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VISA WAIVER PROGRAM OVERSIGHT: RISKS AND BENEFITS OF THE PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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VISA WAIVER PROGRAM OVERSIGHT: RISKS AND BENEFITS OF THE PROGRAM

WEDNESDAY, DECEMBER 7, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:10 p.m., in room 2237, Rayburn House Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, King, Lofgren, and Waters.

Also Present: Representative Chabot.

Staff Present: (Majority) Andrea Loving, Counsel; Marian White, Clerk; and (Minority) David Shahoulian, Subcommittee Chief Counsel.

Mr. GALLEGLY. I call to order the Subcommittee on Immigration and Policy Enforcement.

While the Visa Waiver Program is a popular diplomatic tool, it is unfortunately a flawed program. Before it is expanded, the program should be reexamined to ensure that any national security concerns are addressed and resolved.

Under the VWP, nationals of designated countries—and there are currently 36—are allowed to enter the United States without a travel visa.

Since its creation, the VWP has been rightfully criticized on national security grounds. Those concerns have been validated over the years when individuals such as the suspected 20th September 11th hijacker Zacarias Moussaoui came to the U.S. as a French national under VWP and when Richard Reid boarded the American Airlines Flight 63 en route from Paris, France, to Miami, Florida, with a British passport and attempted to light a bomb that was hidden in his shoe.

Congress has acknowledged these security concerns several times and added security-related requirements to the program in the 2002 Visa Waiver Permanent Program Act, the USA PATRIOT Act, and most recently in the 2007 Implementing Recommendations of the 9/11 Commission Act.

But even with the changes, the VWP is still the subject of significant security risks, both inherently and due to a lack of follow-up to ensure the countries become or remain compliant with the program's requirements. A May 2011 Government Accountability Office report found that only "half of the countries have entered into

agreements to share watchlist information about known or suspected terrorists and to provide access to biographical, biometric, and criminal history data." Such an agreement is a requirement of the program.

And Congress required the Department of Homeland Security to issue biennial reports regarding the security risks associated with a country's VWP status, but the GAO found that the DHS had not completed the latest biennial reports for 18 of the 36 VWP countries in a timely manner.

Unfortunately, this criticism is not new to the Visa Waiver Program. A 2004 DHS Inspector General report found that the agency was "unable to comply with the mandate to conduct country reviews of each VWP-designated country every 2 years to determine whether the country shall be continued in the program." And a 2008 GAO report concluded that the "DHS has not fully developed tools to assess and mitigate risks in the Visa Waiver Program."

So DHS consistently ignores congressional mandates regarding the VWP and cannot keep up with the demands for the 36 countries that are currently in the program. These failures need to be addressed before we encourage the expansion of the Visa Waiver Program.

This Subcommittee has a significant interest in protecting Americans and ensuring that the VWP is not a national security risk.

The United States shares a close friendship with many of the Visa Waiver Program countries and with many countries that would like to be designated for the program. However, legislation and policies that can compromise our national security should be carefully scrutinized by Congress.

Before I close, I know one of the witnesses, Rich Stana from GAO, is retiring, and this will be his last time testifying before Congress. I just wanted to take the opportunity to thank Mr. Stana for his years of service. He has been testifying in front of this Subcommittee on immigration-related issues since 1997. We have greatly benefited from his expertise, and we all wish him well in his retirement.

Thank you very much, Rich.

Mr. STANA. Thank you very much, Mr. Chairman.

Mr. GALLEGLY. There is a vote on. If you would like to make your opening statement, then we will go vote, or if you would prefer to——

Ms. LOFGREN. I am fine to make it now, and then——

Mr. GALLEGLY. Okay.

Ms. LOFGREN [continuing]. We can go directly to our colleague when we return.

Mr. GALLEGLY. I would yield to the gentlelady, the Ranking Member of the Subcommittee.

Ms. LOFGREN. Thank you, Mr. Chairman.

First created by Congress in 1986, the Visa Waiver Program has actually played a vital role in growing our economy, creating and maintaining American jobs, and keeping the country safe. The program permits business travelers and tourists from certain countries to visit the United States for up to 90 days without first obtaining a visa at a U.S. Embassy overseas. The participating countries have to follow strict security measures and agree to share addi-

tional intelligence with our government. As such, the program facilitates and promotes travel for business and leisure to the United States while promoting national security.

The Visa Waiver Program was first initiated with just two participating countries, the United Kingdom and Japan. Over the years, as has been mentioned, countries have been added and subtracted depending on several factors, including conditions in the country, and the rate at which its nationals are refused other nonimmigrant visas by consular officers.

The Visa Waiver Program now has 36 participating countries. Current long-term participants include many of our closest allies, such as Australia, Germany, Ireland, Singapore, Sweden, Japan, and the U.K. Most recently, in 2008 President Bush expanded the program to include additional allies, such as the Czech Republic, Estonia, Hungary, and South Korea. Greece was added in 2009 under President Obama.

The Visa Waiver Program is important to our economic growth. In 2010, over 65 percent of all foreign visitors to the U.S. came from visa-waiver countries, even though such countries make up a small percentage of the world's population. According to the U.S. Travel Association, those visitors spent nearly $61 billion, helping to support millions of American workers with travel, tourism, hotel, and restaurant industries.

