettably, to legacy INS. Post-September 11 that deployment speed increased very rapidly.

Mr. SCHROCK. Great. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. The gentleman from Maryland, Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman, and thank you for holding the hearing on this important issue.

Secretary Harty, I had a couple of questions. As you stated in your testimony, I think our consulates are the front line in this effort of screening people for visa purposes. I think it is essential that we have the right technology and information systems in place so that we can compare visa applicants against data bases that we have to determine whether they have a criminal background record or any kind of profile that would lead us to be concerned of a potential terrorist activity. I think it is essential that the data bases be coordinated so that we have common information and the most comprehensive information.

I represent an area right next to the Nation's Capital, a very diverse community. Once someone passes that test, in other words, they have passed the computer check at the consular office, all the information has gone through and they have confirmed that there is no match with the data base, then the consular officer still has to make a decision as to whether or not this person should be granted a nonimmigrant visa. My concern is that in many cases there are people who have legitimate reasons to come to the United States, whether it is for education purposes, whether it is to visit a sick family member, dying family members in many cases, who

are being denied visas without being provided really any additional information as to why they do not meet the test.

Right now, as I understand the test, the consular officer has to determine whether or not they have sufficient ties to their country that they live in, which is a very wide open test, and we want our consular officers to have discretion. On the other hand, it seems to me incumbent that we provide some of these people reasons that they are being denied. Again, these are people who have met the security check, OK, we have confirmed that there is no match. Because we have had literally hundreds of cases, in many cases people who want to visit dying relatives, who do have ties to their country of origin, have no reason to want to stay in this country, but they are being denied on a routine basis. And they have to pay $100 every time, at least, something thereabouts. And many times they pay $100 more than once and they are not really given in many cases reasons by the consular officer as to why they are being denied, so it makes it much more difficult for us to help them provide the information.

My question is, how can we address that issue? I have lots of cases here which I think anybody who is looking at the facts would conclude that this person wanted to come to the United States for legitimate reasons and yet they were denied a visa. So that is one question. Then I have questions on the other end. It seems to me we need to do more for people who are actually overstaying their visas. But if you could address that one first.

Ms. HARTY. Sure. Thank you very much for the question. It goes to the very heart of what we do. I agree with you completely and with Secretary Powell who talks very regularly about the importance of balancing secure borders and open doors, and the importance on the open door side of that equation of recognizing that this country prospers in countless numbers of ways when we in fact allow legitimate travelers to come here, be they coming for tourism, business travel, academic pursuits, or any other personal reason. We need to bear in mind the travel and tourism industry, an $88 billion industry. One out of every seven civilian adults employed in this country is employed by some facet of the travel and tourism industry. We are not unaware of those things.

What we are aware of as we do our jobs as consular officers overseas, as I have done for many years myself, is the great privilege of representing our country overseas and of being able to delve into the society to which we have been assigned, so that we speak the language, we read the newspapers, we understand the economics, we understand very well from our friends in the Department of Homeland Security the overstay rate of people from the country that we are assigned to. We do a balance that allows us to take into account everything we know about that country and then ask very specific individual questions to the person in front of us.

It is awfully sad sometimes, sir, you are absolutely right, if someone comes up and says that they have a dying relative. The last thing in the world we want to do is impose an additional hardship on them. Having said that, though, sometimes it is not always exactly what it seems to be, both on the side of what the applicant might tell us about why they are coming as well as when the applicant says they were not necessarily told what the reason for their

denial was. In a country, say, with a 47 percent unemployment rate, a young applicant who wants to go to the United States who does not have a job in his own country does not necessarily look to us like somebody who would come home again when they might in fact seek employment in the United States.

Mr. VAN HOLLEN. I do not mean to interrupt you but my time will expire soon. Clearly, the individual that you were just describing is somebody who you can understand why someone would make a judgment that maybe they would be a risk to stay in the United States. I am not going to go over all the cases, maybe we can go over them some individually.

Ms. HARTY. Sure.

Mr. VAN HOLLEN. But we are talking about someone from India, a woman who is a member of all Indian University badminton champion, in 1991 she was admitted to George Washington University School of Business and Public Management, she was admitted to the special program, her father has agreed to pay for her entire stay in the United States, the family has lots of assets in India, and there is no clear reason why this woman was denied. Maybe in some cases you are saying they do not provide the individual with the reason. But sometimes our office asks for a reason and we do not get an explanation.

So, clearly, there are many cases where their judgment is absolutely right. But it seems to me there has to be a process where in those cases where the facts suggests there are good reasons to come here, a dying family member or something—when I talk to somebody who works at NIH who has a family member who is dying and lives in the neighborhood and I know and they just want their brother who is 75 years old to come visit them before they die and they are denied a visa, it seems to me there has to be a mechanism for dealing with this at the staff-to-staff level rather than it having to get elevated up to a Member of Congress intervening.

My concern is we are not focusing enough of our efforts on people who are overstaying their visas. Part of this VISIT program has this exit provision, which right now is a voluntary program I believe at two airports, including BWI. Really, we should be going after those people who are abusing the visas by overstaying. We are giving a lot less attention to that while at the same time it seems to me a lot of people who want to come here legitimately are being left out.

I guess my time has expired; maybe there will be another round. But I really would like to pursue this because we really get lots of cases, Mr. Chairman. We do not pursue every one but we want to pursue those that the facts suggest that the individual has not really been given full information as to why they have been denied entry.

Chairman TOM DAVIS. We get a lot of the same.

Mr. VAN HOLLEN. I know you do.

Chairman TOM DAVIS. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Thank you. First, Under Secretary Hutchinson, former Congressmember, I have heard nothing but complimentary feedback from Baltimore-Washington International Airport. I represent Maryland's Second Congressional District and BWI is in that district. In the beginning with the TSA we had com-

plaints that our office had to deal with involving long lines. I think one of the reasons for that is that TSA had a good program, they cut the personnel and then all of a sudden the lines increased. But we changed that.

As it relates to the US-VISIT program, I am going to ask you some questions because you will probably be gone but the next panel has a member of the U.S. Chamber of Commerce on it, so I want to give you the opportunity to respond to what your experiences are at least at BWI, which is what I know about. But I think the Department of Homeland Security and the BWI have been working very, very closely on the exit program and it has worked very well. It is a pilot program and I think BWI is the only airport right now that has the exit procedures and kiosks. Our office nor BWI have received any complaints at all about the program. That is incredible because you usually hear complaints about something somewhere. I think one of the main reasons for this is that there is a program developed called U.S. Helpers and these are individuals who are working in the international terminals to work with these individuals. Because what they are really saying to the people when they are exiting is if you do not give us the information when you are leaving you will not be able to come back again or whatever, and that is working.

I have heard complaints, though, about long lines interfering with business. International business is extremely important to us. However, I would think that after September 11 and based on what occurred, and our threat against terrorism, our national security, that anyone coming into this country, as long as there are not an inordinate amount of delays, would not have a problem of giving a fingerprint and information off of their passport. It is so important for national security. I mean, we have Social Security Numbers and we have to have pictures on our drivers licenses. And there are also a lot of waiver countries that are not affected. And you are saying, was that fair? Well, bottom line, we have to rely on our intelligence and our intelligence shows that we cannot take care of everybody, everything, that we have to take care of our priorities.

So I am asking you to answer the question, which I anticipate that the Chamber might be concerned about, of interfering with business. That has not been the case at BWI airport, for whatever reason. So if it works, I think do it someplace else or use that as a model when we implement this program on a national basis.

Mr. HUTCHINSON. Thank you, Congressman. I want to compliment BWI, they have been a tremendous partner in assisting us in testing the exit solution. We are very grateful. And you are right, we made sure that we had personnel that was present to help the foreign visitor to make sure they knew how to do it, to assist them in that exit solution. We will be piloting that in other places.

I know that the Chamber and others have expressed some concern about whether we are moving too quickly, how this is going to impact business, particularly the land borders. I appreciate and understand their concerns. In fact, we look forward to meeting with them regularly on this. But, first of all, the history should help a little bit. Those fears were there in reference to the airport solution

and they did not materialize because we were committed to make sure we did not clog business and we added that security value. We have that same commitment for the land borders. We are going to work with those communities and continue to work with the Chamber, who have been a very, very good partner.

What is very, very important is that, whether it is BWI airport, that we have a communication with them, all the airports and the airlines that are impacted, and now it is the communities and our land borders that we need to listen to. Jim Williams will be going down there next week and listening to them. We are going to have that same kind of dialog and partnership as we go to phase II of US-VISIT as we did at the airports.

Mr. RUPPERSBERGER. Are we going to use helpers at other airports, the same system?

Mr. HUTCHINSON. Whenever there is a similar solution we will. And we hope it will be a temporary thing until all of our travelers get used to the requirements. But initially, yes.

Mr. RUPPERSBERGER. My time is getting close and we have a strict chairman here today, so I want to ask one question because this is where I have received a lot of complaints and I am asking your opinion on this.

I know that with respect to terrorists and Al-Qaeda that we have to always give different looks as far as security and because Al-Qaeda is very patient and they do do surveillance. No question, we know that and we have established that. At BWI Airport there was a program, at least when we went to Code Orange, to 1 day just stop all cars that are coming to the airport. Now I guarantee you that many people will miss their flights because of that issue.

I am wondering whether, in your opinion, that type of tactic is worth the result to really delay and to stop everybody coming into BWI Airport without notice. I know we need to give different looks. But that seems to be rather drastic from a commerce and a business point of view to just do that without warning and when there is no intelligence information that there could be a problem there. What is your opinion with respect to that?

Mr. HUTCHINSON. Whenever we go to Orange, it is not designed to stop business traffic and traffic at the airport, it is just designed to add a security measure. So we want to have——

Mr. RUPPERSBERGER. But I am asking you specifically with regard to that tactic, do you feel that is justified?

Mr. HUTCHINSON. It is justified with local airport influence on it. I do not believe it is designed to be comprehensive where everybody is stopped, but it is a rotating check, different checkpoints as they go in. Some airports have it more comprehensive than others. So there is a specific mandate that we give, but there is some local flexibility on it based upon their own security and the makeup of their airport. I would be happy to look at that and get you a more specific response.

Mr. RUPPERSBERGER. Yes. I would like you to look at that and get back, because we do get a lot of complaints about that procedure when it occurred on those occasions. Could you get back to me on that?

Mr. HUTCHINSON. I will be happy to.

Chairman TOM DAVIS. Thank you. Ms. Watson.

Ms. WATSON. Thank you, Mr. Chairman. Welcome, Secretary Hutchinson. I for many years represented LAX and I understand on September 11 LAX was a designation as a target, too. So we have been very concerned about security. As I was reading through the tons of information that has been prepared for us, do I understand that the US-VISIT program exempts the Canadian border?

Mr. HUTCHINSON. Anybody who comes across the Canadian border with a visa will be treated the same as if they come across the Mexican border with a visa or into our airports. But the fact is that Canadian citizens do not require a visa to come into the United States, so they will not be impacted the same way because they are not visa travelers.

Ms. WATSON. What concerns me as you follow the dots, it appears that there has been a lot of activity and a lot of crossing coming from the Northwestern part of the United States. And if somebody were a part of a conspiracy to do us harm, that would be the route they would want to come. I just want to mention that.

Historically, our country's information system for tracking visitors has really I would say been quite a failure. We have heard again and again in hearings in this committee and in GAO reports how our data bases for tracking visitors are full of data that is either outdated or just wrong. You are planning to add a lot of new information into the existing data base. So how, I might have missed it because I did come in late, how are we correcting and how are we gathering data that is more updated, more accurate, and, considering the requirements of the Privacy Act, what are we doing differently so we will do a more effective job of tracing people who come across our borders and who live among us and who also could do us harm?

Mr. HUTCHINSON. First of all, of course, we are consolidating data bases, making sure that we share information. But in reference to people who come across on a visa and overstay their visa, we are doing a great deal to handle that information and not just let it sit there. For example, in US-VISIT there is an exit capability now that gives us information on people who do not abide by their visas and leave on time. That information is referred over from US-VISIT to our ICE Office of Compliance that will followup on those leads. We are beefing up the staffing of that to handle that information. That is a voluminous task.

When you are looking at foreign students under the SEVIS program, there are thousands of referrals that come from the universities of students who are not showing up for class, who dropped out, or some other anomaly, so we have to followup on that. US-VISIT, if someone does not leave within the 30 days through the airport, we can check that and that information is referred to us. But we have had an average of 2,500 potential overstays each week since US-VISIT has been implemented. Now, of those, it might have been someone who left a week later. So it is not a viable lead, they just left maybe 4 or 5 days after their 30 days expired. But that is a referral we have to sort through. And so of the 2,500 per week, only about 20 percent of those might actually be actionable for leads that would be sent to the field. But an enormous amount of work is involved in handling the information that is created. It

is a challenge to us, but thank you for raising it because we are working hard on it.

Ms. WATSON. Let me just comment by saying that when the original bill came through the committee establishing this program, I argued to leave the visas and the requests for passports and so on to the State Department because the consulars are well trained, I mean, they are tough. Out at my embassy, my consular, I mean, even people that I thought would be safe bets, said no, because of the training they receive. We do not necessarily have that training and discernment. And I was concerned about where we placed these particular procedures. And so I was not clear in listening, is there a two-step process? When we start looking at the data, does it go through the US-VISIT program and then to the State Department, the consular section in the State Department, or does it go to the consular section and then back to US-VISIT? Can you explain that process to me.

Mr. HUTCHINSON. I think there are two possibilities here. One, of course, if a consular office issues a visa, then that happens first and that information is transferred to Homeland Security so that when they come in through the checkpoint we will have that same information to confirm their identity. So is that an answer to your question?

Ms. WATSON. And then it goes back to the consular section of State?

Ms. HARTY. Well, the second half of that, of course, is if the Department of Homeland Security learns that somebody has overstayed a visa, that information is available to the State Department. So should the person apply for another visa later on, we would be aware of that information, and that would have taken place here. It is really mutual; whoever sees them first puts it in the system, and this is a system that everyday is sharing more and more information to the other. The most important thing we think is that both consular officers overseas and Homeland Security officers at ports of entry have as much information as is available by either of our agencies to make the best decisions possible.

Ms. WATSON. If someone answers my question, I am still a little confused. I think the culprit in all of this is that we just did not have adequate personnel, enough personnel to stay on these cases. All of us are so reminded of the aftermath of September 11 and those hijackers who received their clearance months and months after September 11 occurred. So somebody dropped the ball.

Mr. HUTCHINSON. I am sorry to interrupt you.

Ms. WATSON. Go ahead.

Mr. HUTCHINSON. But I thought your first question, and maybe you were going at that, is that in the State Department consular offices when the visa is issued, do our visa security officers duplicate that work? We are trying to avoid that, obviously, and to compliment and give a security perspective. But that might have been the direction of your question. But in every area the information needs to be interchangeable in real time, and that is our objective.

Ms. WATSON. Yes. That is what I understood. But I think the consular function should stay with State because they do have experienced workers. And if I could end by saying I know 175,000 persons would be involved would be created when we created the

Department of Homeland Security. I hope that we have designated enough people to track this information and keep it updated. That is my concern. Thank you very much. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you. And I want to thank this panel. We may have some additional questions in writing to follow-up on, if that would be OK with you. But I will dismiss this panel.

We will take a 2-minute recess as we set up the next panel. Let me just note for the record that Representative Burton wanted to be here today. He could not make it but I just want to note that he has testimony for the record.

We will take about a 2-minute recess.

[Recess.]

Chairman TOM DAVIS. We are now ready for our second panel. I want to thank you all for staying with us and for taking the time from your busy schedules to appear. Our panel consists of Dr. David Plavin, who is the president of Airports Council International-North America, who is here on behalf of the Airports Council-North America and the American Association of Airport Executives; Randel Johnson, vice president for Labor, Immigration and Employee Benefits, U.S. Chamber of Commerce; and Jessica Vaughan, senior policy analyst for the Center for Immigration Studies. It is our policy that we swear in our witnesses.

[Witnesses sworn.]

Chairman TOM DAVIS. We have some lights in front of you, when it turns orange that means 4 minutes are up and you have 1 minute remaining. Your entire testimony is in the record, so it is already part of the record. We have some questions we have already gleaned off that. But if you can try to keep it to 5 minutes, the committee would appreciate that and then we can move on to questions. Thank you again for being with us and for staying with us.

Mr. Plavin, we will start with you and move right on down.

STATEMENTS OF DAVID Z. PLAVIN, PRESIDENT, AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA, REPRESENTING AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA AND AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES; RANDEL K. JOHNSON, VICE PRESIDENT FOR LABOR, IMMIGRATION AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE; JESSICA VAUGHAN, SENIOR POLICY ANALYST, CENTER FOR IMMIGRATION STUDIES

Mr. PLAVIN. Thank you, Mr. Chairman, and members of the committee. Thank you for holding this hearing. Today I am testifying on behalf of ACI-North America, ACI-Worldwide, and the American Association of Airport Executives.

We want to start by saying we fully support the goals of the program. We think it is long overdue. Airports have been arguing for a long time that this is a program that clearly needs to be implemented. Second, I want to say that we really thank the Department of Homeland Security, Under Secretary Hutchinson, the US-VISIT program, Jim Williams and his folks. The individual program has been implemented smoothly and without a lot of disruption.

Now having said all of that, I think the other part of the issue is that we need to take great care with the way in which we implement the program, expand the program, and look at it on an ongoing basis because its potential for damage to the economy is very serious.

Let me start with the entry part of the program. Underlying patterns historically have had the immigration function inadequately staffed at airports. Most airports report that, especially during the peak seasons, lines are very long and people are waiting a long time and sometimes still waiting on planes in order to get into the arrivals hall. We think US-VISIT made the right decision in implementing their program in what is traditionally the very slowest part of the travel season. We think that was a great, intelligent decision.

But if you put the two together, you can see why we have a concern about the problems that the existing clearance procedures will exacerbate. New York, for example, reports that there are fully a third more travelers during the summer season than during the current season. Dulles Airport notes that today they might process 800 to 1,000 US-VISIT passengers per day but that during the summer months that probably will exceed 2,000 people per day. If we in fact extend this program to people who are now covered by the Visa Waiver Program, we are talking about a multiplication of that number that is very, very serious and we think will overwhelm the CBP and the airport resources.

In that context, I think it is very important that we have published standards as to how long we think it ought to take to process people. We do not have that now. In fact, we have moved away from that over the years. And it is not possible for the Department to fulfill the cost effectiveness requirement that you have included in the authorization without having some form of performance standard. There is no acceptance of the fact that there is a reasonable amount of time within which people ought to be cleared coming into the country.

There are a series of financial issues. We think that Congress and DHS need to fully fund the US-VISIT program before the exit portion of that is implemented. Our experience with TSA, for example, demonstrates the peril of forging ahead with inadequately conceived and funded solutions. The US-VISIT funding should cover space and services used by the program at the airport.

Let me turn then to the exit elements of the VISIT program, especially the biometric dimension of it. It is a much more complicated program to implement than the entry program. Most important, the success of the exit process, that is to say, to do what Congress intended it to do, will depend on the proper placement of each process. Especially, the needs need to be based on the unique physical and traffic characteristics at each airport, and they are very different. That ought to require real and regular consultation with each airport and its airline community. That is crucial to a successful rollout. That was excellent at the beginning of the rollout process. We think it needs to be resumed. Test pilot programs would make it even more effective. It would be critical to test a variety of technologies—kiosks, hand-held devices, and placements at airports with different physical and traffic characteristics.

The US-VISIT exit phase, unlike the entry phase, will insert an entirely new process, equipment, and staff into airports where previously none existed. Unlike airports in the rest of the world, U.S. airports have not been designed or built to accommodate passenger controls on departures. Passenger flows and passenger mixes are different at each airport. Space is already at a premium at these airports.

Having said all of this, we think it is really important in almost every case that US-VISIT focus on implementing their program at the departure gates, not in the middle of the concourses where the current experiments have them. We think that is the only way to really be sure that passengers actually go through the process and depart on the flight. It will also reduce the congestion. And because of the confusion about exit procedures which will probably continue for a period of time, the conversation we already heard today about the border crossings, we would really hope that as we look at penalties for failure to comply we take into account the fact that there are lots of holes in this system that are going to remain that way for a while.

Finally, there have been a series of cumulative changes, all of which I think individually have been for the better. But currently what we have is a hodgepodge layering of security and clearance procedures at airports that undermine efficiency, economic viability, customer service, and security itself in some cases. We hope that we can develop a comprehensive approach to all of the DHS programs, including some new facility guidelines on how to put together an airport and how to flow people through it.

Again, Mr. Chairman, thank you for holding this hearing. ACI and AAAE and our member airports look forward to working closely with you and with DHS to enhance security and travel for the public. Thank you.

[The prepared statement of Mr. Plavin follows:]

Statement Of

David Z. Plavin,

President,

Airports Council International-North America (ACI-NA)

on Behalf of

Airports Council International –North America

and the

American Association of Airport Executives

Before the

House Government Reform Committee

House of Representatives

March 4, 2004

Chairman Davis, Ranking Member Waxman and members of the Government Reform Committee, thank you for inviting me to appear before your Committee to discuss the ongoing implementation of the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT). I am testifying today on behalf of the Airports Council International-North America (ACI-NA) and the American Association of Airport Executives (AAAE).

Airports Council International - North America (ACI-NA) represents local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. ACI-NA member airports enplane more than 98 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America. Over 370 aviation-related businesses are also members of the association, which is the largest of the six worldwide regions of Airports Council International, which concurs with this testimony.

AAAE represents the men and women who manage the primary, commercial service, reliever and general aviation airports.

On behalf of the men and women who operate and manage America's airports, we appreciate the opportunity to offer our observations on the current progress of the US-VISIT program and outline some of the challenges faced by airports across the country. While much remains to be done, it is clear that a great deal of progress has been made in recent months and that our nation's aviation system is more secure than it has ever been.

GENERAL COMMENTS

ACI and AAAE and our member airports fully support the goals of the Enhanced Border Security and Visa Entry Reform Act of 2002 to ensure that the United States knows whom it is welcoming and whether or not they have overstayed their welcome. As part of the implementing effort, the Department of Homeland Security (DHS) issued the US-VISIT interim final rule on January 5, 2004, requiring that most visitors traveling on visas will have two fingerprints scanned and a digital photograph taken upon arriving at airports and seaports for entry into the U.S. Upon exit from these airports and seaports, the plan is for visitors to have their travel documents scanned and photograph compared and to provide fingerprints again.

But, we also believe that the US-VISIT program must be implemented with great care in order to facilitate travel and trade, while we ensure that the security and immigration objectives are met. It would be hugely detrimental to passengers, airports, airlines and local and national economies if US-VISIT became an ironic term rather than an effective entry/exit program that welcomes foreign visitors, the vast majority of whom pose no threat to the United States.

ACI and AAAE and our member airports very much appreciate that the Department of Homeland Security, particularly Under Secretary Hutchinson, the Office of Border and Transportation Security, US-VISIT Program Office and the Bureau of Customs and Border Protection (CBP) took our concerns and those of our members into account by moving the effective date of the entry aspects of US-VISIT from January 1 to 5, 2004, thus avoiding a peak holiday travel period and working toward implementation during an historically low traffic time of the year. We commend Under Secretary Hutchinson, the Office of Border and Transportation Security, the US-VISIT Program Office and CBP on the generally smooth implementation of the US-VISIT entry program at 115 airports.

We also support the Department's postponement of full implementation of the much more complex exit elements at airports so that they can be the subject of thorough consultation, preparation and pilot programs.

However, we cannot afford to let the relatively trouble free beginning of US-VISIT during a light travel season make us complacent about how well the system will cope with the increased number of passengers trying to enter and later exit the U.S. at airports during peak travel periods. DHS needs to consult extensively with airports and airlines and avoid artificial deadlines to ensure that US-VISIT will be a successful entry/ exit program. The U.S. Government must provide the human, technological and financial resources necessary for the efficient functioning of US-VISIT so that business people and tourists do not decide that it simply takes too much time, effort, confusion and dislocation to travel to and from the U.S. We all know the important contribution that business and tourist travel make to U.S. businesses, jobs, taxes, and local and national economies.

ACI and AAAE also maintain that it is critical that US-VISIT attend to all points of entry and reach some broader arrangements with our neighbors for handling travelers. US-VISIT cannot be an effective program until it is implemented beyond just airports and seaports, which represent a minority of international trips. Unless and until that is accomplished, US-VISIT will fail in its goal of identifying, comprehensively, who has entered and left the country.

And, as a matter of procedure, we recommend that whenever the DHS uses an expedited rulemaking process as it did in adopting the interim final rule on US-VISIT, it is very important that it include a provision mandating a review after a reasonable period of time and have a specific sunset date so that the rule must be affirmatively renewed. This is important because rules adopted on an expedited basis are implemented without the usual opportunity for fully considered input from interested and affected parties.

ENTRY STAFFING ISSUES

Airports have concerns going back many years about insufficient staffing by CBP (and some of its prior, legacy agencies) to facilitate travel through airports, particularly during peak hours and seasons. We have a concern that the addition of the US-VISIT toolbox to the existing clearance process will exacerbate the underlying, historically inadequate staffing at airports. We believe that one of the reasons US-VISIT has performed well thus far is that additional CBP personnel appear to have been assigned during the initial period. Even if US-VISIT takes only 15 seconds per visa holder (an ambitious goal), international airport Arrivals Halls typically process thousands of arriving passengers per hour during their daily processing periods. For example, Dulles International Airport estimates that 800-1000 passengers are going though US-VISIT now, but that 2000 passengers will have to do so during the summer--- at least doubling in the number of passengers that will undergo US-VISIT procedures. Unless we add significant numbers of CBP staff, an additional 15 seconds per transaction and these kinds of volumes of targeted passengers, will produce cumulative strain on the inspection system and airport facilities that will result in long lines and overcrowded facilities for all arriving passengers. Unfortunately, it is our understanding that there are no plans to add CBP officers at airports. While CBP should intensify its efforts to train new staff to assume positions at airports that are currently vacant, we also maintain that CBP needs to add new positions, especially positions that are flexible in hours of the day, days of the week, and seasons of the year.

ACI and AAAE endorse the indications in the US-VISIT interim final rule that there is flexibility for dealing with different mixes of traffic and delays. We recommend, for example, that the question of whether or not there should be separate lines for different types of traffic be determined on an airport-by-airport basis, depending on the design of facilities and mix and patterns of traffic, to better facilitate the optimal flow of passengers. In addition, the interim final rule refers to mitigation strategies to deal with delays. We believe that the local CBP and US-VISIT officials must have the authority and must be encouraged to respond quickly to changing traffic mixes and volumes throughout the day, computer glitches, diversions due to weather, and emergencies and other causes of delay, in order to avoid unacceptably long lines and missed connections.

Finally in this regard, we are very concerned that the interim final rule seems to imply that the US-VISIT requirements might be extended to additional foreign nationals, such as passengers from Visa Waiver Program (VWP) countries and Canada, who currently are not subject to US-VISIT requirements. Any expansion must be considered very carefully in terms of its usefulness and risk, impact on relations with other countries and the potential burden on the US-VISIT program, CBP, U.S. embassies and consulates, passengers, airports, and airlines. Adding such an enormous volume of passengers subject to US-VISIT would totally overwhelm the resources of CBP and the facilities at many airports, with consequential negative impacts on tourism, travel and trade if our ports of entry become bottlenecks, and with little positive benefit for national security.

It seems clear, at this point, that most countries in the VWP may not be able to meet the statutory requirement to have a program in place on October 26, 2004 for issuing machine-readable passports containing a biometric identifier that meets the standards set by the International Civil Aviation Organization. We see little evidence that the U.S. Government has such a plan for the passports it will be issuing, either. If this problem is not resolved by amending the law or other means, it could wreak havoc on the US-VISIT process and on airport facilities because there would be an exponential increase in the number of passengers traveling on visas and that therefore would have to undergo all the elements of the expanded US-VISIT procedures. If the U.S. Government plans to extend the program to additional foreign nationals, it should not do so without providing ample opportunity for Congressional input and public comment in advance of the action.

PERFORMANCE STANDARDS

ACI and AAAE believe it is important that the entry and exit procedures each have published performance standards for the clearance of individual passenger and aircraft, without which there can be no assessment of customer service, productivity, or cost-effectiveness of the entry/exit system. US-VISIT and CBP must be able to provide timely information on actual passenger and aircraft processing times to travelers, airports,

airlines, and to Congress, so that Government and industry can gauge how the systems are functioning and whether and what improvements should be made. This is important just as airports are no longer provided with even the most basic information about how many inspector positions or inspectors are assigned to their individual airports, as that information has now been deemed classified.

CONSULTATION WITH AIRPORTS

ACI and AAAE recommend that US-VISIT and CBP consult with airports about the continuing implementation of the entry elements of US-VISIT because CBP staff, airports and airlines will be dealing with the increasing number of passengers that are known to be returning to the system and the growth we know to be coming as we move into what is, historically, the busiest of travel seasons.

With respect to the design of the exit elements of the US-VISIT program, we strongly urge that US-VISIT involve airports early and intensively in designing the basic building blocks of the process, because this will be a much greater challenge than the entry process. During the entry phase, US-VISIT has been able to build on existing CBP facilities and staff at airports. The exit phase presents a host of issues of a different order of magnitude because it will insert a new process, equipment, and staff into airports, where previously there were no governmental requirements or personnel. Space for such functions is already at a premium at many airports. Unlike arriving passengers, departing travelers do not all appear for their departure in the same place, in the same way, at the same time. Unlike airports in most other parts of the world, U.S. airports have not been designed or built to accommodate passenger departure controls and most U.S. international gateway airports also have substantial domestic traffic.

We appreciate that US-VISIT staff recently indicated that they are resuming regular conference calls with airport and airline trade associations and hope this also signals closer contacts with individual airports as well. Many of our members report that they have had little or no contact with US-VISIT regarding the exit process since site assessment visits by US-VISIT personnel were conducted during winter 2003. US-VISIT should provide all airports with regular and timely feedback on their site assessment visits and on how the exit pilot

at Baltimore Washington International Airport (BWI) is progressing. We recognize that US-VISIT staff is extremely busy, but we strongly recommend that they not try to craft exit pilot programs and procedures in a vacuum. We recommend that they consult with the airport trade associations and with individual airports on an ongoing basis. Our members have a wealth of experience to share, particularly with their difficult experiences incorporating TSA into their facilities and traffic flows. We believe that an ongoing exchange of information and ideas between US-VISIT and airports and other stakeholders is crucial to the successful rollout of the exit elements of US-VISIT.

FINANCIAL ISSUES

ACI and AAAE welcome the statement in the US-VISIT interim final rule that "there will be no additional costs to the traveling public, airlines or airports resulting from the implementation of this rule". The U.S. Congress and DHS need to ensure that the US-VISIT program is fully funded before the exit portion is implemented. US-VISIT not only needs funds to test and implement the program at airports, but also to expand staff if necessary, oversee contracts including liability, and service and maintain its equipment. Our experience with the TSA (with screening machines crowding terminal lobbies, lack of funding for in-line baggage solutions and rolling deadlines) clearly demonstrates the peril of forging ahead with inadequately conceived and inadequately funded solutions.

We strongly urge US-VISIT to design its exit procedures to be conducted at the aircraft departure gates (or where determined most effective in each airport) and share offices and other space with CBP officers. If US-VISIT activities result in a taking of space at the airport or it wants its own offices, needs the use of airport services, such as power lines or other utilities, or imposes other costs on airports, it should pay or reimburse the airports at the going rate at that airport for those facilities and services.

EXIT ELEMENTS OF US-VISIT

The exit process is particularly complicated, raising many questions, which need to be resolved including the site, technology, equipment, and staffing of the exit process, as well as how it relates to the entry process.

Airports would like assurances that policy-related matters are defined and finalized before the deployment, with the requirements specified in writing prior to implementation. It is critical that the roles, responsibility and lines of communication among stakeholders, US-VISIT, CBP, airports, local law enforcement, and airlines be clearly delineated.

This also makes the test pilot programs critical to working out the best solutions on an airport-by-airport basis. ACI and AAAE recommend that US-VISIT and CBP should not only maximize utilization of pilot programs to test exit procedures using kiosks, but also develop gate-specific solutions for success and efficiency rate comparisons. In this manner, US-VISIT will not only be able to ascertain in quantifiable ways the most successful implementation of the proposed exit alternatives, but will solidify flexible and responsive approaches to a broad roll-out of exit procedures. Airport-by-airport, gate-specific approaches continue to emerge as the best path to successful exit program implementation.

Airport Selection for Test Pilots

ACI and AAAE welcome implementation of the US-VISIT exit test pilot at BWI on January 5, 2004 and we understand that the test is going well. We also welcome the plans to conduct additional pilots at up to 15 airport and seaports. We strongly recommend that US-VISIT select for its pilot programs airports that cover a wide range of differences in physical configuration and traffic mix. US-VISIT should test its concepts and technologies at airports where international departures occur at multiple terminals, are co-mingled with domestic arriving passengers, and have many connecting passengers, many passengers subject to US-VISIT requirements, and many non-English speaking passengers, subject to US-VISIT requirements. In this way the full range of challenges are evident and prior to full implementation.

Placement of US-VISIT Exit Process

We also believe US-VISIT must plan to test different site alternatives to see which work best for the exit process not just utilization of kiosks. We believe that the most effective placement in almost every case will be at the departure gate. Given the inherent mixing of departing international and arriving domestic passengers at many U.S. airports, it will be extremely difficult to assure that an exiting US-VISIT passenger actually departs the country unless the exit processing is located at the aircraft jetway and the exit process is

integrated with the airlines' gate boarding pass readers. US-VISIT staff could make sure that there are announcements and signs about US-VISIT in the gate area and could approach passengers who may be unsure as to whether or not they need to go through the process. By placing the process at the gate, it should be easier to prevent passengers from simply getting on the plane without being processed or, alternatively, leaving the airport without taking their flight. It is also likely to be the easiest alternative from the passengers' point of view because they can go through the US-VISIT process while they are waiting in the gate area. US-VISIT must also be responsible for conducting some type of reconciliation with the airlines' electronic departure manifests so that it will have confirmation that individual passengers actually boarded and departed.

Placing US-VISIT at security checkpoints will result in long lines for all passengers waiting to go through TSA security, while visa holders add the US-VISIT procedures to their screening process. In addition, connecting visa holders will have no need to go through security lines again and thus may not know or forget that they need to go through the US-VISIT process. It may also be more difficult to make sure affected passengers comply with the procedures and that they actually get on their flight, as opposed to just walking out of the terminal. Some of these problems will also affect placing US-VISIT kiosks at various points in the departure area beyond the security checkpoints.

Most importantly, the success of US-VISIT's exit procedures will depend on the proper placement of the exit process in the context of the unique physical and traffic characteristics of and on meaningful consultation with each individual airport.

Technology/Equipment

ACI and AAAE recommend that US-VISIT test various types of kiosks, including wireless mobile kiosks, and handheld devices to make the exit process as flexible as possible. Maximum mobility and flexibility is critical in US-VISIT's equipment so that the program does not undermine airports' efforts to maintain their flexibility in order to achieve maximum efficiency and customer satisfaction in airport and airline operations.

Airlines may change their flight schedules, types of service and code share and alliance partners on very short notice, which means that they may need to shift their operations to other parts of the airport.

It is important that US-VISIT consider its equipment needs in terms of peak processing times and numbers. In addition, US-VISIT should not focus only on the number of peak-time visa holders at an airport when determining the number of kiosks required to conduct the exit process. The layout of the airport, particularly if there are multiple concourses or terminals, will also have a significant influence on the number of kiosks or other mechanisms necessary to conduct the exit process.

Staffing

ACI and AAAE strongly urge that US-VISIT hire sufficient staff to inform and assist affected visa holders expeditiously and courteously. In addition, it needs to hire individuals who speak the foreign languages that many passengers are likely to speak at a given airport, and staff who are trained in dealing with diverse cultures. It is unclear what role CBP will play in the exit process, but, with chronic shortages of trained CBP officers, we would strenuously object should they be pulled from primary and secondary entry inspection to staff the exit process. Again, US-VISIT needs to take account of the physical layout of and traffic mix at each airport. Multiple concourses and terminals at an airport and a significant number of non-English speakers are likely to require more staffing than the number of peak time visa holders might suggest.

Re-entry into the U.S.

Because perfect implementation will not be possible in the initial stages of the program, ACI and AAAE urge that visa holders, airlines and airports should not be penalized by denial of entry, fines, or termination of service etc. because of confusion about the entry/exit process, because of inadequate preparation and signage, or because passengers may depart from an airport or seaport which does not have an exit process yet or because they enter or depart over a land border. This has some very serious implications that must be addressed before the program is widely implemented

IMPACT OF CUMMULATIVE CHANGES

There have been numerous changes in how U.S. security and facilitation functions are conducted at airports since September 11, 2001. Many of these changes contribute to increased security. However, the continued

layering of numerous procedures is creating a hodge-podge approach undermining the efficiency, economic viability and customer service aspects of airport facilities. DHS needs to work with airports on developing new facility guidelines incorporating effective security and facilitation procedures and taking cumulative account of their physical and financial implications.

GOVERNMENT AND PUBLIC OUTREACH

We note that US-VISIT has attracted some criticism and lack of understanding in a number of foreign countries, especially those that are not members of VWP, and whose nationals are subject to the new entry and exit processes of US-VISIT. As needed, the U.S. Government should consult with affected governments to explain the program. We are concerned that if other countries (particularly those with inadequate technological resources) introduce similar programs, there could be a further, cumulative negative effect on the important travel and tourism industry, which has already been so severely affected since 2001. Airports are concerned that, without proper planning and consultation, adding more and more procedures will, inevitably, decrease travel demand and stifle the industry's present slow recovery.

ACI and AAAE believe that US-VISIT needs to continue its efforts in educating the traveling public on the requirements and procedures involved in US-VISIT, to minimize disruption and increase passenger cooperation with the program at points of entry and, eventually, points of departure. These efforts could include handing out information cards at point of embarkation, showing videos at airports and on board international flights, and briefing foreign media. US-VISIT should assist airports in responding to questions and concerns raised by the local media and communities.

CONCLUSION

ACI, AAAE and our member airports look forward to working closely with US-VISIT and CBP to ensure that the entry and exit elements of US-VISIT actually enhance U.S. security and travel to and from the U.S. We appreciate the Committee's continued interest in this topic and we look forward to working with you and with the DHS to accomplish our mutual goals.

Chairman TOM DAVIS. Thank you very much.

Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I think my primary role here today is, frankly, to see that the interests of the border communities in this country are represented as the big decisions get made here in Washington. In this regard, let me just mention, and in response to some of the questioning earlier, the lessons we have at airports are interesting and they are important, and we certainly share many of the concerns of the prior speaker, but the land ports are an entirely different kettle of fish. It is like comparing a cruise liner on top of the ocean to the difficulties of exploring the depths of the ocean.

I was on the Data Management Information Task Force. I was privileged to visit many border communities and airports. You saw those from Asa Hutchinson where 80 percent of crossings occur, almost 400 million a year, at the land borders. It is not just a question of statistics and numbers, however, it is a question of environment. The land borders are entirely different than airports. It is an antiseptic environment versus one where it is dusty, harsh, a lot of stress on border guards. We cannot extrapolate the lessons from one and say that because it is working well at airports that we can take those lessons and apply them to the land ports.

Mr. Chairman, my testimony is quite lengthy. I would just like to ask that the members of the committee spend some time if they have not already going through the input from all the various local Chambers we have had. I can say that in my experience I have never had such an overwhelming response for information when we did a survey of the Chamber so quickly, ranging from Laredo to Nogales, to Ote Mesa, to San Diego. I think just that response shows the depth of the concern with US-VISIT and what may happen come December out there in the real world.

I want to emphasize, Mr. Chairman, that while, yes, the U.S. Chamber of Commerce is concerned about profits and cents, but when one visits these border communities it is not just a question of keeping businesses alive, it is a question of keeping a way of life alive, it is a question of keeping Americans employed. Because when you have slowdowns at the borders and they last more than a few days, Americans lose their jobs, and when Americans lose their jobs, the economy goes downhill. I remember one occasion up in Buffalo where people were close to having tears in their eyes when they were talking about concerns about delays at the borders and the fact that their children would have to move, schools would close down because there would be no jobs. So it is not just dollars and cents here, it is environment, it is the social weaving of a community.

Let me also mention that there is a natural skepticism among Chambers at the borders. These people have dealt with the government for a long time. There is a sense that while we are hearing some of these great things and, yes, it is working well at the airports so let's roughly apply that to the land ports and see what happens, we do not think there will be much of a slowdown, maybe 10 seconds here or there, people just do not believe that is the way it is going to work out. They do not believe Washington is listening to their concerns, and that is one reason that I am here. But they

are asking that Congress closely follow this process, that DHS, before they implement anything in a massive way, do a series of pilot projects to test these concepts so in fact there are not any delays at the borders.

Now, we are going to be criticized I know for not being sensitive to national security. But do not use that argument. I can say that people who live at the borders, who consider themselves U.S. patriots as strong as anybody, just want to have a feeling that the government is listening to them, that there is a conscious sense of what is at stake here, and that what the government is implementing will in fact promote national security. If they have that, I think everyone is willing to pull the wagon. But they have to have a sense of what is the purpose, what is the cost, and is it worthwhile. And DHS needs to do a better job of selling the program.

Last, just as a technical matter, I should note that the statute that created the Department of Homeland Security recognizes that economic security—in fact, it is in the mission of the Secretary—economic security is also important to this country and that we have to keep speedy, efficient commerce moving at our borders. That is also part of the Department's mandate as decided by Congress.

Let me just close by saying I think we all know that in a political year there are going to be attacks on this administration based on it is too weak on security, perhaps too strong on security, I do not know, it depends on what is the flavor of the day. But there is a concern I think at the border communities and generally that the Department will move too quickly because it will be afraid of these kinds of attacks. We would just ask and hope that this debate, because the stakes are so high, can be accomplished in a nonpartisan way.

Just in closing, we would just hope that the Congress carefully follow what the Department does, and if in fact deadlines need to be extended, that Congress will seriously consider doing so. Thank you, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

Statement of the U.S. Chamber of Commerce

ON: **"AMERICA'S NEW WELCOME MAT: A LOOK AT THE GOALS AND CHALLENGES OF THE US-VISIT PROGRAM"**

TO: **HOUSE COMMITTEE ON GOVERNMENT REFORM**

BY: **RANDEL K. JOHNSON**

DATE: **MARCH 4, 2004**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 96 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Testimony of Randel K. Johnson

Vice President for Labor, Immigration & Employee Benefits

U.S. Chamber of Commerce

Before the

House Committee on Government Reform

"America's New Welcome Mat: A Look at the Goals and Challenges of the US-VISIT Program"

March 4, 2004

2:00 P.M.

Chairman Davis, members of the Committee, I would like to thank you for the opportunity to testify today on the status of the United States Visitor Immigration Status Indicator Technology (US-VISIT) system and its potential impact on business and the economy. I am Randel K. Johnson, Vice President for Labor, Immigration and Employee Benefits at the United States Chamber of Commerce.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than 3 million businesses. The Chamber's federation includes state and local chambers throughout the United States and 96 American Chambers of Commerce overseas. The Chamber's membership includes businesses and organizations of every size and in every sector of the economy. Chamber members with interest in the US-VISIT system include companies and organizations in the travel and tourism industries, companies that import or export goods and services through our ports of entry, companies that do business with international customers and clients, and companies that employ an international workforce. Chamber members on both the U.S.-Mexico and U.S.-Canada borders, including local chambers of commerce and American Chambers of Commerce abroad that conduct business between the United States and other countries, also have a great interest in the implementation and efficiency of the US-VISIT system.

I am also the chair of the Americans for Better Borders (ABB) coalition, which unites regional business organizations and a wide array of companies and national trade associations representing manufacturing, hospitality, tourism, transportation, recreation and other industry sectors to work to ensure the efficient flow of exports and tourism across our borders while addressing national security concerns. The ABB coalition was originally founded in 1998 out of concern for the impact of implementation of the

original entry-exit provision of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[1]

The Chamber and the ABB coalition were instrumental in the creation and passage of the Data Management Improvement Act (DMIA) of 2000, which set the current deadlines for implementation of the US-VISIT program and established the DMIA Task Force, a public-private group chartered in 2001 by the Attorney General to evaluate and make recommendations on how the flow of traffic at United States airports, seaports, and land border Ports-of-Entry (POE) can be improved while enhancing security. I was privileged to be named by the Attorney General to represent the U.S. Chamber on the Task Force in 2002. The Task Force submitted two reports to Congress, one in 2002 and one in 2003. The 2002 report focused on what was then the entry-exit system and detailed numerous challenges to implementing such a system, including the differentiation required for the modes of entry, land, sea, and air, and differences between the northern and southern land border environments. In 2003, the Task Force report detailed the significant challenges facing our ports of entry in terms of infrastructure and technology and the need for greater cooperation and coordination among federal agencies with border responsibilities, with state and local governments, and the private sector. Significantly, in reviewing the progress to date on the US-VISIT system in 2003, the Task Force report included the following recommendation:

> That the first phase at air and sea [Ports of Entry] be reviewed and evaluated no later than 6 months after implementation by an independent body. This evaluation must consider the program's effect on national and economic security and international trade and travel. Congress should consider any recommendations from the independent review and evaluation and also reconsider deadlines for all other entry/exit statutory requirements. It is further recommended that any mandates in this area receive appropriate funding.[2]

The Chamber, its members, and the ABB coalition fully support the efforts of the Department of Homeland Security to improve the security at our ports of entry and borders. The purpose of my testimony today is not to denigrate the outstanding efforts of the Department to meet its difficult statutory and security mandates to protect our borders. We do not oppose the US-VISIT system; the Department has worked hard over the last year to listen to the concerns of business and has made significant strides in adopting systems that attempt to balance the need for security and the continued facilitation of legitimate travel at our ports of entry. However, the U.S. Chamber and its members remain very concerned that, if the US-VISIT system is implemented improperly, we risk serious economic harm by impeding the billions of dollars in cross-

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[1] Americans for Better Borders, www.abbcoalition.org.
[2] *Data Management Improvement Act Task Force Second Annual Report to Congress*, Department of Homeland Security, December 2003.

border trade (particularly at our land borders) and deterring the millions of legitimate visitors to our country, who also spend billions of dollars within our borders.[3]

Before moving into the details and the numbers, however, I do wish to emphasize that there is more at stake here than dollars and cents. As a member of the DMIA Task Force, I was privileged to visit many of the border cities, north and south, and to meet with businesses, chambers of commerce, and individuals which will be directly impacted by US-VISIT. From these visits, it is clear that there is more involved here than just commerce. These communities are so intertwined with those across the border that a way of life is endangered, a recognition that not just jobs, but whole lives will be changed along with the fabric and social underpinnings of communities.

These visits also reflected a skepticism of government, its promises, and its understanding of, not only what is at stake under US-VISIT, but what are the extreme practical difficulties that need to be dealt with in effectively processing the massive amounts of traffic at our borders, together with an unrealistic belief in the infallibility of technology. Technology in a laboratory operating under pristine conditions under the direction of a well-trained operator may work well in theory. But, will it be a solution that meets real life demands in outdoor, dusty, alternatively extremely cold and extremely hot conditions, staffed by personnel who will, despite their best intentions, encounter malfunctions and human error in the processing of millions of border crossers?[4]

Phrased differently, will the promises of the government be met when the rubber really meets the road? They may be, but there is a skepticism that you will hear today wondering if it is all possible, particularly under existing deadlines. And it is not an overstatement to say that there is literally no room for error.

Lastly, there is a concern that the government will act too hastily, without sufficient planning and testing, for fear that any delay in meeting deadlines will result in criticisms that "it is weak on security." We would hope that this would not be the case, but this fear, in a political environment, is understandable. However, the stakes are simply too high to allow this to occur and we would hope that the very real concerns over US-VISIT can be weighed in a bipartisan manner.

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[3] The Chamber's concerns are no different from those expressed by Congress when it created the Department of Homeland Security. The Homeland Security Act of 2002 gave the new Department, among other things, the mission to: "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland." Homeland Security Act of 2002, §101(b)(1)(F). In addition, the responsibilities of the Directorate of Border and Transportation Security specifically state "In carrying out the foregoing responsibilities [relating to border and transportation security], ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce." Homeland Security Act of 2002, §402(8).

[4] Technology is wonderful, but it will never be a complete panacea as we live in an imperfect world. As the Los Alamos technical support team noted in the DMIA Task Force's 2003 report to Congress, "Border operations goals are dauntingly diverse and, therefore, present unusually challenging opportunities that cannot be addressed solely through technological means." *Data Management improvement Act Task Force Second Report to Congress*, December 2003, Information Technology Consultant Analysis Summary Report, p. 32.

Air and Sea Ports

We submitted comments to the Department of Homeland Security on its interim final rule implementing the US-VISIT requirements for visa travelers at air and sea ports on February 4, 2004. I believe the committee has copies of these comments, but I would briefly like to highlight some of our concerns regarding the air implementation here today.

First, although major delays in international arrivals have not been reported from the implementation at US-VISIT at airports (we do not have information about the seaport implementation), we are extremely concerned about the capacity of the system to absorb additional travelers and additional data. This concern arises both on the technology and personnel, and infrastructure level.

The US-VISIT program has so far been operational only during the lowest period for international travel to the United States during the year. As travel season picks up this spring and summer, we expect additional travelers to arrive requiring enrollment in US-VISIT. In addition, we understand that while the system currently is only required of persons holding visas entering the United States, the Department intends to eventually include all non-citizen entrants, with persons from the Visa Waiver Program countries next.[5] To our knowledge, the Department has not demonstrated that its system can meet this extra load.

We noted that Customs and Border Protection (CBP), as an insurance against delays, deployed additional personnel to airports in the initial days of the US-VISIT implementation. We also understand that some of this additional staffing has since been rescinded. If additional travelers during peak season or additional classes of travelers are required to be enrolled in the US-VISIT system, we would strongly urge CBP to devote adequate staff to ensure expeditious processing of all international travelers.

We are also concerned about the technical capacity of the system to expeditiously process larger numbers of travelers. As more and more individuals are added to the US-VISIT biometric databases, in particular the "watch list" databases against which a traveler's biometrics are checked, the time required to return a "match" or "non-match" is likely to increase, unless the capacity of the system is adequate. We do not know the specific technical capacities of the databases to support thousands of extensive searches

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[5] "'It is a problem with the VISIT system that visa waiver travelers are not enrolled,' [Assistant Secretary for border policy and planning at the Department of Homeland Security, Stewart Verdery] said. 'We've been talking to [the visa waiver countries] about various options on how that can happen.'...[Verdery] said a policy that allows U.S. citizens traveling within the Western Hemisphere and citizens of Canada and other neighboring countries to enter the United States without showing passports could soon change." (Jeremy Torobin, "U.S. Proposes Stationing Passenger Screeners in Foreign Airports," *CQ HOMELAND SECURITY*, February 18, 2004). This would not be a small expansion of those covered as visa waiver admissions were more than 13 million in 2002 (*2002 Yearbook of Immigration Statistics*, Department of Homeland Security, Office of Immigration Statistics, October 2003).

conducted simultaneously at ports across the country and return accurate data, but the concern about the time taken for the database search and the accuracy of the data was expressed recently in testimony before the House Homeland Security Committee.[6]

We also have concerns about the proposed exit system for air and sea ports, which is still in the development phases. The current system of exit confirmation is the testing of self-service kiosks located near the passenger security checkpoints at airports. While the concept of a self-service checkout is appealing, and certainly is the least likely to cause disruption or additional backups for departing travelers, the lack of information provided to travelers and the seeming "voluntariness" of the system may, in fact, reduce the effectiveness of the exit system in actually recording departures. The self-service kiosk also provides the traveler with no documentary evidence that he or she has complied with the exit verification, and, therefore, should any discrepancy arise, the traveler will be at a loss to prove compliance.