But what is more telling is how much this country may have lost because the Visa Waiver Program does not include more countries. While other countries have taken steps to welcome more visitors, waiting times for visits at U.S. embassies and consulates have grown to embarrassingly long levels. In some consulates, it now takes more than 6 months for visa applications to be processed, so the result has been decreasing market share in international travel. According to a study conducted by an American industry coalition, the U.S. is estimated to have lost $43 billion in visitor spending in 2005 due to lost market share. And, according to the Department of Commerce, the positive balance of trade generated by inbound travel declined by more than 72 percent between 1996 and 2005.

Since 2005, those losses have only grown, as international travel continues to increase but the U.S. share of the travel market continues to decrease. And as we lose market share, we also lose the ability to share American ideals with the rest of the world. Studies show that foreigners who visit the U.S. are 75 percent more likely to have a favorable view of our country, and 61 percent are more likely to support the United States and its policies. So this country also suffers because fewer foreign visitors are able to experience and value our hospitality and our values.

For these reasons alone, we should consider expansion of the Visa Waiver Program, but there is a more important reason, however counterintuitive it may be. Many of the supporters of the Visa Waiver Program, including conservative security advocates like former DHS Assistant Secretary Stewart Baker, support expansion of the program because they believe it makes the U.S. safer.

This is because participating countries are required to share important law enforcement and national security intelligence and take other steps pursuant to agreements required by the program.

Participating countries must exchange watchlists of known and suspected terrorists, issue more secure e-passports, report lost and stolen passports on a daily basis, and enhance overall counterterrorism and law enforcement cooperation with us. At the same time, visa-waiver travelers must also obtain preclearance to board a flight to the U.S. through the Electronic System for Travel Authorization.

These measures provide U.S. Government personnel with new tools to secure the borders, help prevent terrorist and criminal activities, and promote a safer international travel environment for our citizens and those of our allies. Considering all of these benefits, as well as recent improvements made to the program by the Departments of State and Homeland Security, it may well be time to alter the program and extend its reach.

I look forward to the hearing today and our witnesses, and especially Representative Mike Quigley, who has been such a leader in advocating especially for Poland, one of our most firm allies in the world.

And so, with that, Mr. Chairman, I would yield back, looking forward to hearing from Mr. Quigley first and the rest of our witnesses.

Mr. GALLEGLY. I thank the gentlelady.

As you probably are all aware, the bells went off. We have about 7 or 8 minutes to get to the floor to vote. So we will vote as quickly as we can, return, and, Mike, we will be ready to go as soon as we get back.

Mr. QUIGLEY. Thank you.

Mr. GALLEGLY. The Subcommittee stands in recess for probably 20 minutes.

[Recess.]

Mr. GALLEGLY. I apologize for the interruption, but that is the way the system works around here. Unfortunately, we don't have a lot of control over when the bells ring.

I was about to introduce our witness, our colleague and friend from Illinois, Mike Quigley. Congressman Quigley represents Illinois's Fifth District in the United States House of Representatives. He is a Member of the House Committee on Judiciary and the House Committee on Oversight and Government Reform. Congressman Quigley is the former Cook County commissioner and has served his community for over 20 years.

Welcome, Mike. And, with that, we will yield to you for your testimony.

TESTIMONY OF THE HONORABLE MIKE QUIGLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. QUIGLEY. Thank you so much, Mr. Chairman and Ranking Member Lofgren. I appreciate that.

And I also want to thank the Chairman of the full Committee, Lamar Smith, for helping us put this together, the Committee staff for their hard work, and certainly my staff, Lindsey Matese and others, who have worked so hard to get us to this point. And I look forward to hearing from the second panel here of experts today.

But today's hearing really represents a watershed moment. Believe it or not, it has been 10 years since this Committee has had

a hearing on the Visa Waiver Program, and in that time a lot has happened. And many in this room have long-founded beliefs about what this program, commonly known as VWP, can or cannot do.

Let me ask something of my colleagues today, and that is: Let's set aside some preconceived notions of the program. As I have spoken to my colleagues over the past few years in my time here in Washington about VWP, I have repeated one line: This is not your father's VWP program. This is not your father's Visa Waiver Program. And, again, this is not an issue of immigration. These are travelers, not immigrants. This is an issue of national security, but it is not about comprehensive immigration reform.

The Visa Waiver Program increases our access to data regarding who is coming and going. It allows us to map and trend country-based data and requires a commitment to safety and security from country designees.

One of the most compelling reasons to promote the expansion of VWP to qualified countries is that the program has become a vital counterterrorism tool. Already, the program requires travelers to receive travel authorization through the ESTA program before boarding a U.S.-bound flight. Over the last 2 years, DHS developed an enhanced biographic program and accelerated efforts to improve vetting and screening capabilities.

DHS still must release overstay numbers in order for VWP expansion to happen, something they are working on. Combine this work with the reformed and expanded Visa Waiver Program and we will have effectively minimized opportunities for the expansion of terrorist networks. This is a goal I am sure we all share.

My interest in this issue began, though, even before I took office. I represent a district that is nearly one-fifth Polish. Chicago has the highest concentration of Poles of any city outside of Warsaw. I hear from my Polish community daily about the unfair law that excludes their country from visa-free travel. Poland, whose country has fought side-by-side with Americans in Afghanistan, is among those countries left outside looking in.

As President Obama acknowledged in Warsaw this year, Poland's exclusion from VWP is having a detrimental impact on our relationship with this key ally. Other vital nations, such as Brazil and Taiwan, are currently excluded from participation.

So I took action. I introduced H.R. 959, the Secure Travel and Counterterrorism Partnership Program Act of 2011. The bill would allow the Secretary of Homeland Security to bring additional eligible countries into the VWP by modifying primary qualifying criteria for entry. Senators Kirk and Mikulski have introduced identical language. The Administration formally supports this language.

This Nation needs to keep its doors open for visits from its allies. Foreign travelers who come to America gain an understanding of what makes America great, and they share these positive experiences with their neighbors. Expansion of the VWP would bring in tourism dollars and economically stimulate the travel industry. In 2008, the countries in the VWP generated more than 16 million visits to the United States, accounting for 65 percent of all overseas arrivals that year. VWP travelers spent more than $51 billion in the United States.

International travelers spend three times more than national travelers when they come to this country. That spending generated 512,000 jobs, $13 billion in payroll, and $7.8 billion in taxes for our economy. If properly done, expansion of the VWP will improve our international relationships, create jobs, stimulate the economy, and, again, let me repeat, make us safer.

There are 36 countries currently designated for visa-free travel under the program, all of which must sign information-sharing agreements with the U.S. and qualify under certain enumerators regarding refusals at consular offices abroad. The U.S. Government maintains that there are significant security benefits from having countries enter into the required info-sharing agreements and to report lost and stolen passports promptly, in addition to the economic and diplomatic benefits accrued from more travel to the U.S.

As I conclude my remarks, I am hopeful that those with questions will ask them of our panelists and that they will listen to the answers. I wholly believe that today's outdated visa regime reflects neither the current strategic relationship nor the close, historic bonds between our peoples. I look forward to today's discussion and thank the Committee for its indulgence.

[The prepared statement of Mr. Quigley follows:]

Prepared Statement of the Honorable Mike Quigley, a Representative in Congress from the State of Illinois

Chairman Smith, Chairman Gallegly, Ranking Member Lofgren and members of the Subcommittee, thank you for inviting me to testify here today.

I'd also like to express my extraordinary gratitude to committee staff for their hard work in making today's discussion a reality.

I am sincerely looking forward to hearing from Assistant Secretary Heyman, Dr. James Carafano and the witnesses on today's second panel.

Today's hearing represents a watershed moment.

A hearing only on the Visa Waiver Program has not taken place in the House Committee on the Judiciary for nearly 10 years.

In that time, a lot has happened. And still, many in this room have long-founded beliefs about what this program, commonly known as the "VWP," can or cannot do.

Let me ask something of my colleagues today: set aside preconceived notions.

As I've spoken to my colleagues over the past years to share my support for expansion of the VWP, I've repeated one line –

This is not your father's visa waiver program.

This is not an issue of immigration.

This is an issue of national security.

The Visa Waiver Program increases our access to data regarding who is coming and going.

It allows us to map and trend country-based data, and requires a commitment to safety and security from country-designees.

One of the most compelling reasons to promote the expansion of VWP to qualified countries is that the program has become a vital counterterrorism tool.

Already the program requires travelers to receive travel authorization through the Electronic System for Travel Authorization, or ESTA, before boarding a U.S.-bound flight.

Over the last two years, DHS developed an enhanced biographic program and accelerated efforts to improve vetting and screening capabilities.

DHS still must release overstay numbers in order for VWP expansion to happen, something they are reportedly working on.

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I represent a district that is nearly one-fifth Polish.

Chicago has the highest concentration of Poles of any city outside of Warsaw.

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Poland, whose soldiers have fought side-by-side with Americans in Afghanistan, is among those countries left outside, looking in.

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VWP travelers spent more than 51 billion dollars in the U.S.

That spending generated 512,000 jobs, 13 billion dollars in payroll and 7.8 billion dollars in taxes for our economy.

If properly done, expansion of the VWP will improve our international relationships, create jobs, stimulate the economy and again, let me repeat, will make us safer.

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The U.S. Government maintains that there are significant security benefits from having countries enter into the required info-sharing agreements and to report lost and stolen passports promptly –

In addition to the economic and diplomatic benefits accrued from more travel to the U.S.

As I conclude my remarks I am hopeful that those with questions will ask them, and that they will listen to the answers.

I wholly believe that today's outdated visa regime reflects neither the current strategic relationship nor the close historic bonds between our peoples.

I look forward to today's discussion, and thank the Committee for its indulgence.

Thank you.

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Mr. QUIGLEY. And, Mr. Chairman, at whatever points of procedures you deem appropriate, I will for the record ask that a letter of support from the President; testimony from Senator Kirk; testimony from Roger J. Dow, President and CEO of the U.S. Travel Association; testimony from the U.S.-Poland Business Council; letters of support from the Discover America Partnership, the Polish American Chamber of Commerce, the Embassy of the Republic of

Croatia, and the Embassy of Romania, as well as the Kosciuszko Foundation, be submitted for the record.