Given these discrepancies, any method of exit verification must include clear directions to the traveler *upon entry* as to the need to "check out" upon departure and the means by which to do so. Since initially the exit capability will not be available at all airports, we predict a great deal of confusion by travelers as to the exit requirement. We have already received questions via our American Chambers of Commerce overseas regarding whether travelers must exit from designated airports, and if they do not, how their exit will be registered and whether it will impact their ability to return to the United States in the future. A great deal of outreach to travelers (in multiple languages) must be made to avoid inadvertent noncompliance with any requirements for exit verification. We would strongly urge a period of time during which any negative impacts from failure to register are waived until it is clear that most travelers understand and are able to comply with the exit requirements.

Land Borders

Of course, the largest challenge to the US-VISIT program remains the land borders. The circumstances of travel at land borders are monumentally different than at air and sea ports and the hurdles are immeasurably higher. The unique situation of the land borders was discussed extensively in the 2002 DMIA Task Force Report to Congress. The report stated:

> There is a marked difference between an inspection conducted at an air or sea POE [port of entry] and one conducted at a land border. Because of their varied status, divergent points of origin, unfamiliarity with requirements and regulations, and the increased risk to the U.S., most applicants for admission at seaports and airports receive a comprehensive inspection that includes mandatory data systems

[6] Transcript of Hearing before the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security, January 28, 2003, Dennis Carlton of the International Biometrics Group, LLC: "As the size of the database gets bigger, the limited amount of data that can be acquired from the two fingerprints means that the system is going to start returning more and more false matches, because there just isn't sufficient data to find the matching record in the database."

> checks. In contrast, the great majority of persons arriving at land border POEs are residents of the border area who cross frequently and are familiar with requirements concerning their entry into the U.S. and receive an inspection that may include data systems checks. The vast majority of all border crossings into the U.S. occur at land border POEs.... Border traffic includes U.S. citizens who leave and reenter the U.S. multiple times daily, permanent residents who make multiple entries, and aliens who hold non-immigrant visas or border crossing cards and commute back and forth daily or weekly from Canada or Mexico. Individuals can cross land borders as pedestrians, on bicycles, in cars, rails, buses, trucks, or other vehicles.[7]

In fact 80% of all inspections take place at the land borders; over 358 million inspections in 2002 were conducted at land borders, compared to 78 million at airports and 12 million at seaports.[8] The land borders also see the crossing of $540 billion in surface trade between the United States, Canada and Mexico.[9] As these facts and statistics reveal, the land borders represent a significantly larger challenge for the Department in order to ensure that the implementation of US-VISIT does not impede legitimate commerce and travel.

This testimony has given us the opportunity to reach out to the state and local chambers of commerce on the land borders to assess the concerns they have about the impact of the US-VISIT system to their communities. In the short period of time we had to conduct our survey, we found that the volume of trade and economic activity that is at risk at the border is enormous, as are the parallel concerns over the possible impact of US-VISIT. We have attached to this testimony documents, including studies of economic impact and resolutions by some of these local chambers of commerce, but I would like to include in my statement a variety of the facts and concerns cited, from both the Canadian and Mexican borders.

Texas

The Laredo Port of Entry is the busiest commercial crossing on the U.S.-Mexico border, handling more than 9,000 trucks and over 900 rail cars each day. The Port of Laredo processed more than $32 million in exports and almost $47 million in imports from Mexico in 2002. In addition, the crossings in Laredo process almost 25,000 pedestrians and more than 43,000 passenger cars daily. According to the Laredo Chamber, "[A]ny delay, no matter how small per entry, multiplies into major congestion."[10] The Laredo Chamber estimates that at least 50% of local business is directly or indirectly tied to cross-border trade and traffic.

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[7] *Data Management Improvement Act Task Force First Annual Report to Congress,* December 2002, p. 11.
[8] Source: PAS G-22.1 *INS Statistics,* cited in *Data Management Improvement Act Second Annual Report to Congress,* December 2003, p. 15.
[9] Bureau of Transportation Statistics, U.S. Department of Transportation, *North American Merchandise Trade by U.S. State and All Land Modes, 2002,* www.bts.gov/ntda/tbscd/reports/annual02/state/us_trade_2002_all.html.
[10] Response to survey by Miguel A. Conchas, President and CEO of the Laredo Chamber of Commerce, February 2004.

A recent study by Dr. Michael Patrick, Director for the Texas Center for Border Economic and Enterprise Development at Texas A&M University concluded that a 1% decrease in border crossings would cost the Laredo economy $19 million in annual sales, and increase local unemployment by 7.2%. Sales taxes alone would decline by $133,000. Across all of the major Texas ports, Brownsville, McAllen, Laredo, and El Paso a 1% decline in crossings would cost the border region $76 million in sales and 1,500 jobs, and decrease the Gross State Product by $1.2 billion.[11]

The Brownsville, Texas Chamber of Commerce reported an additional concern: Mexican citizens own approximately 50% of the resort condominiums at South Padre Island. Because the majority of Mexican border crossers hold so-called "laser visas," Border Crossing Cards that also serve as visitor ("B-1/B-2") visas that generally restrict their period of stay to 72 hours, the Chamber is extremely concerned that if border crossings become more difficult, many of these owners will divest of their real estate, costing the local economy millions of dollars. If the period of stay for "laser visas" is not extended, long border delays will limit the time that these vacationers can use their homes, making these investments less attractive.

The El Paso international bridges handle almost one-fifth of all trade along the U.S.-Mexico border, more than $38 million in 2002. Local economists estimate between 15% and 20% of the city's retail sales are derived from Mexican nationals.

According to the Greater San Antonio Chamber of Commerce, Mexican nationals purchased approximately $170 million in retail goods in San Antonio last year. Two major malls in the area report that as much as 35% of all sales go to Mexican nationals. Further, according to Visa International, San Antonio has the second largest usage of their credit cards by Mexican nationals in the United States (second to McAllen), with 8.29% of total U.S. purchases.

The Free Trade Alliance of San Antonio, the Greater San Antonio Chamber of Commerce and the communities of Brownsville, McAllen, Laredo, Del Rio, and El Paso have agreed to work together to address these issues. One common goal is to obtain a change to the limitation on the "laser visa" to allow Mexican nationals to stay for longer periods of time and to be exempt from US-VISIT enrollment, since they have already submitted to extensive background checks to obtain the cards, which contain the biometric identifiers required under the US-VISIT system.

Washington

Whatcom County, Washington has four border crossings, Peace Arch, Pacific Highway, Lynden, and Sumas, accounting for more than 2 million crossings per quarter. The region had almost a one-third drop in crossings since the fall of 2002. While some of this continued the downward trend since the Canadian dollar weakened in the 1990s, it is

[11] Patrick, Dr. Michael, "The Price of Security," *Inlandport: The Laredo Chamber's Business and Trade Magazine*, January/February 2004.

worth noting that border activity has not increased in recent years as the Canadian dollar has strengthened.

A survey conducted by Western Washington University in the summer of 2003 revealed that Canadian shoppers make approximately 10% of all retail sales in Whatcom County, estimated at over $35 million. In 2002 the total trading relationship between Washington and Canada was nearly $11.3 billion. The Blaine, Washington border crossings are the sixth largest crossing in value of trade on the Canadian border at $9.9 billion.

According to Department estimates, an additional nine seconds of inspection time will result in over 700 additional minutes of cumulative vehicle wait time at the Blaine crossing.[12] Delays at the border after September 11 and during periods of heightened security alert have caused Canadian residents, particularly in the Vancouver metropolitan area, to believe that border crossing is a hassle. There is discussion in British Columbia of running commercials on Vancouver area television encouraging Canadians to return north. Canadian press has reported stories about US-VISIT expressing great concern that it will cause additional delays when implemented. The local chamber of commerce in Bellingham, Washington reports hearing very little about how the Department is intending to implement US-VISIT and is very eager for local community outreach.

Arizona

The Yuma County, Arizona chamber has concerns about the impact of US-VISIT on the more than 20,000 agricultural workers that visit daily at the San Luis Port of Entry during the agricultural season. Yuma is a county of 170,000 people in the southwest of the state called "the lettuce capital of the country" and depends on this agricultural workforce for its more than $500 million agricultural industry. According to Ken Rosevear, Executive Director of the Yuma Chamber of Commerce:

> It is extremely important that [these workers] are able to cross within a short window of time to be able to coordinate with the busses that transport them to their work areas. These areas may be as far as 50 miles and require another two hours of travel. Waiting times at the border during the season can reach 2+ hours and that delay can cause shortages for that day's labor force in the fields....[T]hese delays can cost millions of dollars in lost revenue per day.[13]

According to the Yuma chamber, a new port of entry at San Luis East is in the early stages of development because of existing congestion at the port of entry, including a new highway to run from the port to Interstate 8. According to Mr. Rosevear, "As far as ability to absorb any further delay in either commercial, auto, or pedestrian traffic, absolutely NONE. This will bring total gridlock to our current port."[14]

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[12] Department of Homeland Security, US-VISIT Industry Day Briefing, July 2003, http://www.dhs.gov/interweb/assetlibrary/USVISIT_IndustryConfBrief.pdf.
[13] Response to survey of border chambers, February 2004.
[14] *Ibid.*

The Douglas, Arizona Chamber of Commerce reports similar concerns. Douglas estimates that more than 60% of its retail volume is from Mexican customers, and it underpins the entire local economy. Currently crossing times coming into the United States range from 20 minutes to 2 hours, with lines backing up more than 10 blocks into the town. This traffic backup creates air pollution problems. The regular crossers include employees of the more than 26 maquiladora plants across the border, and farm workers. These workers regularly cross the border each way daily, and sometimes several times.

The Nogales Chamber of Commerce reports that 80% to 90% of business in the town is tied to the border. The largest employers include the more than 300 maquiladora plants, produce companies, government agencies (most tied to the border) and merchants, who estimate that 80% of their revenue is from Mexican customers. Crossing times at the Nogales Port of Entry range from 20 to 40 minutes on average with longer waits during morning and afternoon commute times. According to Department estimates, a nine second increase in inspection times at the Nogales Port of Entry would result in an additional 500 minutes of vehicle wait time.[15] Of significance is the fact that the Nogales Chamber was not aware of US-VISIT or its pending implementation until informed by the U.S. Chamber. Apparently, there has been no outreach by the border agencies to the local Nogales business community.

New York

The Watertown Chamber of Commerce recently conducted a study of the Thousand Islands bridge crossing. The Thousand Islands crossing, which connects Interstate 81 to Highway 404 in Ontario is one of the fastest growing travel routes between Ontario, Quebec and the U.S. southern and mid-Atlantic states and cities, handling more than 2 million passenger cars per year, and forecasting 80% increase in traffic in the next 30 years. What makes this crossing unusual is that almost two-thirds of crossings are for recreation, and 63% of the visits are for more than two nights. Commuter crossings dominate the other major ports of entry on the U.S.-Canada border. As a major gateway between the recreational areas of upstate New York and the "cottage" areas of Ontario and Quebec, Thousand Islands is potentially more susceptible to declines in crossings due to delays, as vacationers may choose to spend their holidays on their own side of the border. The crossing also accommodates more than 1,500 commercial vehicles daily, comprising $29 million in trade per day, with more than 165,000 jobs in the U.S. and Canada dependent on this trade.

According to the Plattsburgh-North Country Chamber of Commerce, the total economic impact of Canada on the Clinton County, New York area, surrounding the Champlain/LaColle border crossing, is more than $1.3 billion, including more than 14% of all county jobs, almost $300 million in annual visitor spending on tourism and retail, and $8.7 million in county sales tax generated. The Champlain/LaColle border crossing

[15] Department of Homeland Security, US-VISIT Industry Day Briefing, July 2003, http://www.dhs.gov/interweb/assetlibrary/USVISIT_IndustryConfBrief.pdf.

is the only crossing in the eastern half of the continent that does not cross water, and is currently undergoing a major expansion. Yet, still, at the height of the summer vacation season, backups at this crossing can be over two hours.

California

The San Ysidro Port of Entry in California is the busiest border crossing in the world, processing over 40 million passengers and 15 million trucks and busses annually over the past three years. Its sister port at Otay Mesa, primarily a commercial port, handles more than $20 billion in two-way surface trade annually, averaging more than 5 million vehicles and 11 million people crossing annually in the last five years.

According to the San Ysidro Chamber of Commerce, more than 60,000 people cross the border daily, and two-thirds of this volume are regular crossers, presumably workers. Inbound waits for crossing are often more than two hours, and the chamber estimates that if each car is stopped only 10 seconds longer more than nine hours of delay could result. In the days following September 11, businesses along Main Street in San Ysidro reported more than 90% lost business. Further, there is no infrastructure in place for exit inspections, and no room for expansion; the town of Tijuana starts literally adjacent to the port of entry. Even so, outbound traffic is often backed up more than one hour, even though Mexican customs usually waives most traffic through.

At Otay Mesa, the local chamber of commerce estimates that 95% of business in the town is generated by cross-border trade, both directly and indirectly, much of it the maquila industries that operate facilities on both sides of the border, including Sanyo, Honeywell, Hitachi, Parker Hannifin, and others. One of the main appeals of the area is the availability of a skilled, legal workforce that enters from Tijuana daily.

The El Centro Chamber of Commerce, located just north of the Calexico border crossing, is concerned with the impact on its retail economy. El Centro has a population of about 150,000, but the adjoining town of Mexicali has more than 500,000 "laser visa" holders. The local Costco and Wal-Mart retail outlets depend on this cross-border shopping, and ground has recently been broken on a large new regional mall with numerous national retailers to serve this Mexican market. Further, businesses in El Centro and farms throughout the Imperial Valley depend on Mexican labor. The El Centro chamber expressed concerns similar to the Yuma chamber of the impact of US-VISIT on the entry of agricultural workers to this vibrant growing center in California.

The Greater San Diego Chamber of Commerce reports that total sales to Mexican citizens represented $3 billion in retail sales for San Diego in 2000 and 2001. After 9/11, increased border security resulted in decreases in sales of up to 80% for several months. The Greater San Diego Chamber of Commerce, along with the City of Chula Vista, the City of San Diego, the San Diego Association of Governments (SANDAG), San Diego Dialogue, Sand Diego Regional Economic Development Corporation, the San Diego World Trade Center, San Ysidro Business Association, San Ysidro Chamber of Commerce, and the South San Diego Economic Development Council, has formed the

San Diego Alliance for Border Efficiency. One of its goals is to mitigate the impact of US-VISIT on southbound border congestion by ensuring the development of necessary infrastructure prior to implementation.

Michigan

The Detroit/Windsor border crossings account for more than 27 million inspections annually and almost $100 billion in trade. These crossings account for almost 40% of all U.S.-Canada trade, with the Ambassador Bridge being the single busiest border crossing along the northern border, handling 25% of U.S.-Canada trade itself. The automotive industry alone accounts for more than $300 million of this daily trade. More than 160,000 jobs in Michigan and 1.8 million jobs nationwide are tied to the export of manufactured goods to Canada. Thirty-eight states and Puerto Rico have Canada as their primary trading partner, and half of U.S. exports to Canada are produced in 14 states. Of the passenger crossings, the majority of noncommercial crossings are locals. More than 10,000 people cross the border in Michigan to work, including more than 1,600 nurses in the city of Detroit. One hospital estimates that 15% of its nursing staff, and 20% of its critical care nursing staff, cross the border from Canada.[16]

The efficiency of these border crossings is extremely fragile. Following the September 11 attacks, additional security at the Detroit border crossings resulted in 20 mile delays on the Canadian side, taking five hours to enter the U.S. However, delays as little as 20 minutes for just-in-time parts deliveries can result in assembly line shutdowns, increased costs to reroute trucks or ship cargo by rail, barge, or air, and create emergency inventory stockpiles (the exact costs that just-in-time was supposed to replace).

In a June 1998 Senate Judiciary Report on the original entry-exit system proposed by Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Dan Stamper of the Detroit International Bridge Company is cited as estimating that additional entry and exit procedures that would add only 30 seconds per vehicle (for only half of the daily crossings) would still add 3,750 minutes of extra processing time per day. Since there are only 1,440 minutes in a day, this effect would essentially shut down the border. In a February 26, 2004 letter to the Detroit Regional Chamber, Neal Belitsky, Executive Vice President of the Detroit & Canada Tunnel Corporation (which operates the Detroit-Windsor Tunnel), stated:

> Our facility is typical of those at the other major crossings between Michigan or New York and Ontario. The Bridge & Tunnel Operator's Association (BTOA) represents these crossings. Plazas were not designed for today's traffic volumes or the post 9-11 environment....We are concerned that the system may not be fully field tested prior to installation. This could lead to significant disruptions in cross border traffic and

[16] Testimony of Dan Cherrin, former Director of Federal Public Policy of the Detroit Regional Chamber before the Standing Committee on Industry, Science and Technology of the Parliament of Canada, November 1, 2001.

trade. Has an assessment been completed that will indicate both anticipated volumes and risk?"[17]

These Concerns Are Not Limited to Border Communities

While the above statistics, we believe, are compelling in terms of painting a realistic picture of what is at stake in our border communities if US-VISIT results in increased delays, we realize that it may be deceptively easy to dismiss all of this as a "border issue," which perhaps only the members of Congress from northern and southern border regions need be concerned about. Unfortunately, this misimpression characterized much of the debate surrounding reform of the original Section 110.

This would be a mistake. While we have not yet been able to quantify what the ripple effect increased border delays might have on downstream commerce and throughout the American economy far beyond our ports of entry, it can hardly be gainsaid that we do live in a nation in which virtually all parts of the economy are interdependent and that an adverse impact on one part will, like falling dominoes, adversely impact others. Perhaps the relatively recent 2002 West Coast port strike most vividly makes this point. There, a work slow down, as a result of a complex labor-management collective bargaining dispute at 29 West Coast shipping ports, delayed about one billion dollars in daily shipments. The adverse economic impacts of the delays rolled through the American economy, resulting in President Bush invoking the rarely used national emergency dispute procedures of the National Labor Relations Act. This one example alone demonstrates the obvious: that the concerns surrounding US-VISIT should be considered national in character.

Conclusion

As can be seen from the previous information, there is a great deal of concern among the communities along the border regarding the implementation of additional border controls. The economic activity dependent on the border in these communities is significant, and the trade and travel volumes also are important for states in the interior. Canada is the number one trading partner of the majority of states in the United States. Canadian tourism contributes $8 billion to the U.S. economy. U.S.-Mexico trade amounts to more than $200 billion and more than 10.8 million Mexicans visit the U.S. annually.

As stated in our comments to the Department of Homeland Security, we are concerned that the proposed implementation plan for US-VISIT at land borders, as outlined in the Department's Request for Proposal for a Prime Contractor for the US-VISIT program and as outlined today by Undersecretary Hutchinson, while taking into account some of the concerns of the business community previously expressed, will not be adequate for the challenges of the land border environment.

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[17] Letter to Claudia Berry, Public Affairs Group, Detroit Regional Chamber of Commerce, from Neal Belitsky, Executive Vice President, Detroit and Canada Tunnel Corporation, February 26, 2004.

As the government has testified here today, initial implementation at the land borders is planned to be limited—applying only to those holding visas, and conducted away from the primary vehicle and pedestrian inspection lanes in the secondary inspection facilities. The exit portion of the system is envisioned to be accomplished via radio frequency cards and readers in exit lanes. However limited this implementation may be, it may still result in additional delays to important border crossers—such as the thousands of agricultural workers that cross the Mexican border, or professional commuters at the Canadian border. Since many of these individuals cross on a daily basis, the Department must consider whether daily registration in the US-VISIT system is necessary. We have also expressed concerns regarding the capacity for even this limited implementation at the secondary inspection facilities at land borders. Finally, there is no assurance that this described implementation will in fact be that which is actually deployed in December 2004, and it seems likely that the universe of individuals covered will ultimately be significantly expanded.

In summary, although the Department has taken the legitimate concerns of business and local communities regarding the implementation into account, there is a great deal of skepticism that the proposed system will not impede legitimate travel and trade. We have heard repeatedly from our local chamber affiliates that there has been a lack of outreach by Department officials, and many questions regarding the proposed system have yet to be answered.

Thus we urge the Department and Congress to provide additional time for implementation of the land border portion of the US-VISIT system, unless the government can publicly and thoroughly demonstrate, in advance and with thorough testing under realistic conditions, that whatever entry-exit system it may impose can be implemented with no additional delays at the borders.

I wish to thank you for this opportunity to share the views of the U.S. Chamber of Commerce and I look forward to your questions.

Resolution in Support of Safer and Secure Borders for our Nation
Through Implementation of Programs that Expedite Legitimate Travel and Commerce

Whereas, pursuant to the Homeland Security Act of 2002, the U.S. Department of Homeland Security has implemented the U.S. VISIT Program (United States Visitor and Immigrant Status Indicator Technology) which by January 2005 will require all border land ports to establish an automated entry and exit control system that will serve two purposes: 1) collect a record of departure for every alien departing the United States and match that record with the alien's arrival record; and 2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted non-immigrants who overstay their authorized period in the United States; and

Whereas, the creation of this entry and exit system will require establishing a structure to physically process all foreign nationals carrying temporary visas leaving the country; and

Whereas, given the vagueness of the program as proposed, it is probable that U.S. Citizens will be caught in the net of US-VISIT and it is unclear on how government would create a system that would exempt U.S. citizens from its scope; and

Whereas, approximately 81 percent of border crossings (358,373,569) occurred at land border crossings. The port of Laredo alone processed a total of 4,225,000 pedestrians; 7,188,000 vehicles; 1,460,000 trucks; and 191,000 rail cars heading south in the year 2002; and

Whereas, the Government Accounting Office (GAO) reported that many risks facing US-VISIT need to be addressed including 1) size and complexity; 2) enormous potential costs; 3) lack of expected benefits in tangible, measurable, and meaningful terms; 4) existing systemic problems; 5) lack of governance structure; 6) management capacity still not implemented; 7) operational issues remain unresolved; 8) historic facility and infrastructure posing significant challenges; 8) value of mission still unknown and unproven, all causing grave concerns in light of high investment costs; and

Whereas, delays in the movement of traffic brought about by exit inspections, coupled with a heightened sense of mistrust of foreign nationals traveling for valid purposes generated by the implementation of U.S. VISIT, are bound to have negative repercussions on local and regional economies by impacting *just-in-time* delivery systems and supply chains for much needed manufacturing plants; real estate investments by foreign nationals in the U.S., threatening both the housing and commercial real estate markets; and the retail market in Texas (40% of retail sales in border cities are attributable to foreign nationals); and

Whereas, even Governor George Bush of Texas cautioned during his administration that Section 110 (predecessor to U.S. VISIT) "could have severe economic impact on our border communities, as increased delays translate to fewer cars, trucks and people crossing the border to conduct business and do their shopping".

Therefore, Be It Resolved by the Board of Directors of the Laredo Chamber of Commerce that it fully supports efforts by the U.S. Department of Homeland Security to secure our borders but firmly opposes the implementation of the U.S. VISIT Program as presently designed; and further recommends 1) that the GAO conduct a study to develop a current life cycle cost and cost/benefit analysis for US-VISIT prior to its implementation; and 2) a review of the program to include input from stakeholders, i.e., private/public representatives of land ports, to generate a process that will maintain national security but continue to expedite the movement of legitimate travelers.

Passed and Approved this 28th day of October, 2003

ARNOLD CISNEROS, CHAIRMAN OF THE BOARD

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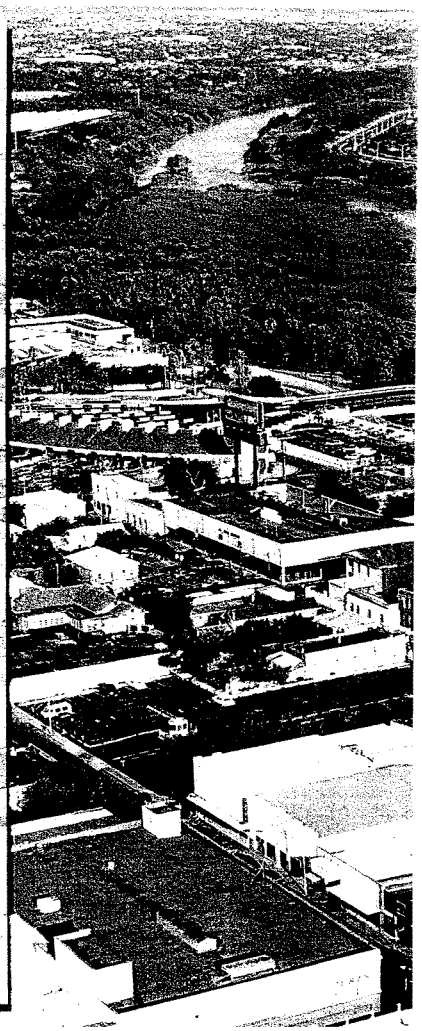
On January 5 of this year the Department of Homeland Security launched the US-VISIT Program at 115 airports and 14 seaports across the country. A second phase of the program is projected for institutionalization along the country's busiest land ports by year's end. A derivation of Section 110 of the Immigration Reform Act of 1996, US-VISIT is a program designed to verify the entrance and exit of foreigners traveling with visas. The system revolves around the use of biometrics, which are physical characteristics unique to each individual, to verify identity. Described as a program to enhance the nation's security while facilitating legitimate travel and trade through U.S. borders, the program came under fire early on during the planning phase, particularly from residents and businesses along the U.S.-Mexico border, for two reasons: 1) groups in this area felt discriminated against since the entry of Canadian citizens along the northern border would be handled in an entirely different manner (Canadian citizens do not require visas and can enter the U.S. for 6-month long stays); and 2) rather than "facilitating legitimate travel and trade" as proposed, residents of the border area felt the system would be more of a disruption, since it promised to increase delays in crossing time probably leading to congestion. Critics of the program have also expressed that the technology required to handle US-VISIT will be costly and will further require complete adaptation of infrastructure along all land ports.

The Department of Homeland Security began testing the new entry procedures on November 17, 2003, at Hartsfield-Jackson Atlanta International Airport. The test showed that the new procedures added an average of 15 seconds to the entry process at primary inspection for foreign nationals traveling with visas. This, critics state, would become a nightmare along land ports, where thousands of travelers are processed every hour.

At such an early stage it is difficult to predict what will be the actual impact of US-VISIT. Dr. Michael Patrick, Director of the Texas Center for Border Economic and Enterprise Development at Texas A&M International University, conducted a series of scenarios based on existing data to project some possible outcomes of US-VISIT along the Texas-Mexico border. The results of his study follow.