Mr. GALLEGLY. If that is a unanimous-consent request, I would——

Mr. QUIGLEY. It is.

Mr. GALLEGLY. So it will be made a part of the record of the hearing, without objection.

Mr. QUIGLEY. Thank you, Mr. Chairman.

[The material referred to follows:]

THE WHITE HOUSE

WASHINGTON

May 27, 2011

Dear Representative Quigley:

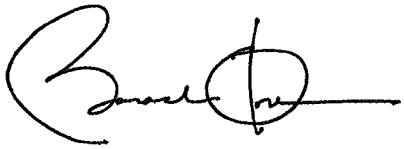
Thank you for your letter regarding my visit to Poland and your recent introduction of the Secure Travel and Counterterrorism Partnership Program Act of 2011 (S. 497/H.R. 959) to restructure the Visa Waiver Program (VWP).

I write to express my strong support for the Secure Travel and Counterterrorism Partnership Program Act of 2011. I share your view that our counterterrorism and security partnerships have evolved and it makes sense to pursue a restructuring of the program. Countries that are willing to cooperate with the United States on our global priorities, including on counterterrorism initiatives, information sharing, and prevention of terrorist travel, deserve the opportunity to become part of our VWP.

I also share your support for Poland and disappointment that this close NATO ally has been excluded from the VWP to date. Poland's strong and steadfast support during our missions in Iraq and Afghanistan demonstrates the deep alliance we have forged and the close partnership between our two countries.

It is my hope that my trip to Poland will help to strengthen the enduring bonds between the American and Polish people. Thank you again for your leadership on this important issue of interest to both countries.

Sincerely,



The Honorable Mike Quigley
House of Representatives
Washington, D.C. 20515

Testimony of Senator Mark Kirk (IL)
Hearing on: "Visa Waiver Program Oversight: Risks and Benefits of the Program"
US House of Representatives Committee on the Judiciary
December 7, 2011

I would like to thank Chairman Smith and Ranking Member Conyers for agreeing to hold this important hearing today on the Visa Waiver Program (VWP). I also want to acknowledge another member of this committee, my colleague from Illinois Congressman Quigley, for his leadership on this issue.

The VWP is vital to advancing our national security as well as our economic interests. The 36 nations currently part of the VWP are some of our closest allies around the world, including South Korea, Japan, Australia, and the nations of the European Union.

The program's security standards include sharing security-related information with the United States and the timely reporting of lost or stolen passports. VWP participants also are required to maintain enhanced counterterrorism, law enforcement, border control, and document security standards.

The VWP brings immense economic benefits to the United States. According to the US Travel Association (USTA), in 2010, more than 17 million visitors to the US were from VWP countries, comprising 65 percent of all visitors. While visiting, they spent nearly $61 billion, supporting 433,000 American jobs and generating $9 billion in tax revenues.

Once a nation enters VWP, the economic boost to the US is immediate. South Korea entered the VWP in early 2009. According to the USTA In 2010, there was an increase of 49% in arrivals to the U.S. from South Korea that drove $789 million in new spending and created 4,800 new U.S. jobs.

I strongly support expanding the VWP to include additional US allies, most notably Poland. Despite its strong support for the United States, Poland remains one of the only major democratic US allies to be excluded from the VWP. That is no way to treat a friend, especially when over 2,500 Polish troops are fighting alongside our soldiers in Afghanistan.

On March 7, 2011, I joined Senator Barbara Mikulski of Maryland and Congressman Quigley to introduce the Secure Travel and Counterterrorism Partnership Act in the Senate and House (S.497/H.R. 959). This bicameral, bipartisan legislation aims to update and modernize VWP requirements, ultimately making Poland and other U.S. allies eligible to participate in the VWP.

On May 28, 2011, during his inaugural visit to Poland, President Obama endorsed our bill. The President's announcement was a major success for the citizens of Poland and America, including the nearly 1 million Polish-Americans living in the state of Illinois.

I look forward to working with my Congressional colleagues and the Administration to advance this important bipartisan initiative in the 112th Congress.

Statement of Roger J. Dow

President & CEO of the U.S. Travel Association

Oversight Hearing on U.S. Visa Waiver Program

Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary

United States House of Representatives

December 7, 2011

I am pleased to submit this statement on behalf of the U.S. Travel Association, the national non-profit organization representing all sectors of America's travel industry. Our mission is to increase travel to and within the United States. Last year, the $759 billion travel industry generated $1.8 trillion in economic output. To build on this success, we are pleased to offer some observations about the economic success and enormous potential of the U.S. Visa Waiver Program.

Since its creation in 1986, the Visa Waiver Program (VWP) has been an invaluable instrument of U.S. national security and public diplomacy and is also critical to our nation's economic health. It is difficult to exaggerate the benefits to the United States of reciprocal 90-day, visa-free travel with the 36 countries that currently qualify for visa waiver status. The opportunities that would result from expanding the program to key emerging economies is staggering. As the Subcommittee reviews the program, we urge you to reflect on these benefits to our foreign policy, homeland security and economy that comprised the original rationale for creating the Visa Waiver Program.