Cont. on p. 10



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INTRODUCTION

There is growing concern that the implementation of the US-VISIT (United States Visitor and Immigrant Status Indicator Technology) program will have a negative impact on the economies of Texas' border communities, the State of Texas, and the U.S. The program calls for the establishment of an entry and exit control program at the nation's ports of entry. Many fear the program will bring the flow of trade, commerce and tourism to a grinding halt at the border, with people and goods delayed for hours waiting to cross. Border officials and merchants are concerned that many cross-border shoppers, tourists, and businessmen will just stop "doing business" in U.S. border communities because of the long delays and hassles of the US-VISIT program. This, they say, will have a devastating impact on border communities.

This paper provides a preliminary assessment of the economic impact of the US-VISIT program on the Texas border metropolitan communities and the State of Texas. Decreases in cross-border flows of shoppers and merchandise trade are examined to determine their impact on sales, employment, sales tax revenues and local bridge revenues in the border metropolitan communities and at the state level.

Mexico is the U.S.' second largest trading partner and Texas' largest trading partner. Over 80% of U.S.-Mexico and nearly 100% of Texas-Mexico merchandise trade flows through Texas ports of entry. Nearly four of every ten border workers are employed in trade and commerce-related activities with Mexico. Roughly one in ten Texas workers are employed in export-related activities with Mexico.

METHODOLOGY

Currently, a model for measuring the economic interdependence between the U.S. and Mexican economies at the regional (border) level does not exist. To measure the economic impact of the US-VISIT program several ad hoc measures were developed. Cross-border sales and trade with Mexico are the central economic variables examined in this study. They drive the other key economic variables under examination-employment, sales tax revenues and bridge revenues. Sales tax revenues and local bridge revenues are important sources of local government revenue.

In terms of the relationship between the economic variables studied, it is assumed that decreases in cross-border sales lead to decreases in employment and sales tax revenues; decreases in trade lead to decreases in employment and bridge revenues. (Assumptions and data used in this study are provided in the section entitled: Notes, Assumptions, and Calculations.)

To measure the economic impact of the US-VISIT program different scenarios involving a decrease in cross-border shoppers, sales and trade are considered for four Texas metropolitan communities: Brownsville, McAllen, Laredo, and El Paso. The four metropolitan communities represent over 80% of the border population, employment, and cross-border trade and commerce. Three scenarios are examined: a 1%, 5% and 10% decline in cross-border shoppers and trade. The effect on sales, employment, sales tax revenues, and local bridge revenues are reported for the four metropolitan communities. The impact of the three scenarios on the state economy is also provided.

To put the 1%, 5% and 10% decreases in border crossings in

Table 1

PRELIMINARY: BORDER REGION IMPACT

Estimated Impact of a Permanent Decline in Border Crossings* of 1%, 5%, and 10%

(Based on 1992 Data)

Absolute Change

	BROWNSVILLE			McALLEN			LAREDO			EL PASO			BORDER		
Decline in Border Crossings (Percent)	1%	5%	10%	1%	5%	10%	1%	5%	10%	1%	5%	10%	1%	5%	10%
							Decrease By								
Sales (millions $)	9	45	89	28	140	280	19	95	190	20	100	200	76	380	759
							Increase By								
Unemployed	228	1140	2280	594	2970	5940	398	1990	3980	366	1830	3360	1549	7745	15490
							Increase								
Unemployment Rate (percent)	10.8	11.5	12.3	14.1	15.0	16.5	7.2	9.1	11.5	8.3	8.8	9.4	10.4	11.2	12.3
							Decrease By								
Sales Tax Rebates (thousands $)	62	310	620	196	980	1960	133	665	1330	140	700	1400	531	2655	5310
							Decrease By								
Bridge Revenues (thousands $)	143	715	1430	156	780	1560	324	1622	3240	103	515	1030	726	3630	7260

* Northbound and southbound pedestrian, vehicular and commercial trucks.

Table 2

PRELIMINARY: BORDER REGION IMPACT

Estimated Impact of a Permanent Decline in Border Crossings* of 1%, 5%, and 10%

(Based on 1992 Data)

	BROWNSVILLE			McALLEN			LAREDO			EL PASO			BORDER		
Decline in Border Crossings	1%	5%	10%	1%	5%	10%	1%	5%	10%	1%	5%	10%	1%	5%	10%
	Percentage Change														
	Percentage Decrease														
Sales	0.17	0.85	1.70	0.29	1.45	2.90	0.46	2.30	4.60	0.12	0.60	1.21	0.21	1.05	2.10
	Percentage Increase														
Unemployed	1.54	7.24	13.5	1.89	8.76	16.1	5.75	23.37	37.85	1.49	7.03	12.19	1.98	9.20	16.85
	Percentage Increase														
Unemployment Rate	0.2	1.0	2.0	0.3	1.5	3.0	0.6	3.0	6.0	0.1	0.5	1.0	0.4	2.0	4.0
	Percentage Decrease														
Sales Tax Rebates	0.14	0.7	1.40	0.29	1.45	2.90	0.52	2.60	5.20	0.19	0.95	1.90	0.33	1.65	3.30
	Percentage Decrease														
Bridge Revenues	1.0	5.0	10.0	1.0	5.0	10.0	1.0	5.0	10.0	1.0	5.0	10.0	1.0	5.0	10.0

* Northbound and southbound pedestrian, vehicular and commercial trucks.

Table 3

PRELIMINARY: STATE IMPACT

Estimated Impact of a Decline in Texas Exports to Mexico of 1%, 5%, and 10%

	EXPORTS (millions)	GROSS STATE PRODUCT (millions)	EARNINGS (millions)	EMPLOYMENT
		Decreases		
1% DecLINE	417	1,200	258	8,300
5% Decline	2,100	5,100	1,300	42,000
10% Decline	4,200	10,300	2,600	84,000

perspective consider that the decline in cross-border shoppers following the 1995 peso devaluation was roughly 6% (higher in some communities than others). A year later cross-border shopper flows had recovered to their pre-devaluation levels. The fall-off in cross-border shoppers following the September 2001 terrorist attack and heightened border security was roughly 5% (higher in some communities than others) for the September-October time period. Border crossing numbers in 2002, for most border communities, surpassed their pre-September 2001 levels. Vehicle crossings remained down in 2002, however, for Laredo and El Paso.

PRELIMINARY IMPACT ASSESSMENT*

* Interpreting the results of this preliminary impact assessment requires CONSIDERATION of two important points:

1. At this time, since the details of the US-VISIT program have not been announced by the Department Homeland Security (DHS), it is difficult to know the extent of the delays that cross-border shoppers and trade will encounter at the border ports of entry in the short-term or long-term, due to the program. Much depends on how the program is implemented and how cross-border shoppers, tourists, and the business community respond to its requirements.

2. For the purposes of this study, the declines in border crossings (of 1%, 5%, 10%) are assumed to be permanent. If the declines are not permanent, the estimated (negative) impacts of the US-VISIT program on employment, sales, sales tax rebates and bridge revenues will lessen overtime as cross-border shoppers, tourists, and the business community adjust to the requirements of the program. Historically, border community economies have demonstrated strong resilience in the face of external shocks, bouncing back, for example, from peso devaluations and government policies that delay or restrict the flow of people and commerce across the international border.

Border Region Impact: A 1% (permanent) decline in cross-border commerce and trade will result in (estimate) a loss of $76 million dollars in sales, a loss of 1,549 jobs, a increase in the unemployment level to 10.4% (from 10.0%), and losses of $531,000 in sales tax rebates and $726,000 in local bridge revenues. See Table 1 for the impact of 5% and 10% declines in cross-border commerce and trade.

Of the four border metropolitan communities, based on the assumptions used in this study, Laredo will be affected the most, in relative terms, by the US-VISIT program. A 1% (permanent) decline in cross-border commerce and trade for Laredo will result in (estimate): 0.46 % decline in local sales (of $19 million): 0.52% decline in sales tax rebates (of $133,000); 1.0% decline in bridge revenues (of $324,000); a loss of 398 jobs; and, 0.6% increase in the unemployment rate (to 7.2%). See Table 2 for a comparison of the four metropolitan communities.

Cont. on p. 12

Table 4

PRELIMINARY: STATE IMPACT

Estimated Impact of a Decline in Cross-Border Shoppers of 1%, 5%, and 10% on State Sales Tax Collections

	Loss in Sales Tax Collections to the State
1% Decline	$ 4.6 million
5% Decline	$ 22.9 million
10% Decline	$ 45.9 million

SECURITY Cont. from p. 8 in Texas

State of Texas Impact: A 1% (permanent) decline 17 million exports to Mexico will result in (estimate) a loss of $4 ct of $1.2 dollars export sales, a decline in the state's gross produ a loss of billion dollars and earnings of $258 million dollars, an in sales 8,300 jobs. The state will also lose $4.6 million dollarsnd 10% tax revenue. See Tables 3 and 4 for the impact of 5% a declines in Texas exports to Mexico.

[illegible]

Border Economy (Tables 1 and 2) isville,

1. The border is defined to include the MSAs of Brownt more McAllen, Laredo, and El Paso. The four MSAs represent. than 80 percent of the border population and employm values.

2. Baseline Data: 2002 data used for estimating impact (Table 4) mptroller

3. Data Sources: sales and sales tax revenue - Texas Commission; of Public Accounts; employment - Texas Workforce Center for bridge crossings (pedestrian, vehicle, truck) - Texas Cel and local Border Economic and Enterprise Development/TAMIUder bridge systems; bridge revenues - Texas Center for Borcal bridge Economic and Enterprise Development/TAMIU and lo systems.

4. Cross-Border Shoppers: Northbound pedestrian and vehicle numbers were adjusted to reflect that not all those crossing the border shop daily. Adjustment assumptions: (a) 85% of the daily cross-border pedestrians shop; 75% of individuals crossing in vehicles daily shop; two passengers per vehicle.

Number of Cross-Border Shoppers - 2002

Border	58.1 million
Brownsville MSA	14.0 million
McAllen MSA	10.3 million
Laredo MSA	15.3 million
El Paso MSA	18.5 million

5. Sales per Cross-Border Shopper: Based upon studies by the Dallas Federal Reserve, the Texas Center for Border Economic and Enterprise Development/TAMIU, and interviews with border business and industry representatives, the following assumptions were made in calculating sales per cross-border shopper.

Percent of Industry Sales to Cross-Border Shoppers - 2002

	Wholesale/Retail Sales	All Other Sales
Border	30%	15%
Brownsville MSA	20%	10%
McAllen MSA	35%	17%
Laredo MSA	50%	25%
El Paso MSA	15%	7%

6. Sales to Cross-Border Shoppers: Total sales figures were adjusted for the percent sold to cross-border shoppers.

Sales (All Industries) to Cross-Border Shoppers - 2002

Border	$8.8 billion
Brownsville MSA	$89 million
McAllen MSA	$2.8 billion
Laredo MSA	$1.9 billion
El Paso MSA	$2.0 billion

7. Average Sales per Cross-Border Shopper: The average sales per cross-border shopper was calculated by dividing total sales by the number of cross-border shoppers.

Average Sales per Cross-Border Shopper - 2002

Border	$151.46
Brownsville MSA	$ 63.57
McAllen MSA	$271.84
Laredo MSA	$124.18
El Paso MSA	$108.11

8. Sales per Employee: The average sales per employee was calculated by dividing total sales by total employment.

Average Sales per Employees (all industries) - 2002

Border	$53,083
Brownsville MSA	$42,345
McAllen MSA	$48,780
Laredo MSA	$53,247
El Paso MSA	$60,917

9. Unemployment: The unemployment effect of a decline in border crossings was estimated by adding two components: 1) unemployment resulting from a decline in sales to cross-border shoppers, and 2) unemployment in the transportation and warehousing industries as the result of a decline in the number of cross-border commercial truck crossings.

To estimate the unemployment effect of a decline in sales to cross-border shoppers, the average sales per employee was calculated. The unemployment impact of a decline in sales to cross-border shoppers was determined by dividing the loss in sales by sales per employee.

To estimate the unemployment effect of a decline in cross-border commercial truck crossings, the average number truck crossing per employee was calculated. The unemployment impact of a decline in commercial truck crossing was determined by dividing the decline in commercial truck crossings by truck crossing per employee.

10. Local Sales Tax Rebate: The amount of local sales tax rebates generated by sales to Mexican cross-border shoppers were adjusted to reflect the amount of sales taxes lost to the municipalities and the state as the result of refunds. The Texas Comptroller's manifesto program permits Mexican shoppers to receive a refund on sales taxes paid upon submission of proper paperwork. Knowledgeable border business and industry representatives indicate that roughly 30 percent of the sales tax collected on sales to Mexican cross-border shoppers is refunded.

11. Bridge Revenues: Bridge revenues collected by local bridge operators include the fees paid by southbound pedestrians, vehicles and trucks.

Michael Patrick, Ph.D., a regular contributor to InlandPort Magazine, is Director for the Texas Center for Border Economic and Enterprise Development of Texas A&M International University.

ISSUE PAPER
Greater San Antonio Chamber of Commerce
SA to DC XXVI

1. TITLE: United States Visitor and Immigrant Status Indicator Technology Program (U.S. VISIT)

2. INTRODUCTION: Since September 11, 2001, the U.S. State Department and U.S. Department of Homeland Security have enacted sweeping changes to the process for obtaining a visa to enter the United States. Additional new policies and procedures are due to go into effect in early 2004. The implementation of these new policies has already had an impact on the San Antonio economy and will likely continue to cause harm to several sectors of critical importance.

In late 2001, the U.S. State Department began requiring personal interviews be conducted for all individuals requesting a visa to enter the United States unless they were coming from a country with a reciprocal visa policy (i.e. Canada, United Kingdom, etc.). Although this policy had already been in effect for many years for Mexico, the increase strain on the system has caused long waits for obtaining visas. Prior to September 11, 2001, visa requests would generally take a few weeks. Now they take months. The result has been a general decrease in travel to the United States.

In addition, beginning in January 2004, the U.S. State Department and Department of Homeland Security are planning to implement a new program called US VISIT. Essentially a recreation of the former Section 110 immigration proposal, US VISIT will require all international visitors be screened upon leaving the U.S. The goal is to provide government officials with data on whether foreign visitors leave when their visas expire. The result will be additional congestion and strain on airports and border crossings.

The federal government has not allocated the additional resources (technology and personnel) to implement the new policies implemented since 2001. Additional programs like the US VISIT will exacerbate the already choked system. In June of 2003, the General Accounting Office (GAO) issued a report which indicated that the Department of Homeland Security's plan for implementing many of the new entry/exit procedures was lacking "sufficiently detailed information on system plans and progress."

3. BACKGROUND: The implementation of the new visa policies and procedures since 2001 has already impacted the U.S. economy and more specifically the San Antonio economy. Additionally, the US Visit program is anticipated to worsen this impact unless additional resources are put into place to maintain the efficiency of the visa process. This impact has been and will be felt in several sectors of the San Antonio economy:

> **Tourism** – According to the San Antonio Convention & Visitors Bureau, approximately 10% of San Antonio's tourism comes from international visitors. Nearly 800,000 travelers visit San Antonio every year from hundreds of countries. The total size of the tourism industry in San Antonio is $4 billion. With 10% being attributable to international visitors (or $400 million), the impact of these new policies can be profound. CVB staff already point to numerous anecdotal examples

of events and groups that have not come to San Antonio (or the U.S.) because of these new visa rules and procedures.

Retail – In addition to the impact on the hotel/motel and convention industries, the new rules are having an impact on the retail sector as well. According the State Comptroller's office, Mexican nationals purchased over $680 million in retail goods in Texas last year. Estimates are that San Antonio accounts for about 25% of this total (or $170 million). North Star Mall and Rivercenter Mall indicate that Mexican nationals make up between 32-34% of total sales. They too are starting to see a drop off in business because of the difficulty for many families to get the necessary visas to visit the U.S. According to the credit card company Visa, San Antonio has the second largest usage of their credit cards by Mexican nationals in the United States (second only to McAllen) with 8.29% of total U.S. purchases.

Trade – Importers and Exporters are also reporting that many of their customers and business partners are traveling less to the U.S. A major reason is the increased difficulty on obtaining business or tourist visas for entering the U.S. The result in some cases is lost business to competition in other countries.

Sports – San Antonio has a long tradition of promoting international sporting events. The U.S. Olympic Committee has been able to work with the U.S. State Department to ensure athletes and coaches obtain the necessary visas to participate in events held in the U.S. However, participation by international spectators and media is already being impacted by the new visa requirements. The result is that the United States is becoming a less attractive location for hosting international sporting events. In addition, host communities are no longer benefiting from the economic impact of international attendees and the public relations benefit of international media coverage.

Education – Several local academic institutions rely heavily on international students for the financial impact on their bottom lines as well as the international environment they bring to the classroom. Since 2001, student visas have declined dramatically, particularly from countries like Pakistan, India, Thailand, Indonesia, China, and South Korea. The University of the Incarnate Word reports that the percent of its student body made up of foreign students dropped from 9% to 7% in the past year. They cite difficulties with student visas as the primary reason for the drop off.

Housing – The Consulate General of Mexico reports that over 40,000 homes in San Antonio are owned by non-resident Mexican nationals. These homes are, in general, "second homes" for wealthier Mexican nationals who like to visit San Antonio periodically. It is becoming increasingly difficult and time consuming for these families to obtain visas to visit San Antonio. Although there is no evidence of it occurring thus far, a potential impact of the new visa policies could be a sell off of these homes which could depress the local housing market.

Already, *Alliance* staff has worked with business and civic leaders across South Texas who share the aforementioned concerns. To date, the communities of Brownsville, McAllen, Laredo, Del Rio, and El Paso have agreed to work together to address these new policies. Although there are

different suggestions as to how best address these issues, there is clear consensus that they are potentially devastating to an already weakened U.S. and South Texas economy.

4. **OBJECTIVES:** (1) Obtain support for the funding of additional resources (technology and personnel) to implement the visa policies implemented since 2001. (2) Obtain Congressional delegation's support for the delay of the US VISIT program until necessary resources are in place to ensure a minimal impact on the U.S. economy.

Rio Grande Valley Partnership
Rio Grande Valley Chamber of Commerce P.O. Box 1499 • Weslaco, Texas 78599-1499 • 956-968-3141 • Fax 956-968-0210

RESOLUTION

A Resolution endorsing the Border Trade Alliance position on the US-VISIT program and Laser Visa reforms

WHEREAS, the Border Trade Alliance is a public-private coalition of individuals, entities and companies conducting business across U. S. borders to promote NAFTA economics, the economies of the border regions, and the quality of life for its residents, and

WHEREAS, the Border Trade Alliance has a seventeen-year record of border crossing experience, the collective knowledge of key private and public sector representatives, plus a reputation for integrity, leadership and effective lobbying to promote commerce, and

WHEREAS, the Border Trade Alliance Board of Directors Resolution of September 26, 2003 addressed the US-VISIT program, and called for Laser Visa reforms, and

WHEREAS, the Rio Grande Valley Partnership/Chamber of Commerce agrees with the Border Trade Alliance and supports constructive dialogue with U. S. Federal and Congressional leadership as the optimal venue for successfully changing polity and legislation,

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Rio Grande Valley Partnership/Chamber of Commerce endorses the position of the Border Trade Alliance concerning the US-VISIT program and its call for Laser Visa reforms, and

IT IS FURTHER RESOLVED that the Rio Grande Valley Partnership/Chamber of Commerce Board of Directors calls on all elected officials and leaders on the U. S. Mexican Border to develop a common position and strategy for recommending changes to the US-VISIT program and Laser Visa reforms.

Approved at a regular meeting of the Board of Directors on October 23, 2003.

Bill Summers, President/CEO

ATTEST:

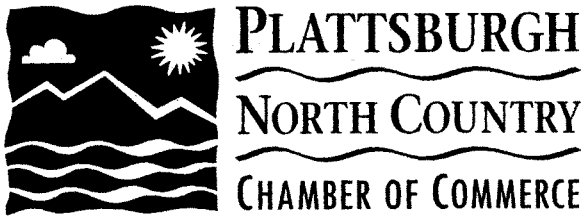
Marjorie Johnson, Secretary

Quebec-New York Connection

The Economic Impact of Canada on Clinton County, New York 2002

A PROJECT OF THE QUEBEC-NEW YORK CORRIDOR COALITION

and the



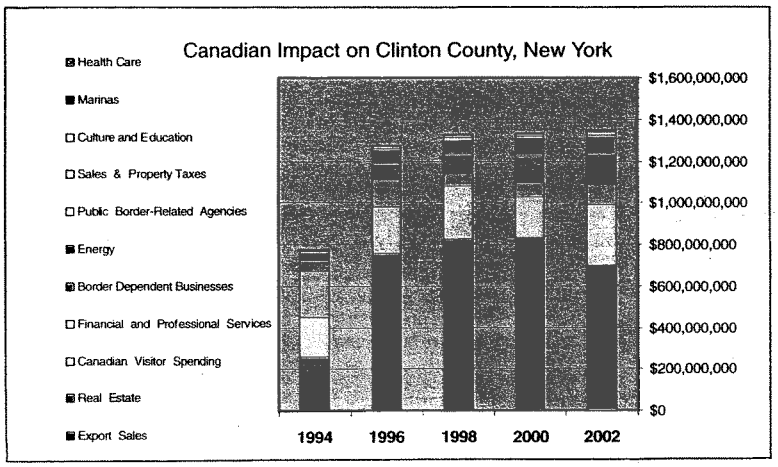
www.quebecnewyorkcorridor.com

The Economic Impact of Canada on Clinton County

TOTAL ECONOMIC IMPACT:

1994:	1996:	1998:	2000:
$784,527,183	$1,278,490,725	$1,329,737,973	$1,333,045,655

2002: $1,351,755,337



HIGHLIGHTS

EXPORT SALES FROM CLINTON COUNTY

(To or through Canada)

Year	Export Sales
1987	$ 71,877,000
1992	$128,240,000
1994	$187,724,000
1996	$488,588,203
1998	$526,144,744
2000	$524,986,171
2002	$411,023,555*

*Actual data not available. This assumes a reduction in line with statewide performance. However, manufacturing actually increased in Clinton County in 2002. If calculated in line with the growth in manufacturing in Clinton County, the estimate would be **$566, 186,616**.

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HIGHLIGHTS

EMPLOYMENT

Number of Employees of Canadian-owned Businesses, International Border Businesses & Border Agencies in Clinton County:

Employment	Percent of County Total:
1994: 2,483	7.5%
1996: 2,927	9.2%
1998: 3,588	11.6%
2000: 4,508	13.5%
2002: 4,646	**14.2%**

Payroll of Canadian-owned Businesses, International Border Businesses & Border Businesses in Clinton County, plus their use of Clint County based Temporary Employment Services:

1994: $59,745,965 **1996:** $77,489,913 **1998:** $99,691,377 **2000:** $132,942,602

2002: $152,706,428

HIGHLIGHTS

BANKING IN CLINTON COUNTY

Client Type	Average Collected Balances				
	1994	1996	1998	2000	2002
Canadian Individuals	$185,611,450	$98,290,775	$30,104,533	$42,420,000	$40,712,581
Canadian-owned Businesses in Clinton County	$8,427,473	$13,836,130	$9,198,017	$7,740,076	$7,267,200
Canadian-owned Businesses not in Clinton County	$19,000,000	$9,100,000	$951,494	$3,475,000	$3,463,000
International Border Businesses	$3,593,267	$3,603,781	$3,130,714	$876,361	$3,108,200
Public Border Related Agencies	$13,099	$45,198	$30,000	$50,000	$802,948
TOTAL	$216,645,289	$123,875,884	$43,414,759	$54,561,437	**$55,353,929**

MACHINERY AND EQUIPMENT

Total reported value of machinery and equipment purchased by Canadian owned businesses in Clinton County:

1994: $5,504,150 **1996:** $15,757,026 **1998:** $11,284,239 **2000:** $21,018,438
2002 10,857,522

ENERGY

Value of Canadian Natural Gas used in Clinton County:

1994: $31,425,499 **1996:** $57,290,469 **1998:** $64,396,166 **2000:** $81,714,379

2002 $82,257,053

HIGHLIGHTS

REAL ESTATE

Equalized assessed value and Property Tax contributions of Canadian-owned, International Border Business and Border Agency Commercial Property in Clinton County:

	1994	1996	1998	2000
VALUE:	$50,209, 640	$243,862,321	$275,736,334	$285,518,359
TAXES:	$570,707	$3,258,289	$2,516,554	$3,967,757

2002 VALUE: $268,753,575 TAXES: $4,238,307

Equalized assessed value and Property Tax contributions of Canadian-owned Residential Property in Clinton County:

	1994	1996	1998	2000
VALUE:	$20,191,457	$22,163,530	$20,226,509	$17,213,824
TAXES:	$527,285	$530,737	$494,627	$393,143

2002 VALUE: $15,905,600 TAXES: $383,214

Rental of Commercial Space by Canadians in Clinton County (Total Reported)

994: $1,077,670 **1996:** $2,437,924 **1998:** $3,342,648 **2000:** $4,441,863

2002 $4,262,159

MEDIA, EDUCATION AND CULTURE

ılue of Canadian connected advertising and sponsorships received by Television, Radio and Magazine Media in Clinton County, plus Tuition and Non-Tax Receipts by public and private schools, and charitable contributions:

1994: $4,549,645 **1996:** $4,576,251 **1998:** $2,958,348 **2000:** $1,500,209

2002: $1,616,472

HIGHLIGHTS

HEALTHCARE

Value of health care related purchases in Clinton County by and for Canadians:

2000: $3,086,000

2002: 7,868,774

ACCOUNTING, LEGAL AND INSURANCE SERVICES

Value of business conducted in Clinton County with Canadians, Canadian-owned Businesses, International Border Businesses and Bord Agencies (Totals reported):

1994: $3,284,485 **1996:** $3,423,993 **1998:** $13,926,384 **2000:** $10,495,281

2002: $33,437,393

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Managing Partner
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Plattsburgh, NY 12901
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HIGHLIGHTS

CANADIAN VISITOR SPENDING-TOURISM AND RETAIL

1995: $193,934,533 **1996:** $224,694,634 **1998:** $253,992,701 **2000:** $193,711,356

2002: $292,594,740

County Sales Tax Generated (3%):

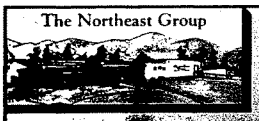
1995: $5,809,757 **1996:** $6,740,839 **1998:** $7,619,781 **2000:** $5,811,340

2002: $8,777,842

Average spending by Canadian Visitors Per Trip in Clinton County:

1995: $156.42 **1996:** $168.89 **1998:** $266.78 **2000:** $213.70

2002: $283.82



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CORRIDOR
WITHOUT BOUNDARIES

North America is in the midst of an economic realignment of historic proportions - and the **Quebec- New York Corridor** has become one of the key connections and beneficiaries of the shift.

From the days of European settlement, both the U.S. and Canada have been dominated by economic development strategies along an east-west axis. Each worked for two centuries to open up the interiors, developing roads, canals and trans-continental railways to tap raw materials and feed coastal industrial centers and ports.

But now the emphasis is shifting to a new north-south axis as the U.S. and Canadian economies integrate, with Mexico following as well. And one of the results is the emergence of a handful of **north-south trade corridors** which possess the critical transportation links between Canada and the U.S and which are becoming more than growing commercial routes - they are now **NEW, BI-NATIONAL ECONOMIC REGIONS.**

OUR CORRIDOR REGION

One of the most important such corridors is the **QUEBEC-NEW YORK CORRIDOR** which at its core exists from **Montreal to Albany**, with connections throughout both Quebec and New York State.

For the Plattsburgh-Champlain gateway area in Clinton County, New York, this means:

- We are now a **GLOBALLY SIGNIFICANT GATEWAY** to and from the **WORLD'S RICHEST MARKET.**
- We are now **MONTREAL'S U.S. SUBURB**, tied directly to that region's amazing assets and opportunities, ranging from its port and logistical advantages to all of its cutting edge industries of tomorrow.
- We are a **HIGHLY SPECIALIZED SERVICE CENTER**, uniquely qualified to support all aspects of Canadian-U.S. interaction wherever they occur.

This updated assessment is a mere snapshot of the impact of this two-way phenomenon on just the U.S. gateway county, demonstrating that something enormously significant and very positive is in fact occurring between New York and Quebec.

EXCITEMENT IS BUILDING AND ECONOMIC INTERESTS OF ALL KINDS ARE COMING TOGETHER WITHIN THE QUEBEC-NEW YORK CORRIDOR REGION. We are collectively recognizing and pursuing the rich opportunities now at our doorstep.

The **QUEBEC-NEW YORK CORRIDOR COALITION** of the Plattsburgh-North Country Chamber of Commerce has been a leader in revealing these opportunities and building crossborder business of all kinds. It provides a link to hundreds of private and public interests throughout the bi-national Corridor region.

WE INVITE YOU TO CONTACT US FOR MORE INFORMATION, AND TO EXPLORE ALL OF THE WAYS YOU MIGHT BECOME A PART OF ONE OF NORTH AMERICA'S MOST STRATEGIC, DYNAMIC AND FORWARD LOOKING REGIONS!

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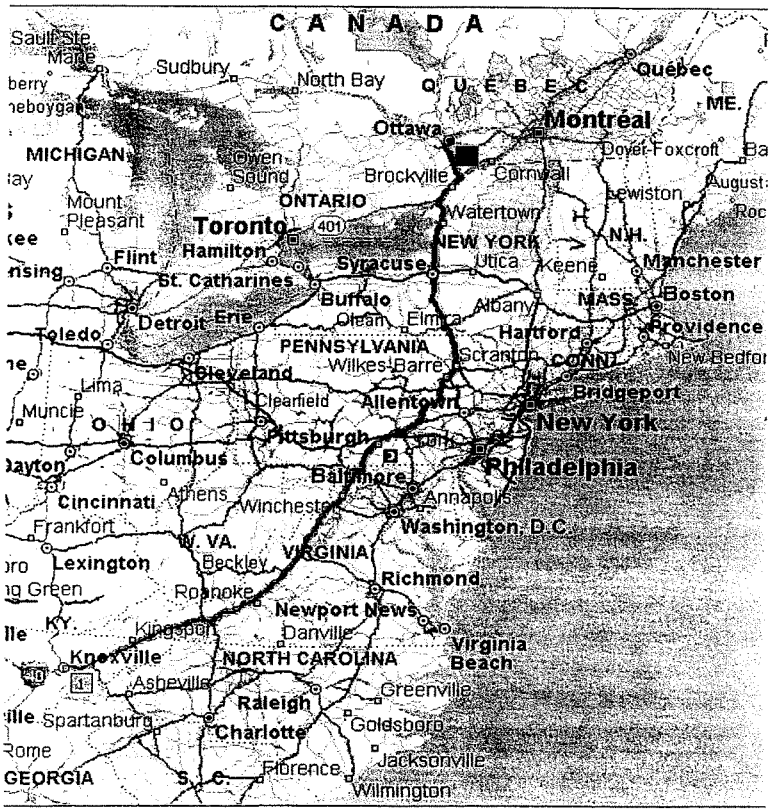

I-81 Trade Corridor

The I-81 Trade Corridor is one of **fastest growing** and the **least congested travel routes** between Ottawa, Toronto, Montreal and Quebec, Canada and the U.S. Southern and Mid-Atlantic States and Cities.

Personal Travel -Tourism

The U.S. Border Crossing at the Thousand Islands Bridge (I-81, U.S.A. to Highway 401 Expressway, Canada) is the **15th busiest passenger vehicle crossing** of all of the crossings along the U.S.A and Canadian border. The volume of **personal vehicles** using this crossing is forecasted to increase by **80% over the next 30 years**

- **2.1** million passenger cars per year
- **73%** of the crossings are for Recreation
- **7%** of the crossings are for Shopping

Of these:

- **63%** of the visits are two plus nights visits
- **7%** of the visits are one night visits
- **30%** of the visits are same day visits

80% of these passenger vehicles carry more than one person, averaging 3 passengers per car

***These statistics indicate that the great majority of these are not commuters, making this a more significant statistic since commuter crossings dominate the other crossings.*

80% travel between New York to Ontario and Quebec

35% with origins or destination directly along the corridor

16% to or from the Watertown or Syracuse area

Commercial Travel – International Trade

The U.S. Border Crossing at the Thousand Islands Bridge (I-81, U.S.A. to Highway 401 Expressway, Canada) is the:

- **7th busiest** commercial vehicle US-CAN crossing out of the 22 major crossings)
- **6th busiest** for value of trade carried by trucks

  The top 7 are:

  1. Ambassador Bridge (Detroit,MI-Ontario)
  2. Peace Bridge (Buffalo,NY-Ontario)
  3. Blue Water Bridge (Detroit, MI-Ontario)
  4. Lewiston-Queenston (Buffalo, NY-Ontario)
  5. Douglas-Blaine (Seattle, WA-British Columbia)
  6. Champlain-Lacolle (Plattsburgh, NY-Quebec)
  7. 1000 Islands Bridge

**When the Prescott-Ogdensburg crossings are added to the 1000 Islands crossing (which is I-81 traffic), we jump to #4

- **1,500 commercial vehicles per day,** 547,500 trucks annually
- **$29 million in trade per day,** $12 billion annually, and growing at rate of 6.3% per year
- The volume of **Commercial Vehicles** using this crossing is forecasted to **double over the next 30 years**
- **165,000 jobs created in the U.S. and Canada** by this trade
- **70%** of commercial vehicle travel occurs between **Ontario / Quebec and New York State / Pennsylvania**, with **one-third directly along the corridor, 17% to or from the Watertown or Syracuse area**

Origins and Destination of Commercial Vehicles Crossing The Thousand Island International Crossing

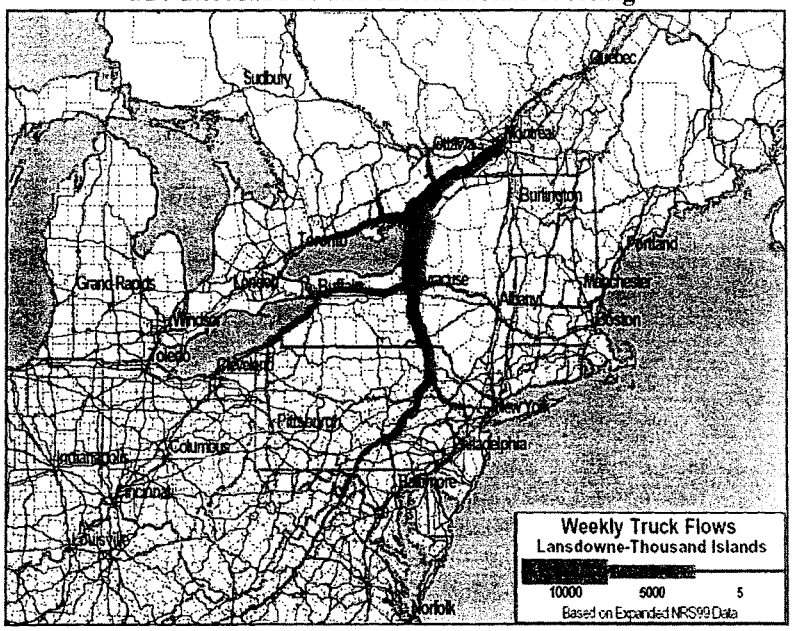

Figure 31: Weekly 1999 truck flows crossing the Thousand Islands Bridge

Figure source: Truck Freight Crossing the Canada-U.S Border, September 23, 2002, Eastern Border Transportation Coalition

The San Diego Alliance for Border Efficiency

Realizing that demand on our Ports of Entry is expected to more than double by 2020 and that San Diego's economy is at stake if the necessary infrastructure is not put in place to handle the additional traffic, a group of private organizations, academia and public agencies established *The San Diego Alliance for Border Efficiency* to promote and champion border transportation and the efficient flow of passengers, goods and services across the San Diego-Tijuana region.

The *Alliance* agreed to support the following objectives:

Expedite Commercial/Passenger Crossings
- Expand the Virginia Avenue – El Chaparral Port of Entry
- Fully fund SR-905
- Find a permanent solution to mitigate the southbound truck route congestion
- Expand commercial/passenger hours of operations at the Ports of Entry
- Fast track Otay II Port of Entry/SR 11
- Increase and retain federal inspectors at the Ports of Entry
- Ensure that the number of north- and southbound vehicle lanes are sufficient to meet regional growth projections
- Promote cooperation between the United States and Mexico on Ports of Entry planning and operation

Implement *Smart* Technology at Ports of Entry
- Expand SENTRI (Secure Electronic Network for Traveler's Rapid Inspection), streamline the application process and extend the renewal period
- Develop a pedestrian frequent crossers pre-clearance program similar to SENTRI
- Support San Diego/Baja California Ports of Entry as a test market for smart border technology
- Use technology to balance high-level of inspections and the flow of people and goods across the border

Mitigate Impact of Data Management Improvement Act (DMIA) of 2000 Implementation
(an integrated entry and exit system that will be implemented at the 50 highest traffic land border Ports of Entry no later than December 31, 2004.)
- Develop the necessary infrastructure prior to DMIA implementation to mitigate southbound border congestion

Members: City of Chula Vista; City of San Diego; San Diego Association of Governments; Institute for Regional Studies of the Californias, SDSU; Otay Mesa Chamber of Commerce; San Diego Dialogue; San Diego Regional Chamber of Commerce; San Diego Regional Economic Development Corporation; San Diego World Trade Center; San Ysidro Business Association; San Ysidro Chamber of Commerce; South San Diego County Economic Development Council. **Partner:** California Department of Transportation
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February 26, 2004

Claudia Berry
Public Affairs Group
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Dear Ms. Berry,

The Detroit & Canada Tunnel Corporation, as operator of the Detroit Windsor Tunnel wanted to comment on the US VISIT program that is scheduled to go into effect at the 50 busiest land ports before the end of this year. DCTC supports any program that protects our nation and facilitates the movement of goods and passengers. This program is of particular importance to the Tunnel as we were busiest passenger vehicle crossing between the US and Canada in 2003 and the third busiest in overall traffic.

Our facility is typical of those at the other major crossings between Michigan or New York and Ontario. The Bridge & Tunnel Operator's Association (BTOA) represents these crossings. Plazas were not designed for today's traffic volumes or the post 9-11 environment. The update recently provided by Mr. Shonnie Lyon raised some issues to think about:

- We are concerned that the system may not be fully field tested prior to installation. This could lead to significant disruptions in cross border traffic and trade.
- Has an assessment been completed that will indicate both anticipated volumes and risk?
- The system as described will require mounting federal equipment in areas traditionally reserved for the operator. Additionally, the system appears that it will require continual presence by CBP inspectors. There are some critical infrastructure, safety, staffing, management and process issues that will need to be addressed.
- DCTC has requested federal funding to develop and implement a regional border traffic management program. A component of this program could provide advance notification for outbound CBP interdiction.

5The Detroit Windsor Tunnel remains available to the Department of Homeland Security and others to expand on our concerns and how we feel the program could be implemented to maximize national security and minimize disruption.

Cordially,
Neal Belitsky
Neal Belitsky
Executive Vice President

Chairman TOM DAVIS. Thank you very much.

Ms. Vaughan, thanks for being here.

Ms. VAUGHAN. Thank you for the opportunity to testify and for holding this hearing.

The US-VISIT program is one of the most important and ambitious immigration program enhancements ever undertaken. The attacks of September 11 were made possible in part due to failures in our immigration system, specifically our temporary visitor program. Those terrorists, like others before them, obtained visas they were not entitled to, successfully used altered documents, and they overstayed their visas. The fact that US-VISIT will help prevent the entry of terrorists is not the only reason it is worth doing. When it is fully implemented, US-VISIT will also help ensure the integrity of the nonimmigrant visa system as a whole by helping us know that travelers are who we think they are and help ensure that they leave when they are supposed to. It is also important to remember that it can provide a service to legitimate travelers by helping to ensure the safety of international travel and help us understand which visitors pose little risk so that their travel can be facilitated.

At the moment we are operating a massive temporary entry system, admitting more than 190 million temporary visitors a year with almost no information on the accuracy of our visa issuance and admissions decisions—virtually no quality control. We do know that today there are at least 10 million illegal immigrants living in the United States, of whom DHS estimates that at least 30 percent of them, probably more, are visa overstayers. So, we have already made 3 to 4 million visa mistakes.

Not only do we not know exactly how many overstayers there are, we have little idea where they came from, how long they have been here, or what kind of visa they entered on. This dearth of information significantly handicaps our visa processing and inspections system. By collecting and analyzing information on departures under US-VISIT, immigration and consular officers will have a much better sense of what kinds of applicants are more likely to overstay and which kinds of applicants will be more likely to abide by the terms of their visa. Then we can focus our resources on screening the kinds of applicants who present the most risk and facilitate the processing for the others.

In addition to improving our screening of these applicants, the US-VISIT program will also enhance enforcement efforts beyond the port of entry. Interior enforcement is currently the weakest link in our immigration system. A recent GAO report noted that the current risk of an overstayer being identified and removed is less than 2 percent. The data presented by US-VISIT will provide information on both the problem groups and categories and also generate leads on specific individuals. For the program to have a meaningful impact on enforcement, however, it is necessary that it generate real enforcement activity; in other words, some people need to actually be sent home so that word gets around that overstayers will no longer escape the attention of authorities.

As we proceed with implementation of the program, it is important that decisions on the order in which different groups are to be phased into enrollment reflect both feasibility and potential bene-

fits to be gained from including them. US-VISIT will turn out to be a huge waste of time and resources if we keep it limited in scope. Right now, by enrolling only regular nonimmigrant visa holders, the program covers only a small fraction of the number of admissions, less than half the number who were covered under the I–94 system which also included certain visitors from Mexico and Canada. Unless US-VISIT begins enrolling more visitors, we actually will be worse off in terms of tracking than we were before. The three main groups missing are Visa Waiver Program visitors, Mexican laser visa holders or the border crossing card people, and Canadians. All of these categories present their own risks for security and compliance and therefore all must be included in US-VISIT eventually.

I believe the strongest case can be made for enrolling Mexican laser visa holders next. The southern land ports of entry system is a notoriously loose sieve that is exploited by all kinds of illegal aliens, including terrorists and criminals. Mexicans represent the largest number of illegal aliens in the country, about 70 percent, and probably about one-third of all of the overstays. Today the border crossing cards are being abused with near impunity. They are one of the most frequently counterfeited U.S. documents and even the genuine documents are used fraudulently. In fact, they are openly available for rent in the street markets of Juarez and other cities. We cannot expect this laxity toward fraud and deceit will be overlooked by terrorists any more than it is overlooked by other prospective illegal immigrants.

At somewhere between 5 and 8 million people, the population of laser visa holders is more manageable than either the regular NIV or visa waiver cohorts. And the documents are already biometric and machine-readable. This is something that we initiated years ago at considerable effort and expense but have yet to begin to utilize. Currently, the cards are being swiped very inconsistently, perhaps only half of the time. A large share of pedestrians are checked, but hardly any traveling by car are asked to even show their cards.

Of course, we need to implement an exit system as well. But in relation to other programs of this kind, again, the scale of the task is manageable. If the State of New Jersey can figure out how to collect money from 30 million people a month without them having to get out of their car, we should be able to figure out how to swipe out 5 to 8 million people a year without too much imposition. Thank you.

[The prepared statement of Ms. Vaughan follows:]

America's New Welcome Mat:
A Look at the Goals and Challenges of the US-VISIT Program

Testimony before the U.S. House of Representatives
Committee on Government Reform
March 4, 2004

Statement of Jessica M. Vaughan
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Washington, DC

America's New Welcome Mat:

A Look at the Goals and Challenges of the US-VISIT Program

The United States Visitor Immigration Status Indicator Technology (US-VISIT) program is one of the most important and ambitious immigration program enhancements ever undertaken. Its implementation was accelerated in response to the terrorist attacks of September 11, 2001, but the fact that it will help prevent the entry of terrorists is not the only reason it is worth doing. When it is fully implemented, US-VISIT will also help ensure the integrity of the entire non-immigrant visa system by authenticating all travelers' identity and by recording both entries and departures. It will help us know that travelers are who they say the are and help ensure that they leave when they are supposed to.

Some skeptics have criticized the US-VISIT program, along with other post-9/11 improvements like SEVIS and NSEERS, for having a bifurcated mission. They ask, is it an anti-terrorism program, or an immigration enforcement program in disguise? The answer is, US-VISIT cannot be just one or the other; the two missions are inseparable.

We know that the 9/11 attacks were made possible in part due to failures in our immigration system, specifically our temporary visitor program. The 9/11 terrorists obtained visas they were not entitled to, they successfully used altered documents, and they overstayed their visas. Over the years, many of the terrorists we have caught have some immigration violation on their record, and virtually every immigration benefits program we offer has been exploited by terrorists (See *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States*, by Steven Camarota, Center for Immigration Studies, 2002).

But recognizing a terrorist at the border is a lot harder than recognizing some other forms of evil; you're not necessarily going to know it when you see it, despite our best efforts at profiling. Terrorists come in all shapes, sizes, and sexes, and may bear passports from any country, or drivers' licenses from any state or Canada. It is unrealistic to expect even the best intelligence agencies to stay ahead of their plans. For this reason, the best possible way to prevent the entry of terrorists into the United States is to have a well-functioning immigration system that is set up to deter, detect, and promptly remove anyone and everyone who lacks a legitimate purpose for being here, or who has overstayed their welcome. Such a system requires three things: superior technology, abundant human resources, and the policies to make effective use of both. The complete implementation of US-VISIT will bring us much closer to that ideal.

Benefits of US-VISIT

The first way US-VISIT is helping is by authenticating the documents presented by regular non-immigrant visa bearers. By comparing biometric security features of machine-readable U.S. visas issued at consulates with the fingerprints and likeness of the bearer, immigration inspectors can more easily catch those using counterfeit documents and those fraudulently using legitimate documents. Biometrics also greatly reduce the number of false hits produced by our name-check system, which helps prevent innocent travelers with common names from being falsely identified as terrorists or criminals. This phenomenon has been a factor in the recent spate of flight cancellations from certain airports. We are already seeing results; the Department of Homeland Security (DHS) has reported that US-VISIT nabbed 30 wanted criminals in its first three weeks of operation.

The ability to verify identity is important and obvious. I would like to spend a little more time talking about the more revolutionary feature of US-VISIT, the departure recording system.

At the moment, in a dangerous international environment, we are operating a massive temporary entry system, admitting more than 190 million temporary visitors a year, with almost no information on the soundness of our visa issuance and admissions decisions. Meanwhile, we do know that there are at least 10 million illegal immigrants living in the United States. DHS estimates that at least 30 percent of them are probably visa overstayers. The General Accounting Office (GAO) says that figure is almost certainly understated, and probably significantly so. That means that we have made about three to four million visa and admissions mistakes. We have known that overstays have been a problem for at least 10 years, since the INS issued a report in 1994. Even so, over those years, we continued to issue non-immigrant visas at an accelerating pace and expanded the Visa Waiver Program.

Not only do we not know exactly how many overstayers there are, we have little idea where they came from, how long they have been here, what kind of visa they entered on. Are they mainly people who are eligible for green cards and jumping in line, products of our overbooked permanent immigration system? Probably many are. But undoubtedly many have motives less benign, whether economic or criminal. The point is we do not know. DHS does collect some information on visa overstayers when it processes applications for green cards and when it processes people for removal, but that information is not analyzed for the purpose of learning about overstayers. It has been 10 years since anyone at the immigration agency has made any attempt to analyze the overstay population beyond guessing at its size.

This dearth of information significantly handicaps our visa processing and inspections system. Their effective functioning depends on having some understanding of who the risky applicants are. Despite the practices in place at some consulates before 9/11, according to the law, to qualify, visa applicants must do more than simply be absent from the criminal watch list. They must have a legitimate and credible purpose for their visit, and they must show they are likely to return home. Without good information on

overstays it is difficult for consular officers to make that determination. More targeted scrutiny of visa applicants will benefit legitimate travelers too, as officials could then focus their attention on the most risky cases.

In addition to assisting in the adjudication of visas, the exit recording feature of USVISIT will help end the practice of using counterfeit foreign entry stamps or obtaining new passports to cover up an overstay.

The US-VISIT program will also enhance enforcement efforts beyond the port of entry. Interior enforcement is currently the weakest link in our immigration system. The data generated by US-VISIT will provide some guidance to DHS on the problem groups and categories. In addition, the system eventually will give leads on specific individuals. For the program to have a meaningful impact on enforcement, it is necessary that it generate actual enforcement activity; in other words, it is imperative that word get around that overstayers will no longer escape the attention of authorities. A recent GAO report noted that the current risk of an overstayer being identified and removed is less than two percent (see *Overstay Tracking is a Key Component of a Layered Defense*, Statement of Nancy R. Kingsbury, GAO report number GAO-04-170T).

Because US-VISIT is an electronic system, with the information collected directly from the visa, and not paper-based, like the I-94 system, where data had to be manually entered, there will be less delay in getting the information to enforcement officials. This does not necessarily have to mean that a Bureau of Immigration and Custom's Enforcement (ICE) agent's pager will go off at 12:01 a.m. on the day someone's visa expires. A more realistic scenario would involve dumping the US-VISIT confirmed overstay data into other law enforcement and immigration benefits databases, such as NCIC, CLASS, SEVIS, IBIS, and others, so that it will become much more likely that overstayers will be flagged and removed or denied further benefits.

Implementation of US-VISIT

As we proceed with the implementation of the program, it is important that decisions made with respect to building the program – the order in which different groups or types of visitors are to be phased into enrollment – reflect both feasibility and potential benefits to be gained from their inclusion. The program will turn out to be a huge waste of time and resources if we do not progress much beyond where we are now. At some point, bigger steps will have to be taken, although I would like to suggest that these steps may not prove to be as big, bold and disruptive as some have claimed. Bearing in mind that the program is not only an anti-terrorism program and an immigration enforcement system, but is also intended to be a way to expedite travel for low-risk individuals, we must be careful not to try to just cover the easy cases. If we do, we may end up penalizing those who pose the least risk, since they will be the only ones in the program. Right now, by enrolling only regular NIV holders, US-VISIT is covering only a small fraction (10.5 million) of the total number of the admissions into the country (190 million). Ironically, that is even less than the number who were covered under the old I-94 system, which has been all but abandoned as a tracking system. The I-94 system

included both regular NIV-holders and about 33 million additional visitors from Mexico and Canada whose travel plans required additional documentation.

Much has been made of the fact that US-VISIT is not enrolling Visa Waiver Program (VWP) visitors, which accounted for about 14 million admissions a year. That certainly is a weakness, but I believe it is less of a problem than the decision not to enroll Mexicans at the land borders. For one thing, until biometric features are used by more countries, we cannot use US-VISIT to verify identity without issuing a biometric visa. The State Department is so behind in its staffing of the consulates as it is, there is absolutely no way they could mange to issue visas to all those who would need to travel anytime within the next five years. It makes much more sense to let the other countries spend the money on producing biometric documents that we can then utilize. In the meantime, with the implementation of Advance Passenger Information System and the new Arrival Departure Information System, we now have the ability to match entries and departures of most NIV and VWP visitors. Therefore, it seems less urgent to add VWP visitors to US-VISIT at this time.

With that in mind, a strong case can be made for including Mexican laser visa (Border Crossing Card) holders in US-VISIT sooner rather than later. Earlier this week, James Williams, the US-VISIT program director, confirmed that Mexican laser visa holders are not scheduled to be included. This is a big mistake, and one that threatens to significantly compromise the value of US-VISIT. This is so not because Mexicans as a group represent a greater security threat to our country than any other group. It is a mistake because the land border entry system, especially the southern border, is a loose sieve that is exploited by all kinds of illegal aliens, including terrorists.

As mentioned earlier, we don't know a lot about the illegal immigrant population, but we do know that Mexicans represent the largest number of illegal aliens in the country (about 70 percent). We know from green card adjustment data, old INS reports, and academic studies that they represent a significant share of the overstays. The refusal rate can be as high as 30 percent in some consulates, which is much higher than the VWP country refusal rates. We know that the border crossing cards are being abused with near impunity. Not only are they are one of the most frequently counterfeited U.S. documents, but even the genuine documents are used fraudulently. They are openly available for rent in the street markets of Juarez and other cities. We also know that terrorists, such as Lebanese Hezbollah operative Mahmoud Youssef Kourani, indicted last year in Detroit, have been smuggled in from Mexico in the past, perhaps with the support of Mexican diplomats, such as the consul fired from her post in Lebanon last year. We cannot expect that this laxity toward fraud and deceit will be overlooked by terrorists any more than it is overlooked by any other prospective illegal immigrant.