Economic Opportunity

One of the original objectives of the Visa Waiver Program was to stimulate our domestic economy by removing entry obstacles that discourage overseas travel to our shores. These benefits are crucial not only for the U.S. travel and tourism industry, but also to the scores of other American industries – from consumer electronics to agribusiness – that rely on a predictable and efficient entry process for business travelers.

The VWP program has provided its promised stimulus to the U.S. economy. In 2010, VWP countries were the largest source of inbound overseas travels to the United States, sending more than 17 million visitors or 65 percent of all visitors from overseas. While here, these visitors spent nearly $61 billion, supporting 433,000 American jobs along with $12 billion in payroll and generating $9 billion in tax revenues.

This volume of VWP visitors has helped make inbound travel America's top service export, supporting 1.8 million U.S. jobs. Most of these jobs cannot be outsourced and many are in industries not typically associated with travel, including manufacturing, construction, agriculture and health care. But over the last decade, while the world travel market grew by 40 percent, the U.S. saw only a one percent increase. Based on forecast demand and our historic share of the global travel market, the United States is poised for enormous growth.

The U.S. currently attracts 12 percent of the world overseas market, but it is our goal to restore the 2000 level of 17 percent by 2015 and sustain it for five years. Achieving this goal would add $390 billion in U.S. exports over the next decade and create 1.3 million jobs by 2020. A crucial step in this direction is to establish a preliminary roadmap – as the U.S. has done in the past with other nations that eventually achieved VWP status – with U.S. allies such as Poland and Brazil to enter the Visa Waiver Program. As these and other countries ultimately qualify for inclusion in the program, millions of additional legitimate visitors would travel to the United States to buy our goods and services.

Expanding the VWP to new countries is a prudent mechanism to improve America's global competitiveness. Brazil, for example, represents a massive market for travel to the U.S. with a population of nearly 200 million people and an annual gross domestic product of more than a trillion dollars. Brazilian visitors spend on average $4,940 per person in the U.S., the highest spending among the top-10 counties with the most visitations to the U.S. In 2010, this spending totaled $5.9 billion which, in turn, supported 42,000 jobs in the United States. While the U.S. share of Brazilian long-distance travel has improved in recent years, it still remains 15 percent below its share in 2000. Competitors such as Portugal, Mexico, Argentina, Italy and Germany have attracted a larger share of this market than the United States in recent years, some seeing up to a 50 percent growth in arrivals.

Every potential new VWP visitor from Brazil, Poland and other key markets constitutes, in effect, a walking economic stimulus package. Each has the desire and means to travel to the United States, for business and/or pleasure; and rarely do these visits require additional U.S. infrastructure; it is just a question of whether our entry process is welcoming or discouraging, as compared with destinations in other nations.

National Security

Another key goal of the Visa Waiver Program was to improve standards for air security, travel documents and international law enforcement collaboration. As a condition of participation in the program, VWP countries must follow strict counter-terrorism, border security, law

enforcement and document security guidelines, as well as participate in information-sharing arrangements with the United States.

VWP countries must issue International Civil Aviation Organization-compliant electronic passports; report information on all lost and stolen passports to the United States through Interpol; and share information on travelers who may pose a terrorist or criminal threat to the U. S. As a result, our government is able to supplement our watch-list database with information from the travelers' home governments. In addition, each VWP traveler must also obtain pre-clearances to board a flight to the U.S. through the Electronic System Travel Authorization.

Taken together, these eligibility requirements ensure compliance with elevated security standards and cooperation with United States law enforcement. This enables us to better detect, apprehend and limit the movement of terrorists, criminals and other dangerous travelers – and to shift limited visa screening resources to higher risk countries.

Public Diplomacy

The most effective ambassadors of American values are ordinary Americans. Citizens from VWP countries who travel to the United States for tourism or business form life-long impressions of American society based on their visits to destinations, large and small, across America. From our national parks to our ball parks to our theme parks, the heartland of our great nation reflects the best of the United States to foreign visitors. The more they know us, the better they like us.

Surveys have shown that foreigners who have the opportunity to visit the U.S. are 74 percent more likely to have a favorable view of our country; and that 61 percent are more likely to support the U.S. and our policies. Moreover, the mere agreement itself to establish a visa waiver relationship reinforces bilateral goodwill. While its explicit mission is to enhance security and encourage travel, the Visa Waiver Program has also demonstrated significant public diplomacy value as a "soft power" tool that complements our formal foreign policy mechanisms.

Next Steps

By strengthening our alliances and enhancing our nation's global image, the Visa Waiver Program has helped to keep us safer. By facilitating more efficient flow of overseas visitors for legitimate business and leisure at a time when the global travel market is booming, VWP expansion offers enormous export opportunity for the U.S. travel and tourism sector across the entire nation.

That is why we strongly support HR 959, introduced earlier this congressional session by Rep. Mike Quigley (D-5th, IL), and HR 3341, sponsored by Reps. Mazie Hirono (D-2nd, HI) and David Dreier (R-26, CA). We are especially pleased that the Subcommittee invited Congressman Quigley to testify today. For reasons the Congressman has outlined in his own hearing testimony, this bill would go a long way toward reinvigorating the original national security and economic development objectives of the Visa Waiver Program.