At four to five million people, the population of border crossing card holders is much more manageable than either the regular NIV or the VWP cohorts, but the significance for immigration enforcement is potentially much greater. At the very least, we should be able to proceed relatively easily with the identity verification aspect of US-VISIT. Since 2001, all Border Crossing Cards have included biometric features, a project

that was undertaken at considerable effort and expense. Now, all we need to do is install the scanning machines at all of the border checkpoints so that they can actually be read by our border inspectors. Currently, the cards are being swiped very inconsistently, perhaps only 50 percent of the time. A large share of pedestrians are checked, but only a few of those traveling by car are asked to show their cards.

We must eventually develop a way to record exits as well. It is widely accepted that many laser visa holders have overstayed, but we have no information on exactly how widespread that problem is. Again, this should not be too daunting a task. If the state of New Jersey can figure out how to collect money from 30 million people a month who pay tolls with an EZPass without getting out of the car (and they've been doing it for the last 10 years), we should be able to figure out how to enable five million people a year to check out at the border without too much trouble.

We have much good solid experience from which to draw when considering options for addressing the security and management issues of US-VISIT, to ensure that the program does not have the effect of choking off legitimate travel and commerce, and DHS and State are already working on these. Programs like NEXUS, SENTRI, and overseas pre-inspections have all been shown to help minimize the impact of new security measures on lines at the ports of entry. Increased staffing would also help. On the other hand, policies like the "wait time mitigation strategy", where DHS officials can suspend the US-VISIT program if the lines at the airport get too long, are potentially dangerous over the long term, and must be discouraged, if not forbidden.

Above all, it is important to remember that US-VISIT provides a valuable service to foreign travelers and the American people alike by helping ensure the safety of international travel. By extension this also benefits the travel industry; after all, that is the industry that stands to lose the most in the event of another attack, or if travel is perceived to be unsafe. As the higher education community learned from the SEVIS experience, remaining in denial about the need or feasibility of a fully-implemented US-VISIT program is truly counterproductive. Continuing to operate our non-immigrant visitor system blindly, without knowing the scale or source of the document and overstay problems, and with few consequences for the violators, is most definitely not an option.

DISCLOSURE

The Center for Immigration Studies is a subcontractor on a project for the U.S. Census Bureau evaluating the quality of immigrant data collected in the American Community Survey. The $220,000 18-month contract was signed in 2003.

Chairman TOM DAVIS. Thank you very much. Mr. Schrock, do you want to start the questioning.

Mr. SCHROCK. Thank you, Mr. Chairman. Thank you all for being here today. It is a fascinating subject, and as you may have heard me say earlier, port security is a huge issue with me with the port of Hampton Roads, a major commercial port, and the largest naval facilities in the world. I go across that Hampton Roads bridge tunnel every week and think who is under there and what are they getting ready to do. Call me paranoid, but if we are not careful, something could happen.

Mr. Plavin, in your written statement you discussed the need for DHS to involve airports early and intensively in designing the basic building blocks of the existing process because this will be a much greater challenge to the entry process. In your opinion, is DHS making a reasonable effort to discover and incorporate this information into its planning for the exit function?

Mr. PLAVIN. I think DHS has indicated very good faith in working with us over an extended period time. My suspicion is that they have discovered that the exit process is much more difficult than anybody had anticipated, particularly the question of implementing the biometric capture as they actually check the departure pieces. And part of the problem—what I think a lot of newcomers to the airport business find out—is that each airport is different; they are laid out differently, their traffic patterns, some people are originating at the airport, some are connecting through the airport, some are English speakers, some are not English speakers. That makes the process of automating the process of capturing the exit data very much more difficult.

So I credit DHS with recognizing that this is a complex issue. I think the next step in the process is to spend more time from the bottom up, working at each airport, to try to design that process which makes the most sense for that particular kind of facility.

Mr. SCHROCK. I was in four or five airports on Monday and I looked at each one and there were no two that resemble each other. I am sure that has to be part of the problem.

Mr. PLAVIN. Right.

Mr. SCHROCK. I went into one and it was like an outdoor garden—Augusta—nice little airport. But, my Lord, anything could be lobed into the air or pushed into there or sent through a fence. I think, boy oh boy, that is a disaster waiting to happen.

Mr. Johnson, in your testimony you implied that the US-VISIT program should not be implemented at any land border before it is fully tested in a real world environment. Has the Chamber articulated what kind of testing would satisfy this requirement?

Mr. JOHNSON. No. That is a fair question, Congressman. We can certainly offer that to DHS and work with our local Chambers, whether it is Nogales or whatever, and construct a pilot project like that. I will say that in this regard, because I have seen some recent announcements from DHS concerning testing of their program, which on its face seemed like good news, the implication was that the testing would be done in existing lanes at some of these borders; i.e., these existing lanes of crossing the border will be taken off-line and therefore tested. Well, at the 50 largest land ports at least, that would be a disaster. It has to be tested, and I know this

is not an easy thing to do, but it has to be tested off-line under a realistic environment, and we could certainly help DHS set that up.

Mr. SCHROCK. How could it be realistic, though, if it was off-line? I am not being cynical, I am just trying to understand in my mind how it would work.

Mr. JOHNSON. You would have to replicate the same kinds of numbers of people at various times of the day and then see how quickly the information can be processed, the fingerprints taken, etc. I am not saying it would be cheap. This is an expensive process and there is a lot at stake and there is really no room for error.

Mr. SCHROCK. September 11 was not cheap either.

Mr. JOHNSON. No, it certainly was not. Right.

Mr. SCHROCK. Ms. Vaughan, is it your opinion that the VISIT program can have a positive impact on U.S. commercial and travel sectors? And what benefits will be gained from a fully functioning VISIT system? I am guessing there is not a problem now, but I am wondering what your thoughts are on that.

Ms. VAUGHAN. I do think that business interests have something to gain when we have safe, secure travel that makes an effort to meet the needs of businesses through programs like pre-clearance, trusted traveler, and so on, as long as we do not compromise security. I think industry, especially the travel industry, for example, has the most to lose if another attack were ever to occur and if people begin to perceive that travel is unsafe.

Mr. SCHROCK. Yes. That was a huge problem after September 11. Thank you, Mr. Chairman. My time is almost up so I will yield.

Chairman TOM DAVIS. Thank you very much. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Just on the issue that I raised before, I will give you the opportunity from the Chamber point of view, our experience at BWI Airport. It works very well. I think one of the reasons is the cooperation between the Homeland Security and the airport and having the right personnel there. The personnel are there to help and to assist individuals and individuals who do not speak the language. So far, there have been no complaints from the airlines or any of the people involved. I would think that is a good program. I am wondering whether the position of the Chamber would be to use that as a model to move forward.

Mr. JOHNSON. Well Congressman, we have not heard of complaints either. In fact, putting exit aside in which there are serious concerns about when you exit and you do not receive a slip of paper that says you exited properly, and then what happens when you come back into the country and you are met by a border guard who says, well, our records show you never exited the country and so you are denied entry, putting that aside, you are right. But my point earlier was that the airports are the airports and the land borders are the land borders and they are apples and oranges. I think it is dangerous to extrapolate too much from the success we have had thus far in a low-traffic environment, as Congresswoman Norton pointed out, and say it seems to be working well at BWI and so let's do it at Nogales, or Douglas, AZ, or Ote Mesa. They are worlds apart. And I think to the extent that, Mr. Chairman, this committee could hold a field hearing at some of the border towns and visit with some of these people who deal with these realities, it would be very, very helpful.

Mr. RUPPERSBERGER. They are not denying on reentry, just dealing with the issue as far as reentry is concerned. But I would think even the people coming to the United States of America for business or for whatever reason would want to have a safe environment. That is an extremely important issue to what we are dealing with. If, in fact, we have another terrorist attack using airplanes, I do not know what it would do to the airline industry.

Mr. JOHNSON. I agree, Congressman, let me clarify. The U.S. Chamber of Commerce supported the creation of the Department of Homeland Security. We key-voted the legislation in the House and the Senate. But there is a need to also keep commerce moving in this country and we need to try and seek a balance. And it is a mandate in the Department of Homeland Security's mission statement that it protect the national security of this country and the economic security. So the Department is charged with looking at all these factors and, in its wisdom, balancing them.

Mr. RUPPERSBERGER. Like most programs in management, it starts at the top. If you are holding people accountable for their performance, you evaluate the issue and you provide the proper resources, which includes personnel, the program usually works.

Mr. JOHNSON. Right. Resources is a huge question here.

Mr. PLAVIN. Mr. Chairman, if I may.

Chairman TOM DAVIS. You may. Go ahead.

Mr. PLAVIN. I think I would like to add something as well. The issue about the success of the program at BWI should, I think, be understood in context. The program has been implemented on the entry side at about 115 airports and seaports. But is the only place where we have actually begun an experiment with how to capture data biometrically on the exit process. Unfortunately, part of the process is we really have no way of knowing how much of the exit process we are capturing because of where that capture is being placed. We do not know how many people are missing it. We do not know how many people are departing without checking in with it. So our point is, it may not be interfering with the process, it may not be interfering with how people move through the system, but we really do not have any way of knowing whether in fact it is being effective in doing what it is designed to do.

Mr. RUPPERSBERGER. Are you familiar with the helper program that is being used there?

Mr. PLAVIN. Yes, I am.

Mr. RUPPERSBERGER. What is your opinion of that program?

Mr. PLAVIN. I think it is an excellent program. I think it has worked well to help people who are baffled by it. But, again, what we do not know is how many people are not really taking advantage of that process and in fact registering that they have left the country. A concern that we have is that if we do not know the answer to that, then we will not know when people try to reenter whether they are legitimate reentries or whether they have actually violated their visa in a prior stay.

Mr. RUPPERSBERGER. Right. OK.

Chairman TOM DAVIS. Thank you. Mr. Plavin, let me start with you. In your testimony, you note that DHS should plan to add significant numbers of staff at airports during peak travel periods in order to avoid long lines and overcrowding facilities for all arriving

travelers. Can you expand on this, and do you have any statistics that would back this up at this point? You heard the testimony previously to this in terms of their expectation. Obviously, this is of concern to the committee.

Mr. PLAVIN. Yes. Thank you, Mr. Chairman. The history of this goes back a long way and it goes back way before September 11 and way before the creation of the Department. For many, many years, large airport ports of entry have experienced many times during the peak season when their arrival halls are so overflowing that you have had to keep all passengers on arriving aircraft because there was no room for them in the arrivals hall. We have now added by the US-VISIT estimate, something like 10 or 15 seconds to each transaction on an arriving passenger in order to capture their fingerprint and their facial recognition profile. You add that to the fact that we are talking about big arrivals halls processing maybe 4,000 or 5,000 passengers an hour today, sometimes with success, sometimes without success.

So our concern is over two issues. One is to be sure that the entry process is properly staffed, and also that we are not making it worse by the addition of the biometric capture. We need the additional people to be sure that we are not making the wait so long that we are discouraging people from coming to the country.

Chairman TOM DAVIS. Mr. Johnson, in your written testimony, you focus a great deal on the potential damage that can result from improper implementation of the US-VISIT program. It is clear that the U.S. border as it functions today is neither effective to secure the Nation nor to promote free movement. People sit in their car and they wait in line for a long time. Further, visitors overstay their visas with little or no concern that the government will ever take notice of their violation. This is why DHS was created in the first place. Do you think DHS even in its first year has been an improvement over the mix of agencies that had jurisdiction over the borders in the past? Do you have any opinion on that?

Mr. JOHNSON. Yes. Obviously, there is that syndrome of trying to create a new system while reorganizing the old one. But as you well know, there were many, many complaints about INS prior to the creation of DHS. It is hard to quantify it. I would say there have been some improvements in that area. Considering the panoply of agencies that were absorbed, we have, I think, a more definite number of people we know who to go talk to to try and make our views known. And there are some startup issues. But overall, I think it has been an improvement but there is a long ways to go. I would say that DHS has ramped up its outreach efforts to the business community and I am sure others, which has been very helpful to us of course.

Chairman TOM DAVIS. OK. Ms. Vaughan, in your written testimony you note that at the current time we are operating a massive temporary entry system, admitting almost 190 million temporary visitors every year, with almost no information as to the soundness of our visa issuance and admission decisions. Do you see DHS moving in the right direction in their attempt to balance the needs of security and commerce?

Ms. VAUGHAN. I do. I was actually thrilled to hear that DHS has started to implement the arrival/departure information system, for

example, which is a way of capturing the exit information for a lot of the travelers without having to go biometric yet or having to figure out how to install a scanner for travelers leaving at every airport at every departure situation. So that we are at least capturing some information and can start to learn which kinds of travelers are the problems and, indeed, what the scale of the problem truly is.

We have not had any kind of report on overstays other than a guess at the total number of overstays in more than 10 years. So now at least we can start to work with real information to try to impose some quality control on our decisions. I think that not only helps us get a grip on the overstay problem and enforcement, but also benefits legitimate travelers because then we are not wasting time scrutinizing people who may not need to be scrutinized so closely.

Chairman TOM DAVIS. You also state in your written testimony that at this time the US-VISIT program does not intend to include Mexican laser visa holders, and that since 2001, all border crossing cards have included biometric features. In your opinion, could these cards be adopted to serve the identification and authentication functions of US-VISIT at the southern border?

Ms. VAUGHAN. Yes. It is hard for me understand why they have not been yet. Part of the problem is that not every port of entry has a scanner to read the cards. But as I said, we know that there is a serious problem in misuse of the cards and even a small-scale program to try to begin to get a handle on how the cards are being used indicates that there is a problem. We are not sure exactly how many cards exist, but it is somewhere between 4 and 8 million, we think. And yet from the information provided today by DHS, there is something like 104 million crossings with those cards, which, if you do the math, tells you that every person is crossing every couple of days on one of these cards, which leads you to believe there may be some misuse of them or every single person who has one is coming up a lot, either doing quite a lot of business or perhaps working or perhaps lending it to someone else.

Chairman TOM DAVIS. Thank you very much. Mr. Schrock.

Mr. SCHROCK. Thank you, Mr. Chairman. I was not going to ask any questions, but based on the direction some of your questions were going and Dutch Ruppersberger's comment on BWI, in your written statement, Mr. Plavin, you say that you "strongly urge US-VISIT to design its exit procedures to be conducted at the airport departure gates." In the preliminary test at BWI, the exit kiosks I think were placed at the TSA screening sites. Why would that not be appropriate for other airports as well?

Mr. PLAVIN. My understanding of the BWI process is it is actually a little bit beyond the security gate, actually in the middle of the concourse. I think there are two reasons. No. 1, if it is actually integrated into the passenger screening process, it adds a significant amount of time to the line for everyone on the line. So that is one of the reasons why I think the CB people decided to push it back away from the security piece. But in doing so, either one of those alternatives does not allow you to capture people who are actually arriving at the airport on a connecting flight.

Mr. SCHROCK. What kind of grief is it causing the TSA people at BWI?

Mr. PLAVIN. In the way it was implemented at BWI, my understanding is that it has not really caused TSA very much grief because it is sufficiently far enough away from the security checkpoint that it does not represent an interference and US-VISIT has added some people to assist people in the use of the kiosk.

Mr. SCHROCK. When you say placed near the TSA screening site, it could be 50, 60, 100 feet away?

Mr. PLAVIN. Yes. Somewhere within 50, 60 feet. Right.

Mr. SCHROCK. OK. So it is not right there with that complex. OK. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. I want to thank our panel. Let me just note, this will be the largest procurement this new Department has put together. There is a very high expectation for it. We have stayed away from the intricacies of the procurement itself, but I want to make it clear we are going to continue to look very carefully at this as it moves through the process. Your comments have been very helpful to that end. We appreciate all of you taking the time to appear with us today.

I am going to keep the record open for a week to allow the witnesses to include any other information that may occur to them in the record. This hearing is adjourned.

[Whereupon, at 4 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[The prepared statements of Hon. Dan Burton, Hon. Elijah E. Cummings, Hon. Carolyn B. Maloney, Hon. C.A. Dutch Ruppersberger, and Hon. Edolphus Towns and additional information submitted for the hearing record follows:]

Statement of Congressman Dan Burton (R-IN-5)
Government Reform Committee Hearing
"America's New Welcome Mat:
A Look at the Goals and Challenges of the US-VISIT Program"
March 4, 2004

I would like to commend Chairman Davis for convening this very important hearing today. Since the tragic terrorist attacks on September 11th, 2001, we have seen a need for increased national security - especially at all of our borders - in order to protect the safety of all Americans.

Working closely with the Bush Administration, I had the privilege as Chairman of this Committee to help write the Homeland Security Act of 2002. By establishing the U.S. Department of Homeland Security, we created a central government agency, whose primary responsibility is safeguarding the United States against potential terrorist threats before they become imminent.

Because the hijackers of September 11th entered the country with U.S.-issued Visas – much like the 330 million other foreign nationals who cross our borders every year - one of the many considerable tasks of the newly-formed agency has been to construct pre-emptive anti-terrorism measures to be implemented at the nearly 400 ports of entry to the United States. This call for action has been taken on by the newly implemented US – VISIT program.

US – VISIT, or the United States Visitor and Immigration Status Indicator Technology program, was created last year to enhance the security of the United States, specifically by: (1) Identifying potential terrorists attempting to enter the U.S.; (2) Expediting legitimate travel and trade; and (3) Ensuring the privacy of all lawful visitors to the U.S.

Since the unveiling of US – VISIT in May of 2003, the Homeland Security Department has been working hard with the Department of State and Department of Justice to implement the initial phase of this program. As of January 5th of this year, over 115 airports and 14 major seaports in the U.S. began collecting "biometric" information from foreign travelers requesting visas - in the form of digital fingerprints and photos. In addition, nearly 1/3 of the 200 visa-issuing American Embassies abroad have initiated similar biometric data collection programs.

It has been reported that the initial phase-in of this promising visa-screening program has achieved great success in identifying individuals either attempting to use fraudulent travel documents, or others who have outstanding arrest warrants and are attempting to flee to the United States. This achievement is no small feat given the short amount of time that this program has been in place. I am extremely proud of the hard-working men and women who have made these accomplishments possible.

Although this program is not flawless or without detractors, I pledge to do my part to work through those issues to make it successful, yet still allow for foreign visitors to feel welcome to travel in this great country.

Understanding that there are several hurdles to overcome before the US-VISIT initiatives are fully functional, I would also like to take this opportunity to look into the future and speak on the potential for further usage of this strategic program.

As many of you know, while I was Chairman of this Committee, I began an investigation into instances of international child abduction, whereby American citizens were taken against their will to foreign countries and held captive, oftentimes in violation of U.S. Court orders. During my tenure, I held several hearings on this issue, and have continued my oversight investigation as Chairman of the Subcommittee on Human Rights & Wellness.

Over the last few years, I have met with numerous parents who have been left behind and have not seen their children in several years, and my heart just breaks for them. Even more disheartening is that many of these abductions could have been prevented if there were some sort of registry that concerned parents could place their child's name on that would alert the proper authorities when a foreign national parent attempts to take a child on board an international flight.

I see great potential in the US-VISIT program to be a beneficial alert mechanism in these matters by providing red flags at exit sites when a listed child is identified.

During my investigations into international child abduction, I have had the pleasure of working with Secretary Colin Powell and Assistant Secretary Maura Harty with the Department of State on these most important issues, and I have been pleased that during this Administration some real progress has been made in the retrieval of abducted children.

However, we cannot be satisfied yet. We must do everything in our power to prevent these crimes from occurring in the first place, and I believe that one way to accomplish this goal is by establishing stringent measures to further stifle the possibility of non-custodial parents abducting children across international borders.

I pledge to continue working closely with the State Department on these matters, and I also look forward to working with Chairman Davis and officials at the Department of Homeland Security to hopefully one-day turn this idea into a reality.

I believe our children are our most precious assets. As legislators, we must do everything we can to protect American children and make sure that they are never taken out of the United States against their will ever again.

Opening Statement of Congressman Elijah E. Cummings
House Government Reform Committee
America's New Welcome Mat:
A Look at the Goals and Challenges of the US-VISIT Program"
March 4, 2004 at 2:00 p.m.
2154 Rayburn house Office Building

Thank you, Mr. Chairman, for holding this hearing, which will serve as an opportunity for us to learn more about the plans for the newly implemented entry-exit tracking program, US-VISIT. It will also provide an opportunity to discuss the extent to which these plans are currently being implemented, as well as any challenges that might occur as a result of this program's implementation.

US-VISIT, the United States Visitor and Immigration Status Indicator Technology Program, was implemented in January of this year by the Department of Homeland Security in a concerted effort to counter not only terrorism, but also track immigration and impede illegal immigration. Through the collection of two digital, inkless finger scans and a digital photograph, the United States hopes to compare and verify information for international travelers with watch lists and enforcement databases, so that

both terrorists and illegal immigrants are either deterred from entering the U.S. or caught at the point of entry.

Because US-VISIT is new and such a system has never before been implemented in this country, it is important that we examine the different complexities of this program. While this system may be important for our national security, it is also important that we address the potential downside of the program in the context of other larger issues; such as its impact on international tourism, trade, travel, and privacy concerns, as well as its actual ability to deter illegal immigration and terrorism. This is especially important when US-VISIT currently excludes from examination, 80% of the visitors who enter the United States from land ports of entry, including Mexico and Canada, as well as visitors from the 27 Visa Waiver countries.

I am also concerned that innocent visitors will be detained at immigration ports of entry because of inaccurate and outdated information currently in the GAO database. I wonder whether the addition of millions of new records to this system through the use of US-VISIT will cause an even greater potential for false positives. And, if it doesn't, then why has the FBI, which contributes records to IDENT (Integrated Automated Fingerprint

Identification) from its National Crime Information Center Database, obtained an exemption from accuracy requirements imposed by the Privacy Act? The current system also fails to make the port of exit feature mandatory. This prevents the system, which aims to track visa overstays, from being effective.

On a broader scale, I am interested in hearing from our witnesses on what impact this system is having and may have on our nation's commerce with other countries. Will it discourage travel and trade with other countries or cause our national airport operations to be severely disrupted? Because of the substantial amount of biometric information that will be collected from visitors of other countries, shouldn't we be concerned with privacy and civil rights issues? Also, under the current program, federal, state, and local law enforcement personnel will have access to this information. What is the best way to make sure the information they have access to is used appropriately?

These are just a few of my concerns. I know that the witnesses before us today will address and bring to light these and many other issues surrounding the implementation of US-VISIT and its sustainability and

expansion. So, with that said, Mr. Chairman, I look forward to hearing from today's witnesses. Thank you for holding this hearing.

Statement by Congresswoman Carolyn B. Maloney

COMMITTEE ON GOVERNMENT REFORM
OVERSIGHT HEARING
"America's New Welcome Mat:
A Look at the Goals and Challenges of the US-VISIT Program"
MARCH 4, 2004
ROOM 2154 RAYBURN HOUSE OFFICE BUILDING

Thank you Chairman Davis and Ranking Member Waxman for holding this important hearing today. I'd also like to thank our witnesses for their testimony.

As the Chair of the Democratic Task Force on Homeland Security an as a Member who lost over two-hundred constituents in the 9/11 tragedy, the issue of keeping our homeland secure is one of my top priorities.

Clearly, our goal must be to capture and prevent terrorists from entering the U.S. while continuing to welcome tourists, business people, and other non-threatening visitors. However, it is unclear that the U.S.-VISIT program is succeeding in this effort. We have heard some critical reports of the system which raises a number of concerns that I hope will be addressed in today's hearing.

First, as this January 15, 2004 Miami Herald article notes, we do not have the fingerprints of many al Qaeda terrorists, most notably, Osama bin Laden. It seems to me that the biometrics system is not useful if we do not have the prints of the world's most dangerous terrorists.

Second, many known terrorists, such as Richard Reid and several of the 9/11 hijackers, used European passports, from Great Britain and Germany. As a result, they would not have been screened through the U.S.-VISIT process. What is being done to address this problem?

Finally, I am concerned by reports that state that the U.S.-VISIT program is screening only 10% of foreign visitors and about a memo which states the program could be suspended if travelers have to wait too long at airports.

As we invest millions, perhaps billions, of taxpayer dollars into the U.S.-VISIT program, we must be assured that this is an effective, efficient program that actually protects our homeland from future attack without negatively impacting tourism and trade. It would be a disaster if we proceed without a plan and strategy on how to collect and process the information and are left with a false sense of security and an enormous bill to pay.

Thank you.

Congressman C.A. Dutch Ruppersberger
Government Reform Full Committee Hearing
America's New Welcome Mat: A Look at the Goals and Challenges of the US-VISIT Program
Opening Remarks
03.05.2004

Thank you Mr. Chairman. My thanks to you, the ranking member and the other members of this committee for calling this hearing. It is refreshing that we are able to fulfill our oversight responsibilities at the beginning of a process and before a program is fully rolled out – rather than coming in at the end and assessing what has gone wrong.

The US-VISIT Program is a massive undertaking by many stakeholders – including government and industry. But it is an important component to make our nation safer. Understanding who enters and exits our country is critical to the entire concept of Homeland Security – and I would like to commend every individual who has worked hard in this endeavor.

Through my role on the House Intelligence Committee, I understand the threats our nation faces very well. I am also honored to represent the Baltimore Washington International Airport, which is in the Maryland 2nd Congressional District. BWI became the nation's pilot airport to test the US-VISIT exit procedures and I have heard nothing but positive feedback from state and airport officials so far.

Of course, no one says the system is perfect and a national roll out will bring many challenges. But these are implementation details and I know the lessons learned at BWI will prove incredibly useful.

Perhaps the greatest lesson the nation can learn from BWI is that there is no one-size-fits-all plan to implement the exit kiosks. DHS officials worked very closely with BWI to determine where best to place the kiosks in the airport, where signage would prove most useful, and how best to inform travelers about the new procedures. With the help of US-VISIT helpers and the airlines, the program seems to be working smoothly.

Issues remain, however, and this hearing focuses on a few:

- Fears that full implementation will cause massive delays
- Beliefs that costs will outweigh benefits
- Concerns about infrastructure, equipment and biometrics

These are important issues and I welcome hearings such as this for discussion. Ultimately, I believe this is a first step in the right direction. If September 11 taught us anything it's that we need to know better who is entering and exiting our country. I welcome the opportunity to bring everyone to the table and find the best solutions to get this right. I commend those in my district, at BWI, working each and every day to test this system for America.

Thank you Mr. Chairman.

Congressman Ed Towns
Government Reform Hearing: US VISIT Program
March 4, 2004

I would like to thank Chairman Davis for holding this important hearing today on the US-VISIT program. The successful implementation of this program is critical to the safety of our citizens, the continued ease of travel, and the success of tourism and commerce in our country.

The origins of this program date all the way back to legislation passed in 1996. Through several congressional mandates, we have now arrived at a program that will track the entry and exit of foreign nationals who must obtain a visa to enter the United States. The system is also supposed to be integrated, automated, and include the use of biometric identifiers. By capturing the identities of foreign visitors through the collection of fingerprints or digital pictures, the goal is to compare this information to relevant watch lists and make it more difficult for terrorist from entering the U.S.

This significant task is all to be accomplished by a Department that was created just over a year ago. So that alone makes this job

challenging. However, it is the sheer magnitude of the actual task that makes this undertaking daunting. In FY 2003, there were about 265 million inspections conducted at U.S. ports of visiting foreign nationals. And we must remember that the program must eventually be implemented at 300 different air, land, and sea ports of entry.

To make this system work at its basic level, we need to ensure the there is adequate funding, watch list databases are accurate and integrated, and there are appropriate technological standards which facilitate interoperable systems. Additionally, we need to make sure that employees are adequately trained to use the system that is developed. This last requirement is often overlooked but essential to the success of the program. If we develop a great system -- but it is not used at all or properly --- we will not have accomplished anything.

I look forward to hearing from today's witnesses about what they believe are the biggest challenges ahead and how we can best help the Department of Homeland Security overcome those barriers.

Thank you Mr. Chairman. I yield back the balance of my time.

United States Department of State
Washington, D.C. 20520
www.state.gov

March 18, 2004

Dear Mr. Chairman:

Following the March 4, 2004 hearing at which Assistant Secretary Maura Harty testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

Paul V. Kelly
Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

The Honorable
Tom Davis, Chairman,
Committee on Government Reform,
House of Representatives.

Questions for Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#1)
Committee on Government Reform
March 4, 2004

Question:

How is the State Department getting the word out about US-VISIT? What mechanisms are in place to determine if the message is in fact getting across to foreign visitors, governments, and companies?

Answer:

The Bureau of Consular Affairs has worked actively and closely with the Department's regional bureaus to inform the traveling public through a variety of media and outreach efforts. We helped organize DVCs with Embassy Manila, Embassy Moscow, Embassy London, and other countries. Our spokesperson arranged a press conference by DHS Under Secretary Asa Hutchinson at Foreign Press Center to help inform foreign media.

CA also issued extensive instructions to the field summarizing progress in US-VISIT and providing talking points for Consular and Public Affairs Officers. We set up links on both the CA Intranet and Internet sites to the US-VISIT site and featured US-VISIT prominently on the unitedstatesvisa.gov site under current news.

Questions for the Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#2)
Committee on Government Reform
March 4, 2004

Question:

What is the status of the discussions regarding expanding US-VISIT to include travelers from countries that participate in the Visa Waiver Program?

Answer:

The Department of Homeland Security and the Department of State have made no final decisions to expand enrollment in US-VISIT at this time.

Questions for the Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#3a)
Committee on Government Reform
March 4, 2004

Question 3:
Information sharing between DHS and the State Department is a major concern for the committee.

What steps are being taken to ensure that information that already exists in databases owned by the State Department and the Department of Homeland Security (DHS) will be shared so that the frontline officers in consulates and at the borders will have the right information at the right time to make the best decisions?

Answer:

There is a longstanding relationship between the Department of State's Consular Lookout and Support System (CLASS) and the Department of Homeland Security's Interagency Border Inspection System (IBIS), to share name-based lookout data. The front-line officers who use these systems, i.e. consular officers overseas and port of entry immigration inspectors, get the following benefits from this datashare:

--access to lookout data that derives from many federal sources and relates to concerns regarding terrorism, hostile intelligence activity, criminality, and illegal migration,

--lookouts related to lost and stolen passports, and

--a dedicated communications line between CLASS and IBIS so that new or modified lookouts are updated in virtual real-time.

There is also a datashare arrangement for information on pending and completed cases. Under the Immigrant Visa Datashare Program, established in 1995, immigrant visa petition data from DHS/USCIS Service Centers is transmitted via the Computer-Linked Application Information Management System (CLAIMS) to the State Department's National Visa Center in Portsmouth, NH, which forwards it to consular offices in support of worldwide immigrant visa operations. Since March 2002, immigrant visa issuance data from all State Department overseas posts is transmitted near-real-time to the IBIS computer and thus made available to all DHS ports of entry inspectors to use when they interview new immigrants.

Nonimmigrant Visa Datashare began in December 2001. The Department of State transmits data concerning all issued nonimmigrant visas worldwide in a near-real-time manner to the DHS IBIS computer for use by DHS officers. Under the US-VISIT Program, this nonimmigrant visa data is available at primary inspection. The data that the DHS inspector may review includes the visa holder's biographic data, photo, and electronic fingerprints, if they had been taken by the consular officer recently as part of the new biometric visa program. This is a major advance in support of the

integrity of the U.S. visa in that it practically eliminates the possibility of visa fraud through photo-substitution or counterfeit visas. In secondary inspection areas, DHS officers can undertake broader searches of visa data.

To support the State Department's Biometric Visa Program, DHS is clearing the electronic fingerprints taken from visa applicants against the DHS IDENT system, which contains a lookout fingerprint database of wanted persons and others who are ineligible for visas.

The State Department makes all visa data available online to DHS officers from the Consular Consolidated Database to the DHS Forensic Documents Lab and the National Targeting Center, which support DHS frontline officers. This datashare allows personnel at the National Targeting Center to view and analyze a broad range of nonimmigrant and immigrant visa records, in conjunction with their other sources of data, to advise the port of entry inspectors.

DHS has agreed in principle to provide consular officers access to entry-exit data and case data concerning aliens who are presently in removal proceedings. We are discussing modalities for this addition to datashare.

Questions for the Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#3b)
Committee on Government Reform
March 4, 2004

Question:

What steps are being taken to ensure that data collected under US-VISIT will be shared between frontline officers of DHS and State Department?

Answer:

The biometric entry and exit data collected on travelers by DHS under US-VISIT is stored in the IDENT system. Consular officers submit all the fingerprints they collect of visa applicants as part of the biometric visa program to IDENT for clearance. The prints collected overseas are then compared to those that may have been collected as part of US-VISIT. Therefore we accomplish two objectives. First, we verify the identity of the visa applicant against the data collected by DHS under US-VISIT. Second, we check the fingerprints against the lookout data in IDENT.

Under US-VISIT, DHS inspectors are intercepting more altered or counterfeit visas. Their reports are currently being shared via email with the Visa Office of the Department of State. The Department of State and the Department of Homeland Security are planning to automate the transfer of data on enforcement actions at ports of entry against travelers with visas.

Our goal is to include enforcement reports in the State Department's Consular Consolidated Database which is in use at all overseas posts.

Another planned systems integration measure is for all arrival and departure data from the DHS Arrival and Departure Information System (ADIS) to be made available to consular offices worldwide. This would include those travelers inspected under US-VISIT and other programs such as the Mexican Border Crossing Card.

Questions for the Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#3c)
Committee on Government Reform
March 4, 2004

Question:

What barriers exist that prevent FBI data from going directly to consular officers? What steps are being taken to resolve those barriers?

Answer:

Consular officers have direct access to lookout data from the FBI. This means that the name, date of birth, and place of birth of individuals in the National Crime Information Center (NCIC) are included in the visa lookout system known as CLASS. Consular officers check the names of all visa applicants against this lookout data and receive results of those checks in a matter of seconds. This improvement was made in July 2002 as a result of Section 403(a) of the USA PATRIOT Act. Almost 8,000,000 names have been transferred from the FBI to CLASS.

Consular officers do not have direct access to the criminal record that pertains to such lookouts. The USA Patriot Act provided consular officers an extract of NCIC information, not the full criminal record. In order to obtain the full criminal record, the consular officer must submit the visa applicant's ten fingerprints to the FBI with the corresponding fee. The FBI only releases the full criminal record when the identity of the visa applicant

is confirmed through the fingerprint match. The cost of this process is passed on to the visa applicant. Approximately one-third of the visa applicants who appear to be a match against an NCIC lookout entry are the true subject of the criminal record once the fingerprints are checked.

In light of our experience of the past two years, the Department of State believes that the efficiency of visa processing would measurably improve if the extract could be expanded to include three additional data fields to allow us to know the crime on record and disposition of the case. A number of crimes have no bearing on visa eligibility such as minor traffic violations. We also wish to avoid re-adjudicating the same potential criminal ineligibilities each time a visa applicant seeks revalidation of a visa because we cannot distinguish between new NCIC lookout entries and old ones that have already been reviewed.

Questions for the Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#3d)
Committee on Government Reform
March 4, 2004

Question:

Currently, FBI data is reviewed and relayed by the National Visa Center. What are the limitations of the National Visa Center if demands for FBI data relays increase?

Answer:

The National Visa Center presently performs the function of receiving fingerprint cards mailed from visa-issuing posts overseas (about 150 daily on average). NVC scans the fingerprints and sends them electronically to the FBI/CJIS. NVC receives the results back from the FBI via email, and in turn sends the results back to posts. An employee of the FBI is assigned to NVC at State Department expense to facilitate this process. He receives clerical assistance from the contract staff at NVC to the extent needed.

Let me clarify that NVC does not see FBI data. The FBI employee who is assigned to NVC has limited access to FBI data. The State Department sees great utility in having an FBI representative at NVC and is discussing with FBI headquarters officials how we might expand FBI data links to NVC and thus increase the value added of the FBI presence at NVC.

Questions for Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (# 4)
Committee on Government Reform
March 4, 2004

Question:

When will biometric data collection instructional videos be produced and distributed to consulates and embassies?

Answer:

US-VISIT has produced a video providing information on DHS' biometric collection process we are making available to posts through our Internet site.

Since every post without exception will have an on-site team provide installation and training for biometrics, we have decided not to produce and distribute a video to posts. Also, any such video would be out of date very soon after production, since we make constant improvements to the software used to collect biometric information.

Questions for Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (# 5)
Committee on Government Reform
March 4, 2004

Question:

Is there a way that biometric data can be collected and cleared against the applicable databases prior to the applicant's visa interview? How will that process work?

Answer:

Off-site collection of applicants' biometric data against CLASS and IDENT prior to visa interview is possible, but would require leasing collection sites and selecting contractors to assist with data collection. We would also need to develop a method of secure data transmission between off-site locations and posts where the applicants will be interviewed. Finally, we would need to develop biometric verification software, so that we can quickly verify that the prints collected off-site match those of the applicant at the interview window.

Since the applicant would be required to appear in person for verification of prints, and since the process of verifying prints would likely take approximately the same amount of time as the initial collection of prints, it is not clear that the benefits of offsite collection of biometric data

would be sufficient to justify the expense. Nevertheless, we are actively exploring all possibilities in order to use biometrics in the most efficient manner to enhance security with minimal inconvenience to the applicant.

Questions for the Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (#6)
Committee on Government Reform
March 4, 2004

Question:

Brazil has reacted negatively with regard to the US-VISIT program. Please describe the actions the State Department is taking to reach out to other countries? Are there efforts to enter into information sharing agreements with other countries to improve our security?

Answer:

While many countries were initially skeptical about the prospect of having their citizens "fingerprinted" upon entry to the United States, most now agree that biometric enrollment is quick and non-intrusive. Two months before the US-VISIT program began, the State Department sent background information, press guidance and informational materials from DHS to all posts worldwide. Posts were instructed to inform the host government and to publicize the program as widely as possible. An update informing posts about the success of the pilot programs was sent the week before US-VISIT went live. Posts hand out brochures to visa recipients and have informational materials posted on their websites along with links to the US-VISIT website at DHS.

The State Department is leading the effort to establish bilateral and multilateral arrangements to share namecheck databases and information on suspected terrorists. We have specifically approached all Visa Waiver countries and begun formal negotiations with Canada.

Questions for Record Submitted to
Assistant Secretary Maura Harty by
Chairman Tom Davis (# 7)
Committee on Government Reform
March 4, 2004

Question:

The Border Crossing Card/ Laservisa technology is currently in use for 66% of all border crossings. This technology is also the underlying technology for the Canadian Permanent Resident Card. Has the State Department given thought to adapting the Laservisa (to be inserted in a traveler's passport) to fully meet the October 26, 2004, deadline for biometric data enabled passports?

Answer:

The State Department is a fully participating member of the International Civil Aviation Organization (ICAO), the international recognized body on setting standards for international machine-readable travel documents (MRTDs). For several years a special committee under ICAO has met to evaluate options for modernizing passport processing, especially in applying modern technology to the passport. Optical memory technology was considered, but the ICAO members felt that contactless chip technology was a better solution for passports. Optical memory technology is a proprietary technology that is not readily integrated into the body of a passport book. ICAO prefers to adopt technologies that are both non-proprietary and globally interoperable. Contactless chip technology was adopted as the

globally interoperable storage medium for MRTDs in the May 2003 ICAO meeting. The Department of State, in compliance with the provisions of the Border Security Act of 2002, will follow the ICAO standard and adopt contactless chip technology.

United States Department of State
Washington, D.C. 20520
www.state.gov

March 17, 2004

Dear Mr. Chairman:

Following the March 4, 2004 hearing at which Assistant Secretary Maura Harty testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

Paul V. Kelly
Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

The Honorable
Dan Burton, Chairman,
Subcommittee on Human Rights and Wellness,
Committee on Government Reform,
House of Representatives.

Questions for the Record Submitted to
Assistant Secretary of State Maura Harty by
Rep. Dan Burton #1
Committee on Government Reform
March 4, 2004

Question:

Assistant Secretary Harty, for the last few years you have been working with me on international child abduction issues, whereby American citizens are taken against their will and held captive in foreign lands. Are any additional resources going to be allocated for these purposes in the FY2005 Budget?

Answer:

Yes. Our plans for the FY2005 budget include increased resources for outreach, training, and information related to international parental child abduction. We recognize the importance of enhancing public awareness of this tragic issue and the resources that we and other agencies can bring to bear in assisting parents whose children have been abducted or wrongfully retained overseas. Increased public awareness also bolsters our efforts to help parents prevent abductions. We want to continue our work with the Permanent Bureau of the Hague Conference on Private International Law and with other Hague member states to address problems in how countries implement and comply with the Hague Convention on the Civil Aspects of International Child Abduction. This includes training for judges from countries that are signatory to the Hague Abduction Convention, as well as preparation of

the Permanent Bureau's "Good Practices" Guide. We have taken such plans into account when preparing our FY2005 Budget request.

Questions for the Record Submitted to
Assistant Secretary of State Maura Harty by
Rep. Dan Burton #2
Committee on Government Reform
March 4, 2004

Question:

During my tenure as Chairman of this Committee, I investigated international child abduction to the Kingdom of Saudi Arabia. In Saudi Arabia, American women held against their will are unable to leave the country without the consent of their closest male relative, usually the person who abducted her in the first place. How will the U.S. Department of State work with the Saudi government to ensure that the rights of all American citizens wanting to leave the country are upheld?

Answer:

We are holding the Government of Saudi Arabia to its September 2002 commitment that all adult American women would be free to travel out of Saudi Arabia, even without permission from their male guardians. In a written statement to the Subcommittee on Human Rights and Wellness on July 9, 2003, the Royal Embassy of Saudi Arabia stated: "The Kingdom now guarantees that all adults (men and women who are 18 years or older) have the freedom to choose in which country they wish to reside and maintain the right to travel to and from Saudi Arabia for purposes of visitation or relocation."

In nearly every case we have raised with the Foreign Minister since his government made this commitment, Saudi authorities have granted permission for the American citizen woman to depart the Kingdom. Two American women withdrew their requests for exit permission after delays in the Saudi Government issuance of exit permits the women had requested. In one of those cases, the Saudi authorities assisted the young woman to find employment and living arrangements outside of her father's household and the woman decided to remain in Saudi Arabia. In the second case, the young woman married while Saudi authorities were considering her application for an exit permit, and she subsequently withdrew her request.

We continue to press the Government of Saudi Arabia to formalize the process of issuing exit permits to American citizen women, with the aim that applicants will receive the permits more easily, reliably, and promptly.

Questions for the Record Submitted to
Assistant Secretary of State Maura Harty by
Rep. Dan Burton #3
Committee on Government Reform
March 4, 2004

Question:

There have been notable cases of international child abduction that the Government Reform Committee has worked on during the 107th and 108th Congresses, including Pat Roush, Samiah Seramur, Monica Stowers, Joanna Stephenson Tonetti, Margaret McClain, Debra Docekal, Maureen Dabbah, and Michael Rives. Could you please have your staff provide a detailed update on how the Department of State has assisted in each of these cases since July 2003?

Answer:

Pat Roush: The Department of State and our Embassy in Riyadh have been actively involved in this case since 1986 when their father abducted her daughters to Saudi Arabia. The Department continually monitored the girls' well being and, when they were children, sought their return to the United States.

Since Ms. Roush's daughters are now adults, their wishes are paramount. Since the August 31, 2002 meeting with a consular officer in London, when the women said that they did not wish to travel to the U.S. at that time, we remain ready to provide any assistance we can, should the women request it.

As U.S. citizens, Ms. Roush's daughters can be issued U.S. passports by applying at our Embassy in Riyadh. They do not require visas to enter the United States. If we learn from the women that they wish to return to the United States, we will assist them to obtain the necessary Saudi Government exit permissions for them to do so. The Government of Saudi Arabia has assured us that no American women will be prevented from leaving the country if they wish to do so.

Monica Stowers: We are holding the Government of Saudi Arabia to a commitment made in September 2002 that adult American women would be free to travel out of Saudi Arabia to the U.S. The government of Saudi Arabia issued Ms. Stowers' daughter, Amjad Radwan, an exit visa to travel to the U.S. in September 2002, but she chose not to travel at that time. In February 2003, Ms. Radwan attempted to travel with her uncle to Bahrain, but Saudi border officials prevented her departure. The Embassy has repeatedly tried to contact Ms. Radwan and her mother by telephone and in writing to see if she needs further assistance. Ms. Radwan has not returned our messages. We stand ready to offer any and all consular services to her, including assistance in departing Saudi Arabia if she wishes to do so.

Seramur: We are working with Ms. Seramur and the Saudi Government to seek consular access to Ms. Seramur's son Faisal, who remains in Saudi Arabia. The

father has refused us any access to Faisal until Ms. Seramur grants him reciprocal access to their daughter Maha.

McClain: We are working with Ms. McClain and the Saudi Government on her next visit to Saudi Arabia. We continue to emphasize to the Saudi Government that our goal is the return of Ms. McClain's daughter, Heidi Al-Omary, to the United States.

Docekal: As we reported in July 2003, Ms. Dokecal has requested that Consulate General Jeddah take no further action at this time with regards to her daughter Suzanne. We have respected her wishes, but are ready to provide assistance should she desire it.

Dabbagh: We continue to work with Ms. Dabbagh and other USG agencies, including the Federal Bureau of Investigation, to seek access to Ms. Dabbagh's daughter Nadia in accordance with Ms. Dabbagh's wishes. In August 2003, the U.S. Embassy in Damascus submitted documents issued by the FBI to the Syrian Ministry of Foreign Affairs, and has repeatedly requested assistance in gaining consular access to Nadia. The Syrian Government has advised us that U.S. consular access to Nadia will be permitted "provided that permission from the Syrian judicial authorities is approved in accordance with Syrian law." We have asked the Syrian Government formally for clarification on how such permission may be obtained, since there appears to be no provision in Syrian law allowing for

third party visitation in custody cases. In the interim, we are exploring avenues to facilitate communication between Ms. Dabbagh and her daughter.

Rives: Since July 2003, the Department has worked with Mr. Rives concerning his wish to visit Saudi Arabia. At the same time, we have maintained pressure on the taking parent's family through the use of U.S. visa ineligibilities, and continue to raise the case with the Saudi Government. Ms. Al-Adel has left her family's home, apparently due to pressures exerted by family members who have been restricted from travel to the U.S. because of these ineligibilities. In September 2003, U.S. Embassy officials in Riyadh spoke to Ms. Al-Adel about options for returning to the U.S. with the children. On November 24, 2003, and again on January 12, 2004, U.S. Embassy Riyadh sent diplomatic notes to the Ministry related to Mr. Rives' plans for a Spring 2004 visit to Saudi Arabia. The U.S. Embassy has worked with the Interministerial Committee to receive permission for his visit and arrange scheduled visitation of 3 hours daily with his children. On February 24, 2004, U.S. Embassy officials reported that a Saudi visa was granted to Mr. Rives for his Spring visit. While this is no substitute for the return of the children, the Department supports this visit as an opportunity for the parents to reach an agreement on the children's return. Post has arranged for Mr. Rives to meet with the Interministerial Committee during his next visit to Saudi Arabia.

Questions for the Record Submitted to
Assistant Secretary of State Maura Harty by
Rep. Dan Burton #4
Committee on Government Reform
March 4, 2004

Question:

What is the Department of State doing to convince the daughter of the President of Uzbekistan, Ms. Gulnora Karimova, to stop defying a custody order and an arrest warrant from an American court and allow her two children—both of whom are American citizens – to visit their father, Mr. Mansur Maqsudi, who is also an American citizen?

Answer:

Since Mr. Maqsudi contacted the Department in 2002 for assistance, we have actively pursued parental and consular access to the children, in keeping with Mr. Maqsudi's wishes. This has involved engaging the Uzbek Government at senior levels and, more recently, seeking assistance from the Russian Government as well. Assistant Secretary for Consular Affairs Maura Harty and Assistant Secretary for European Affairs Elizabeth Jones have raised the case with Uzbek officials, including Uzbek President Karimov and the Foreign Minister. Following Ms. Karimova's assignment to the Uzbek Embassy in Moscow in 2003, we have also worked with the Russian Government to seek consular access. We will continue these efforts despite Ms. Karimova's consistent refusal to allow us to visit the children or to allow Mr. Maqsudi direct contact with his children.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RANDEL K. JOHNSON
VICE PRESIDENT
LABOR, IMMIGRATION & EMPLOYEE BENEFITS

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WASHINGTON, D.C. 20062
202/463-5448 · 202/463-3194 FAX

March 8, 2004

The Honorable Tom Davis
Chairman
House Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Davis:

I wish to thank you for the opportunity to provide testimony on behalf of the U.S. Chamber of Commerce for the March 4, 2004, hearing entitled "America's New Welcome Mat: A Look at the Goals and Challenges of the US-VISIT Program." I would also like to take this opportunity to supplement my written and oral statements with some additional information relating to certain issues raised at the hearing. Specifically, I would like to offer the views of the U.S. Chamber of Commerce on the upcoming deadline for biometric passports for countries in the Visa Waiver Program, which you alluded to during the hearing, and the current state of visa processing at our consulates overseas.

Visa Waiver Program

We are extremely concerned about the ability of the countries in the Visa Waiver Program (VWP) to meet the upcoming October 26, 2004, deadline for the issuance of machine-readable passports. Assistant Secretary Maura Harty, in testimony and during the question and answer period, indicated some of the major problems that will arise if this deadline cannot be met, and we share those concerns.

Over two-thirds of international visitors arrive under the VWP, over 13 million visitors in FY 2002. Of these, over 2 million were coming to conduct business, including business meetings, conferences, to conclude business and trade dealings, oversee investments in the U.S., and other purposes. Over 11 million were tourists. International visitors from Europe are the largest users of the VWP. On average, visitors entering the U.S. from Western Europe stay 15 nights and spend $87 per day ($1,305 per trip), benefiting the U.S. economy by millions of dollars annually.

According to Department of Homeland Security data on inspections, 80% of visa waiver travelers come from six nations, the United Kingdom, Japan, Germany, France, Italy, and the Netherlands—some of our principal trading partners. The government of

Japan has informed the Chamber that it will not be able to begin issuing biometric passports to its citizens until sometime in 2005. Our members have heard similarly from the United Kingdom, and, as Assistant Secretary Harty stated, other countries are concerned as well about their ability to meet this deadline.

It should be noted that although the U.S. is not under statutory obligation to issue biometric passports, it is working toward that goal, and, according to the Department of State, hopes to issue the first biometric U.S. passport by the October deadline. However, this does not necessarily mean that mass production of such passports for all U.S. citizens will be available.

Failure to act on this issue soon, with adequate advance notice to travelers, who may make travel plans months in advance, could have a severe impact. Assistant Secretary Harty testified that the Department of State would be hard-pressed to process the approximately 5 to 8 million additional visa applications they would expect from travelers no longer able to use the VWP, and because it can take several months to obtain visas in some countries, many persons potentially affected by this deadline will begin to make those applications in the coming months. In addition, there will be potentially many more travelers who will simply choose not to travel to the U.S. at all, costing our economy.

We would strongly encourage Congress to reexamine this deadline and either postpone the requirement of a biometric passport until it is clear that a majority of countries will be able to meet it, or, as was done for the machine-readable deadline, allow the Secretary of Homeland Security and the Secretary of State to grant country-specific waivers or extensions to meet the requirement under specified conditions, such as sufficient progress toward meeting the deadline and assurances of meeting security requirements.

Consular Processing

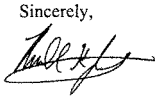
As stated above, the current process for obtaining a visa to travel to the U.S. in many countries is a months-long process, which often requires extensive travel just to go to a U.S. consulate and apply for a visa. The changes to the visa process in the last two years, including increasing visa fees, instituting in-person interview requirements for most visa applicants, and new fingerprinting requirements, have served to deter many international travelers. Overseas travel to the U.S. is already down 32% over the past three years. Press reports from overseas sources portray travel to the U.S. as a never-ending series of obstacles. The perception exists, and is growing, that travel to the U.S., for business, tourism, study, or any other purpose, is just too much trouble.