The stakes are high for every American business seeking to host meetings with international customers, for dozens of international trade shows each year whose foreign clients need to enter the U.S. on deadline, and for tens of thousands of U.S. workers and businesses dependent on a vibrant inbound travel market. As the Judiciary Committee reviews HR 959 and HR 3341, we appreciate your ongoing interest in ensuring an efficient border entry process and look forward to continuing to work closely with you to move this legislation forward.

Testimony of the

Submitted for the record on

"Visa Waiver Program Oversight: Risks and Benefits of the Program"

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

December 7, 2011

The US-Poland Business Council is a non-profit organization that promotes bilateral trade and investments between the United States and the Republic of Poland. Its 25 U.S.-based multinational member companies represent the best of American ingenuity and share an interest in enhancing the commercial relationship between the U.S. and Poland. We appreciate the opportunity to provide testimony for the record on the benefits of including the Poland in the Visa Waiver Program (VWP).

The VWP was originally conceived to enhance economic relationships with and reward ally countries during the Cold War. Today, no country fits the bill for these criteria better than Poland. In the past two decades, Poland has been one of the United States' closest allies, standing by the United States during challenging times. Additionally, as one of the fastest growing economies in Europe, Poland offers a myriad of opportunities for commercial cooperation in sectors of mutually beneficial and strategic interests.

Poland's exclusion from the VWP is a constant stain on the otherwise close relationship between our two countries, and the requirement that Poles obtain a visa to travel to the United States while almost all of their neighbors can travel visa-free does daily damage to America's own interests.

No Threat from Poland

Poland's ties as an ally to the United States are as old as our country itself. Polish born Brigadier General Thaddeus Kosciusko offered seven years of dedicated leadership and service to the Continental Army during the American Revolution that we honor with a prominent statue in Lafayette Park. Our friendship has only grown closer in more recent times. After Poland liberated itself from the Soviet Union, it was American officials, non-profit organizations and businesses that helped the country establish the foundations for democracy and a free market economy. When the United States was attacked on September 11, 2001, Poland was quick to join our side on the missions in both Iraq and Afghanistan.

In a May 2011 letter to Members of Congress, President Obama acknowledged the incongruity between Poland's contributions and the continued visa requirement. He wrote, "I also share your support for Poland and disappointment that this close NATO ally has been excluded from the VWP

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to date. Poland's strong and steadfast support during our missions in Iraq and Afghanistan demonstrates the deep alliance we have forged and the close partnership between our two countries."[1] Polish citizens have fought and died in hostile lands alongside American troops, but they cannot travel to the United States without a visa.

Perhaps the most jarring fact about Poland's continued exclusion from visa reciprocity, however, is the fact that the country now meets the criteria under which its Eastern European neighbors Estonia, Latvia, Lithuania, Hungary, the Czech Republic and Slovakia joined the VWP. Poland has successfully lowered its nonimmigrant visa refusal rate every year since FY2006, when it was 26.2 percent, down to 9.8 percent in FY2010, the latest year for which data is available. Along with the required security and information-sharing agreements—some of which Poland has already signed and all of which the country has committed to sign—this refusal rate would have allowed Poland to join the VWP before July 2009. Unfortunately, while Poland was striving to meet the criteria for entry, the United States shifted the goal posts.

Considering Poland's recent economic strength, past concerns about Polish visitors overstaying their visas in order to work illegally in the U.S.—concerns that have contributed to Poland's exclusion from the VWP—seem untenable. In May 2011, Germany and Austria fully opened their labor markets to Eastern European countries, allowing Polish workers the ability to search for jobs in every E.U. country without restriction. More importantly, Poland has seen incredible economic strength driven by strong consumer demand at home. It was the only country in Europe, and one of the few Western countries, to avoid recession in 2009, and its economy has continued to grow at a fast pace. For the coming year, Poland is projected to have one of the strongest rates of GDP growth in Europe. Poles that over the past decade had sought employment abroad in the E.U. are now returning home to take advantage of the new economic opportunities there.

European countries do not appear concerned about granting Polish citizens visa-free travel. Poland is a member of the Schengen Zone, the agreement among 25 European countries to allow visitors to travel across their borders without any internal visa or customs controls. In fact, **Poland is the only member of the Schengen Zone that is not also a member of the VWP.**

Economic Opportunities and American Competitiveness

American businesses in sectors as diverse as energy, health care, aviation, defense and information technology are interested in capitalizing on the many prospects for mutually beneficial commercial collaboration in Poland. The members of the US-Poland Business Council, however, believe that Poland's continued exclusion from the VWP threatens American companies' long-held competitive advantage in Poland and creates barriers to taking full advantage of new economic opportunities.

Perhaps the most obvious trade limited by Poland's exclusion from the VWP is in the tourism industry. With more than 10 million Polish Americans living in the U.S., there are likely tens of thousands of Poles that do not visit America due to the hassle and cost of obtaining a visa. No

[1] President Barack Obama. Letter to Senator Mark Kirk, Senator Barbara Mikulski, Representative Mike Quigley, Representative Janice Schakowsky, Representative Daniel Lipinski, and Representative Brian Higgins. May 28, 2011. http://photos.state.gov/libraries/poland/788/pdfs/visa_letter.pdf

doubt other organizations have provided testimony to the Subcommittee on the significant economic effect of these lost customers.

However, the lack of visa-free travel to the U.S. for Polish citizens erects barriers to trade on a much broader level, too. Historically, Poles have felt a close connection to the United States and a predisposition to American-made goods, in part, because American companies were some of the first international firms to operate in Poland's post-Soviet market. The U.S. cannot rest on its laurels, however. The American government and business community should continue to promote an "American brand" in Poland, and there is no better marketing for our country's culture, goods and services than encouraging Poles to experience it firsthand.

Unfortunately, the American brand suffers significant reputational damage as a result of our country's visa policy in Poland. Though many Poles remain pro-American today, continued exclusion from the VWP creates the feeling of second-class treatment by the U.S. and may erode Poles' support for our country over time. The German Marshall Fund's 2009 "Transatlantic Trends" revealed that from 2002 to 2009, the favorable opinion of the United States declined more in Poland than in the other eleven European countries surveyed[2] and the Polish Public Opinion Research Center's (CBOS) surveys of Poles' attitude towards the United States have shown a slight downward trend in approval from 2006 to 2011.[3]

This damage to our reputation hurts the American brand among Poles generally, but Poland's absence from the VWP also constructs more tangible barriers to Polish companies that would like to conduct business with the U.S. The cost and, more importantly, the uncertainty and delay associated with applying and being granted a visa limits Polish business customers from traveling to the United States to seek out and evaluate American suppliers. The problem of uncertainty in obtaining a visa is only amplified for Polish companies looking to invest directly in the United States. A 2007 Department of Commerce paper stressed that the ease with which foreign investors can obtain a visa is critical to their decision about whether they will be able to make and administer an investment. These foreign investments help drive the U.S. economy by providing important sources of innovation, exports, and jobs.[4]

Similarly, the logistical challenge for Poles traveling to the United States reduces American companies' competitiveness in Poland. Poland is seeking to transition from a coal-based economy to one driven by the low-carbon energy sources that were pioneered in the United States. American businesses are vying to supply the goods and technology necessary to the development of energy sources such as wind, nuclear, natural gas, and bio diesel, but they face stiff competition from companies in France, Germany, and Canada, all countries that grant visa-free travel to Polish citizens. Polish government and business officials may factor into their business decisions how visa requirements affect the ease of conducting international business.
The visa requirement also diminishes the competitiveness of American companies that already have successful operations in Poland. The lack of visa-free travel frustrates attempts by U.S.-based

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[2] German Marshall Fund. "Transatlantic Trends Topline Data 2009." Question 4. http://trends.gmfus.org/doc/2009_English_Top.pdf
[3] Public Opinion Research Center (CBOS). "Poles and Other Nations," February 2011, January 2010, December 2008, September 2007, and October 2006. http://www.cbos.pl/EN/publications/public_opinion_2011.php
[4] U.S. Department of Commerce. "Visas and Foreign Direct Investment: Supporting U.S. Competitiveness by Facilitating International Travel," November 2007.
http://trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_002704.pdf

corporations to exchange technical ideas and training with their Polish business partners. Barriers to travel may impede the short-term, intensive training in the United States necessary to the development of the Polish workforce and, in turn, create costly delays for the development and expansion of American companies' projects in Poland.

For example, an April 2011 report by the U.S. Energy Information Agency estimated that Poland has 792 trillion cubic feet of shale gas,[5] or 300 years' worth of the country's domestic demand. American companies are leading the exploration and development of this new resource, but the size of the country's trained workforce is far below what will be required for rapid expansion in the next few years if extraction of the gas proves to be commercially viable. There is no better place to train Polish workers in the shale gas industry than on American rigs in the gas fields of Texas, but other countries may be more appealing due to the ease of travel for Polish citizens.

Conclusion

The US-Poland Business Council believes that Congress and the President should prioritize actions that will promote trade with countries as ripe with economic opportunities as Poland. Expanding the Visa Waiver Program to include Poland is the easiest way to immediately improve commercial relations with a country that shares so many mutually beneficial interests with the United States.

The inclusion of Poland in the VWP is not a partisan issue. Both Presidents George W. Bush and Barack Obama have expressed support for and made commitments to multiple Polish presidents to grant visa-free travel to the U.S. for Polish citizens.[6]

Poland's collaboration with and support of American security initiatives, along with its efforts to meet the criteria under which its neighbors qualified, is argument enough that Polish citizens have earned the privilege of visiting the United States without a visa. Yet, it is also important to consider the ongoing harm done every day to America's commercial interests by limiting the flow of travel between the United States and one of the fastest growing economies in Europe.

The fact that as close of a friend and military ally as Poland—with its booming economy and multitudinous opportunities for increasing U.S. trade and exports—does not qualify for membership is evidence enough that the VWP's current criteria are flawed and in need of adjustment. That is why the American companies comprising the US-Poland Business Council support the Secure Travel and Counterterrorism Partnership Program Act (H.R. 959). We urge Congress to act with deliberate speed to enact H.R. 959 or similar legislative language that would open the door for Polish citizens to enjoy visa-free travel to the United States.