We are seriously concerned that the message sent in the U.S. of increasing security at our borders is being interpreted as "Fortress America" to the rest of the world. As I stated on November 20, 2003, in testimony before the House Committee on Small Business: "[T]he *perception* of widespread delays is enough to jeopardize trade and business relationships."

We understand that the Department of Homeland Security is currently undertaking a thorough review of the visa process, in conjunction with its new responsibilities in that area as mandated by the Homeland Security Act of 2002. We hope that they will work with the business community and other interested stakeholders to help ensure that our visas system is as secure as possible without becoming a barrier to legitimate travelers.

I appreciate the opportunity to provide these additional comments on the topics covered at the hearing, and the U.S. Chamber looks forward to continuing our relationship with the Committee to address these issues.

Sincerely,



Randel K. Johnson

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March 4, 2004

The Honorable Thomas Davis
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: House Government Reform hearing on US VISIT, March 4, 2004

Dear Chairman Davis:

The Detroit & Canada Tunnel Corporation (DCTC), as operator of the Detroit Windsor Tunnel wanted to comment on the US VISIT program that is scheduled to go into effect at the 50 busiest land ports before the end of this year. DCTC supports any program that protects our nation and facilitates the movement of goods and passengers. This program is of particular importance to the Tunnel as we were busiest passenger vehicle crossing between the US and Canada in 2003 and the third busiest in overall traffic.

Our facility is typical of those at the other major crossings between Michigan or New York and Ontario. The Bridge & Tunnel Operator's Association (BTOA) represents these crossings. Plazas were not designed for today's traffic volumes or the post 9-11 environment. Shonnie Lyon, DHS – US VISIT recently spoke before the BTOA in Detroit and raised some issues to think about:

- We are concerned that the system may not be fully field tested prior to installation. This could lead to significant disruptions in cross border traffic and trade.
- Has an assessment been completed that will indicate both anticipated volumes and risk?
- The system as described will require mounting federal equipment in areas traditionally reserved for the operator. Additionally, the system appears that it will require continual presence by CBP inspectors. There are some critical infrastructure, safety, staffing, management and process issues that will need to be addressed.
- DCTC has requested federal funding to develop and implement a regional border traffic management program. A component of this program could provide advance notification for outbound CBP interdiction.

The Detroit Windsor Tunnel remains available to the House Government Reform Committee, the Department of Homeland Security and others to expand on our concerns and how we feel the program could be implemented to maximize national security and minimize disruption.

Cordially,
Neal Belitsky
Neal Belitsky
Executive Vice President

International Air Transport Association
1776 K St., N.W. - Suite 400
Washington, D.C. 20006

The Honorable Tom Davis
Chairman, House Government Reform Committee
United States House of Representatives
Washington, D.C. 20515

March 4, 2004

Dear Mr. Chairman,

The International Air Transport Association, representing more than 275 of the world's international airlines and most scheduled carriers serving the U.S. market, extends its appreciation to you and the Committee for holding this important hearing today on the US-VISIT program and asks that our comments below be included in the hearing record.

We are relieved to report that the program's implementation on January 5 has not resulted in significant operational impact at most airports, nor in unreasonably long queue dwell times upon arrival. Our Member airlines attribute this success to a level of staffing at primary inspection desks that is far higher than usual.

In addition, the airlines have noted that the installation of new, more efficient hardware, proper training and a generally supportive attitude within the inspection team have been important factors in the program's success during its initial phase. The US-VISIT team should be commended for its extensive research and planning during the last two years and its commitment to bring the various stakeholders into the process during the early days of development.

Given the fact that passenger traffic to and from the United States is beginning to increase after more than two years at reduced levels and that the Department of Homeland Security will add significantly to the number of visitors who will be subject to US-VISIT registration through 2005, it is essential that the Bureau of Customs and Border Protection (CBP) commits to full and ongoing support for the process.

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Since much of the travel to the US is discretionary and represents a high percentage of first-time visitors, we will not be able to depend on an increasing percentage of passengers familiar with the system and its requirements.

We must realistically expect to be faced with the situation in which a continuous learning curve and the associated need for inspectors to provide verbal explanations will lead to longer individual processing times.

As IATA Member airlines have witnessed, the processing of passengers who do not speak English takes considerably longer than the 15-second average cited by CBP. Accordingly, it is essential that CBP commit – as per Section 403(b) of Public Law 107-173 - to maintaining staffing levels at all airports sufficient to meet the needs of the traveling public.

For the program's initial phase (and based on the size of the existing database), CBP has indicated that two fingerprint images will be sufficient to identify possible "hits" on the system. As the database increases in size, however, CBP has indicated it will likely become necessary in the not-too-distant future to increase fingerprint capture to a full set of 10 images. While capturing two individual fingerprint images is conceivable under the stated timeframes, IATA is concerned that capturing 10 individual prints using a single print scanning device will rapidly overwhelm the inspection process.

US-VISIT registration initially is being applied to a manageable, "known" segment of the alien population seeking to enter or depart the U.S. (in that they have already applied for and been granted a visa). That limited population and the relatively small existing database against which all entries must be vetted are principal factors allowing CBP to mostly meet its 15-second-per- transaction goal and its commitment not to impact on overall clearance times for arriving flights.

We fear, however, that when the program is expanded to include foreign citizens from visa-waiver countries and to capture additional biometrics, CBP will be unable to achieve its stated objective concerning clearance times, leaving the traveling public to suffer serious delays. It is also important that crewmembers not be delayed in the registration process because delays in clearance can impact subsequent flight operations.

Of equal concern is how the US-VISIT exit procedures will be implemented in the days ahead. As there are virtually no dedicated international departure gates at U.S. airports, the program must ensure there is adequate signage and kiosk equipment and sensible traffic flow so that outgoing passengers, who may or may not speak English, know what they must do to complete the exit process and where they must go to do so.

Until the exit system is fully operational at all ports of departure – land, sea and air travel – it likely will be confusing and difficult for the traveling public to comply with the program's requirements. IATA would urge that the exit process not be implemented until it can be executed for all modes of transportation. Otherwise, many legitimate visitors could find themselves barred from entry into the United States on subsequent visits, and airlines could be faced with the associated liability for providing them inbound transportation.

IATA has asked the bureau to issue a policy statement indicating that the inbound carrier will not be held liable to penalty when a passenger refuses to provide the necessary biometric or to cooperate with the authorities during his or her inspection. This request was made because the CBP rule amends 8 CFR 235.1(d)(ii) to read that "failure by an alien to provide the requested biometrics necessary to verify his or her identity and to authenticate travel documents may result in a determination that the alien is inadmissible under section 212(a)(7) of the Immigration & Nationality Act (INA) for lack of proper documents, or other relevant grounds in section 212 of the Act." Since this is the provision under which airlines are frequently fined for transporting passengers not in possession of required travel documentation, a literal interpretation of this language could subject carriers to penalty if a passenger refuses to cooperate.

The US-VISIT program will continue to expand, as required by law. However, that expansion should be considered only in conjunction with the application of technologies and staffing required to ensure that the process can meet its security goals while staying within the desired operational parameters. Importantly, IATA would hope that CBP will better utilize the program's biometric capabilities to allow bona fide passengers, after their first visit to the U.S., to enjoy the convenience of automated entry on subsequent journeys. This would also enable CBP to use its limited human resources on the primary inspection of first-time US-VISIT enrollees or on the secondary inspection of those travelers who pose concerns. Rapid expansion, in either population or program data capture requirements, that is not accompanied by an enhanced throughput capability will result in many of the difficulties that the industry had previously feared, but which CBP has successfully avoided so far.

IATA appreciates your continued interest in the facilitation of travelers to the United States and offers our assistance to you in subsequent proceedings.

Sincerely yours,

Thomas Windmuller
Senior Vice President, Government & Industry Affairs
IATA Geneva office

Written Testimony
Of
Dennis L. Hoover
Director of Human Resources
Port Huron Hospital
1221 Pine Grove Avenue
Port Huron, MI 48060

COMMUNITY

Port Huron, Michigan, is located on the border with Sarnia, Ontario. We are approximately an hour and a half north of Detroit. The greater Port Huron area has a population of approximately 55,000, and our hospital serves over 150,000 people. We are a 186-bed, full-service community hospital with over 1,400 employees. We provide women and children's services and interventional cardiology services, with open heart surgery; our Emergency Center has over 32,000 visits a year. We provide a full spectrum of medical imaging modalities, including MRI, and provide various levels of medical and surgical services.

Just like most hospitals in the state of Michigan, we have a Registered Nurse shortage. Without the proper staffing of Registered Nurses, we will not be able to provide the necessary health care services for our community. Because of Sarnia's location and the fact that it has a larger population than Port Huron, we have been able to recruit and retain Registered Nurses from Sarnia. I have been with the hospital over 18 years, and we have many Canadian nurses that have been here longer than I. Currently, at Port Huron Hospital, we have approximately 400 Registered Nurse positions. Ninety-eight of these positions are filled by individuals who live in Canada. Recently the American Hospital Association provided us with information that there are over 12,000 Canadian nurses that are working in Michigan.

The challenges that we face are the frustrations that relate to the mixed messages by various government officials, confusing communications or lack of written communications, various levels of interpretations and duplication of existing programs, along with what we are reading about future programs. An example of mixed information or lack of information would be that we contacted three different Immigration officials at three different border crossings in Michigan regarding the process of visa screen requirements. Of the three, only one official was aware, but did not have any written communications to share with us. The remaining two officials were not aware of any changes, and stated that Port Huron Hospital is compliant with the current regulations regarding TN visas. Currently, the TN visa through the North American Free Trade Agreement is required for Canadian nurses employed by

healthcare organizations in the United States. Obtaining a TN visa requires proof of nursing education, Michigan and Canadian nursing licensures, and is renewed annually with a letter of employment verifying a continued need and specific role descriptions. In addition to this yearly requirement, the new visa screen process requires much of the same documentation related to the education and licensure with additional background checks and is renewed every five years.

A few suggestions for Immigration improving procedures would be:

- Coordinating the NAFTA required TN visa process with the Immigration required visa screen, as they ask for basically duplicate information
- Seek information from knowledgeable individuals who must live under the current policies and procedures, such as Immigration officers, employers, such as Port Huron Hospital, and employees in border town health care facilities.
- Have a strong communication plan that includes education to local Immigration officers and employers and employees that are impacted by decisions made.

Overall, we must learn how to have a smooth and user-friendly transition from current to proposed US VISIT program that allows for direct communications with Immigration leadership and individuals that must acquire visas.

We all realize the need to secure our borders in today's environment. Please understand the impact multiple Immigration programs have on Port Huron Hospital. An example of this would be if we would lose 25 to 35 of our Canadian Registered Nurses, and if we are unable to recruit replacements, we would be required to close one to three critical care units in our facility. This closure would require patients and their families to secure appropriate healthcare away from their homes and support systems. As I shared earlier, since this Immigration issue applies to the Detroit area, that means our patients may be required to go as far as the Flint area for their health care services. This situation is intolerable and unacceptable for the patient that has a life-threatening healthcare problem. And as trite as it sounds in this letter, this is truly a life or death situation for these patients.

If you have any further questions, or if you wish to visit our community and research these issues on site, please feel free to contact me.

Testimony for the Record of

The Travel Industry Association of America

for the

House Committee on Government Reform

On

America's New Welcome Mat:
A Look at the Goals and Challenges of the US–VISIT Program

March 4, 2004

The Travel Industry Association of America (TIA) submits the following comments for the record.

TIA is the national, non-profit organization representing all components of the $528 billion U.S. travel and tourism industry. TIA's mission is to represent the whole of the travel industry to promote and facilitate increased travel to and within the United States. Our more than 2,000 member organizations represent every segment of the industry throughout the country.

International business and leisure travel to the U.S. is a vital component of our national economy. In 2002, over 42 million international visitors generated $83.5 billion in expenditures, $12 billion in federal, state and local tax revenue, and accounted for one million jobs nationwide. International travel and tourism to the U.S. is a service export, and in 2002, generated a positive balance of trade of $5.5 billion.

International visitation has continually declined over the past three years. Overseas travel to the U.S. was down 31.8% in 2003 compared to 2000 levels. This decline has drastically reduced the flow of tax revenue to all levels of government and reduced our international balance of trade. Since 2000, the loss of international travel to the U.S. has cost our economy $15.3 billion in expenditures.

The decline in travel is due to a variety of reasons, including fear of travel because of terrorism, a downturn in the global economy and confusion over new U.S. visa and border security procedures. While some of the causes are beyond the reach of an individual country, actions by the U.S. government can either enhance or harm our nation's ability to attract increased international travel to the U.S. and create more jobs and economic opportunities for states and cities across the country. For this reason, the US-VISIT program must be implemented with

traveler facilitation as one of its primary goals. Otherwise, international travelers might not wish to return to the U.S., or may be deterred from visiting in the first place.

TIA supports the US-VISIT program as envisioned for airports and seaports. TIA believes that the program meets the Department of Homeland Security's dual missions of enhancing the nation's security and protecting the economy. By developing a system that verifies the identity of travelers quickly and efficiently, US-VISIT adds to the protection of the homeland while ensuring the continuous flow of legitimate international travelers entering and exiting the country.

However, TIA does have several concerns about the implementation of the US-VISIT program. Congress should seriously consider these issues as the program moves forward.

Postpone Deadline for Biometrics Passports

The Enhanced Border Security and Visa Entry Reform Act of 2002 introduced a new security element to traveler documentation which is a fundamental component of the US-VISIT program: biometric identifiers. Capturing a person's biometric and using it as part of the entry process will allow inspection officials to know the person before them is the same person to whom the passport or visa was issued. Biometrics are just now being incorporated into newly-issued U.S. visas. They will also be required in all new passports issued by the 27 countries participating in the Visa Waiver Program beginning on October 26, 2004.

TIA supports the use of biometrics in travel documents. However, most of the Visa Waiver Program countries will not be ready to issue these newer biometric passports until late 2005 at the earliest. Missing the deadline would mean that many leisure and business travelers from those countries would have to obtain visas for entry into the U.S. The State Department estimates that as many as 5 million VWP travelers would be affected by this deadline.

Forcing Visa Waiver Program travelers to get visas will deal a crippling blow to an already ailing travel industry. Approximately two-thirds of all *overseas* (excluding Canadian and Mexican) business and leisure travelers, or nearly 13.5 million visitors, enter the U.S. under the Visa Waiver Program. Overseas travel to our nation is already down 32% over the past three years. Additional losses will send even more workers from the travel and tourism industry to the unemployment line. It is unrealistic to expect travelers accustomed to visa-free travel to spend the money and time to obtain a U.S. visa to visit our country. Especially when these travelers have many other appealing international destinations that are visa-free. Additionally, the State Department lacks the capacity to meet this potential increase in demand. A loss of those 5 million travelers would cost the U.S. economy $15 billion in sales and thousands of jobs.

It is important to note that the U.S. Department of State will not be able to start issuing biometric passports until well after the October deadline. While the State Department is not required by law to do so, it is hypocritical for the U.S. to require other countries to do what we cannot.

The October 26 deadline is a Congressional mandate. The Administration does not have the authority to extend the deadline. Therefore, TIA calls on the House Committee on Government

Reform to support at least a one-year extension of the October 26 deadline. By doing this, Congress will provide the time necessary to allow these important trade and political allies to begin producing passports in a way that will not discourage inbound international travel to the U.S.

Concern Over Delays

TIA is very pleased that enrollment in the program has only added an average of 10 to 15 seconds to the normal inspection process. We commend Homeland Security for their efficiency.

It is critical that this level of performance be maintained during peak travel periods and also when the U.S. travel and tourism industry recovers its lost market share. As stated above, overseas travel to the U.S. has dropped by approximately one-third over the past three years. TIA is concerned that Homeland Security will not have sufficient personnel to maintain a 15-second US-VISIT inspection time when international visitation returns to 2000 levels. TIA urges Congress to provide adequate funding so that Homeland Security will have sufficient inspectors available to immediately meet the demands of peak travel periods.

While TIA is pleased with the efficiency by which individuals are processed, TIA also believes it is important to process entire flights in a timely manner. The time an individual spends at primary inspection is not the only time issue. There is also the concern over how long an individual waits to finally reach a primary inspection booth. TIA supports the original Congressionally mandated goal of a maximum wait of 45 minutes per individual. Although this mandate was repealed in the Enhanced Border Security and Visa Entry Reform Act of 2002 (PL 107-173), TIA believes it is still a useful and important goal for Customs and Border Protection inspectors to meet. TIA urges Congress to allocate funding to provide sufficient inspectors for the US-VISIT program both to meet the 15-second individual inspection time and to keep the wait in line to under 45 minutes.

If primary inspection is perceived to be too much of a hassle, many visitors will be discouraged from returning to the U.S. in the future. Additionally, long lines at primary inspection can create a chaotic environment that is both disruptive and places pressure on inspectors to shorten their review of travelers. It is critical that the US-VISIT program have the requisite staff to keep wait times and inspection times to a minimum. Otherwise, both our security and our economy will suffer.

Outreach to Traveling Public

TIA urges Homeland Security to increase efforts to educate the international traveling public about the US-VISIT program. International travelers coming to the U.S. for business and pleasure should be told who is impacted, and who is not impacted, by this new program. Visitors need to understand in advance what to expect in the process, and what they can do to make the process go more smoothly.

The international traveling public increasingly perceives that the myriad of new security rules is creating a "Fortress America." International travelers do not just consider the impact of a single

rule, but view all rules and programs in total. They have noted the increase in visa fees, new visa interview requirements and growing visa denials. They are also aware of machine-readable passport deadlines, the future use of biometric identifiers in U.S. visas and Visa Waiver passports, collection and use of advance passenger information, or API, along with US-VISIT.

By and large, these new rules and requirements make sense from a homeland security perspective, and TIA supports these efforts to enhance national security. But for many prospective international visitors, wave after wave of new travel requirements paint a "big picture" that the United States is becoming a destination that is too difficult to enter, too expensive to visit and simply not worth the effort. In their opinion, the "welcome mat" has been pulled. TIA has heard accounts of how this negative perception has resulted in lost business. While the Department of Homeland Security cannot respond to every misperception and rumor, the opportunity exists to set the record straight on the US-VISIT program and tell international travelers exactly what the program is and who it affects.

In conclusion, Congress must act in two areas to ensure the continued success of the US-VISIT program and allow the U.S. to remain a viable destination for international travelers. Congress must act immediately to extend the October 26 deadline on biometric passports by a minimum of one year. Congress also must ensure that the US-VISIT program has sufficient funds and personnel to meet security and efficiency objectives. TIA also urges the Department of Homeland Security to increase outreach and education efforts to the international traveling public.

TRAVEL BUSINESS
ROUNDTABLE

STATEMENT SUBMITTED FOR THE RECORD
BY
THE TRAVEL BUSINESS ROUNDTABLE

FOR THE

HOUSE COMMITTEE ON GOVERNMENT REFORM

HEARING ON THE US-VISIT PROGRAM

THURSDAY, MARCH 4, 2004

OVERVIEW

The Travel Business Roundtable (TBR) would like to thank Chairman Davis and Ranking Member Waxman for holding this important hearing, and is pleased to have the opportunity to submit a statement for the record regarding the US-VISIT program. TBR is a CEO-based organization that represents the diverse travel and tourism industry, with more than 85 member corporations, associations and labor groups. The travel and tourism industry is an engine for economic development and job creation. Some 17 million Americans are employed in travel and tourism-related jobs with an annual payroll of $157 billion. Travel and tourism is the first, second or third largest industry in 29 states and the District of Columbia. In the last decade, travel and tourism has emerged as America's second largest services export and the third largest retail sales industry. Our industry is in 50 states, 435 Congressional districts and every city in the United States.

It is impossible to stress enough how important international visitors are to the health of our industry as well as the overall U.S. economy. From 2001 to 2002, international travelers to the United States dropped from 44.9 million to 41.9 million. International visitor spending in the U.S. over that time decreased from $71.9 billion to $66.5 billion. And our travel trade surplus of $26 billion in 1996 plummeted to $5.5 billion in 2002. This continued downward trend of international visitor patterns has caused federal, state and local government travel-related tax receipts to decline from $95.5 billion in 2001 to $93.2 billion in 2002. Moreover, U.S. travel and tourism industry payrolls have dwindled from $160.3 billion in 2001 to $157 billion in 2002, and industry job growth remained stagnant at 17 million workers.

TBR vigorously supports the efforts of Congress, the Department of Homeland Security, the State Department, Congress and the Bush Administration to establish and implement programs such as US-VISIT to protect our country. However, it is vital that the agencies incrementally implementing these programs consider their collective impact on the traveling public. Being ever mindful of DHS Secretary Tom Ridge's admonition about the need to create the proper balance between protecting our homeland and promoting free and open commerce, TBR's goal is to ensure that the paramount objective of protecting our nation's security is pursued in a manner that is effective, coherent and does not unnecessarily compromise our economic vitality.

US-VISIT

The US-VISIT program was officially launched on January 5, 2004 at 115 airports and 14 seaports. The system, created by Congress to better track foreign travelers crossing our borders, requires all visitors

entering the U.S. with a visa to submit biometric identifiers at ports of entry. The initial phase requires two fingerprint scans and a digital photograph.

Thus far in its implementation, significant delays have not been reported. However, TBR is concerned that the program's technological ability may not be able to incorporate significantly more travelers during peak travel seasons. We are also concerned that, as more information is added to the database, search times may become lengthy and delays may occur.

The exit component of US-VISIT, a self-service kiosk, is currently in testing at Baltimore-Washington International Airport and Miami's seaport. TBR has heard reports that the system, because it is voluntary in nature and many travelers are not aware of the need to "check out," may require personnel to guide passengers through it in a timely manner. Thus far in the pilot program, many travelers have simply failed to notice the kiosks, which may create problems for them upon re-entry in the U.S. through no fault of their own.

In testimony before the House Select Homeland Security Subcommittee on Infrastructure and Border Security on January 28, 2004, James May, president and CEO of the Air Transport Association of America and a TBR member, expressed concern that the burden of directing travelers through the exit program might fall on airline personnel. TBR agrees that the airline industry should not bear this responsibility.

In the event of excessive wait times at airports and seaports, DHS has created a contingency plan for mitigating delays. The plan would exempt select travelers from US-VISIT screening if delays exceed one hour. DHS Under Secretary Asa Hutchinson testified at the same subcommittee hearing that this system was developed as a precaution and has not been implemented to date. TBR is concerned that this contingency response does not adequately address security objectives and believes a more appropriate response would be the addition of staff and capacity during excessive wait times in order to conduct necessary screening.

US-VISIT at our land borders is still being evaluated, with deadlines for its capabilities to be in place at the 50 busiest ports of entry by December 31, 2004 and all remaining land borders by December 31, 2005. TBR believes that adequate staffing and technology must be put in place prior to implementation so that our land borders are not gridlocked.

THE POTENTIAL NEXUS WITH BIOMETRIC PASSPORTS

The October 26, 2004 deadline requiring travelers from Visa Waiver Program (VWP) countries to present passports with biometric identifiers coincides with the extended deadline for all VWP passports to be machine readable. A potential crisis was avoided with the delay of the machine readable passport (MRP) deadline last October. However, the new biometrics deadline still looms on the horizon. While TBR supports the implementation of these technologies for strengthening security at our nation's borders, we are concerned that enforcing such requirements without allowing sufficient time to meet them will harm our industry, the U.S. economy and our nation's image around the world. TBR supports the immediate passage of legislation that would allow VWP countries sufficient time to meet the biometrics requirement either by postponing the deadline until a date when a majority of the countries estimate they can be compliant or by constructing an incremental waiver program whereby each country's deadline is determined by its progress toward meeting the specified requirements.

The Bush Administration is reportedly considering a solution to the biometrics issue that would involve extending the existing deadline to a yet-unspecified date while simultaneously requiring all VWP citizens

to enroll in the US-VISIT program. This would subject VWP visitors to the same fingerprint and facial recognition requirements that travelers who carry visas currently face.

While the issue of the biometrics deadline for the VWP countries is significant, TBR believes that the inclusion of VWP travelers in the US-VISIT system, by itself, could also create strong negative impacts. Attitudes abroad toward collection of personal data by the U.S. government and the suspect capacity of the US-VISIT system to absorb another 13 million travelers without causing significant delays, could lead international travelers to eliminate the U.S. as a potential travel destination altogether. We urge Congress to pass a clean extension of the biometric passport deadline for VWP travelers that does not require their inclusion in the US-VISIT program.

CONCLUSION

According to reports from DHS, US-VISIT has already uncovered 30 known criminals and is building on its suspected terrorist watch list. TBR is pleased with this success and with the lack of reported significant delays at ports of entry. However, it is critical that all aspects of the system function in accordance with one another in order to monitor our borders and protect our homeland effectively. Therefore, it is vital that DHS conduct a thorough evaluation of the US-VISIT system in its initial implementation phase at airports and seaports to determine where problems might exist, develop projections of capacity for inclusion of additional classes of travelers, test concepts for future implementation phases before they are undertaken and set realistic staffing goals to ensure the success of this endeavor.

A variety of other homeland security issues continue to dominate the travel and tourism industry's legislative agenda. In addition to US-VISIT, changes to the Visa Waiver Program (VWP) and other non-immigrant visa policies, the introduction of the Computer Assisted Passenger Pre-Screening (CAPPS II) initiative and other programs collectively place travel and tourism at the vortex. Unique challenges attendant to each, when combined with overlapping common concerns, demand a coherent and harmonized approach to problem solving. TBR has developed a white paper titled *Homeland Security Policy and the Travel and Tourism Industry: Finding the Proper Balance*, which examines these issues in greater detail. The paper is available on TBR's website, www.tbr.org.

TBR stands ready to work with Congress, the State Department, the Department of Homeland Security and other relevant federal entities to ensure that those who wish to do harm to our nation are prevented from traveling to the U.S., while those who seek to visit our country for legitimate reasons are treated respectfully and are admitted in an efficient manner. We appreciate the Committee's attention to these pressing matters and offer our assistance in any way.

TRAVEL BUSINESS ROUNDTABLE

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Jonathan M. Tisch
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