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[5] U.S. Energy Information Agency. "World Shale Gas Resources: An Initial Assessment of 14 Regions Outside the United States," April 2011. http://www.eia.gov/analysis/studies/worldshalegas/pdf/fullreport.pdf

[6] President George W. Bush. Remarks after meeting with Polish President Kaczynski. July 16, 2007. http://georgewbush-whitehouse.archives.gov/news/releases/2007/07/20070716-1.html; President Barack Obama. Remarks by President Obama and President Komorowski of Poland after Bilateral Meeting. December 8, 2010.

December 1, 2011

The Honorable Mike Quigley
United States House of Representatives
1124 Longworth House Office Building
Washington, DC 20515

Dear Representative Quigley,

The Discover America Partnership, a diverse coalition of American industries established to advance visa and entry reforms that will create over one million American jobs, writes in support of your leadership on the expansion of the Visa Waiver Program (VWP).

The VWP was originally created to improve standards for air security, travel documents and international information sharing, and to stimulate our economy by removing entry obstacles that discourage overseas travel to our shores. These objectives are critical not only for the U.S. travel and tourism industry, but also to scores of other American industries – from consumer electronics to agribusiness – that rely on a predictable and efficient entry process for business travelers.

The VWP has delivered. In 2010, VWP countries were the largest source of inbound overseas travel to the United States, sending more than 17 million visitors, or 65 percent of all visitors from overseas. While here, these visitors spent nearly $61 billion, supporting 433,000 American jobs along with $12 billion in payroll and generating $9 billion in government tax revenues. The most lucrative segment of international travel for the U.S. is from overseas, as each "long-haul" visitor to America spends an average of $4,000 per visit here.

This volume of VWP visitors has helped make inbound travel America's top service export, supporting 1.8 million U.S. jobs. Most of these jobs cannot be outsourced and many are in industries not typically associated with travel, including manufacturing, construction, agriculture and health care. But over the last decade, while the world long-haul market grew by 40 percent, the U.S. saw only a one percent increase. Based on forecast demand and our historic share of the global travel market, the United States is poised for enormous growth.

The U.S. currently attracts 12 percent of the world overseas market, but it is our goal to restore the 2000 level of 17 percent by 2015 and sustain it for five years. Achieving this goal would add $390 billion in U.S. exports over the next decade and create 1.3 million jobs by 2020. A critical step in this direction is allowing U.S. allies such as Poland, Brazil and Chile to enter the VWP. With the entry of these countries, millions of additional legitimate visitors would travel to our shores to buy American goods and services.

Expansion of the VWP will also buttress homeland security. Because of the VWP's strict security standards and obligations, foreign travelers' passports are more secure and U.S. audit authority is stronger. VWP's information-sharing requirements yield data from other nations that continuously supplement our own terrorism watch lists.

In addition to its economic and security benefits, the VWP is an important tool for U.S. public diplomacy, exposing far more international visitors to the attractions and values of America's heartland. Studies have shown that foreign nationals who visit the U.S. return home with a far more positive view of our nation and its policies. For these reasons, during his recent visit to Poland, President Obama stated: "It makes sense to pursue a restructuring of the program. . . Countries that are willing to cooperate with the United States on our global priorities, including on counterterrorism initiatives, information sharing, and prevention of terrorist travel, deserve the opportunity to become part of our VWP."

The VWP has proven essential to both the security imperatives and economic opportunity of selected reforms in our entry process. The stakes are high for every American business seeking to host meetings with international customers, for dozens of international trade shows each year whose foreign clients need to enter the U.S. on deadline, and for tens of thousands of U.S. workers and businesses dependent on a vibrant inbound travel market.

Thank you for your leadership on this critical issue for our nation.

Sincerely,

DISCOVER AMERICA PARTNERSHIP

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New Jersey Restaurant Association
Ocean Today
Ohio Hotel & Lodging Association
Orlando Regional Chamber of Commerce
Oshkosh Corporation
Palm Springs Desert Resort Communities Convention and Visitors Authority
Pasadena Convention & Visitors Bureau
Pennsylvania Tourism Office
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Rachel Holland Special Events
San Francisco Travel Association
Smart Business Hawaii
Southwest King County Chamber
Tacoma Regional CVB
The Chamber of Commerce of Hawaii
U.S. Olympic Committee
United States Airports for Better International Air Service
Vail Resorts

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Bogdan Puksztа
Executive Director

December 5, 2011

Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary
House of Representatives
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Honorable Committee Members:

As the voice of the Polish American business community in the United States, the Polish American Chamber of Commerce (PACC) is dedicated to serving the best interests of our membership by facilitating commercial contacts between the United States and Poland. Our organization is at the forefront of encouraging and promoting domestic and foreign trade and the expansion and integration of the Polish and Polish American business communities in the United States and Poland.

As an organization that represents the interests of the Polish American business community, our membership is in strong support of including Poland in the Visa Waiver Program (VWP) for the following reasons:

- Given the United States' focus on economic development and foreign direct investment, it is imperative that Poland's strong and growing business community have the flexibility to travel easily for business and commercial reasons without going through the onerous process of obtaining B-1 visitor visas. Because of Poland's membership in the European Union, Polish businesses have the option of other attractive business destinations and the non-inclusion of Poland in WVP has a chilling effect on the United States/Poland business community relationship by stigmatizing Polish businesses as second class citizens. Based on the current economic situation worldwide, it is a detriment to the United States not to be inclusive to all business and economic options, especially of an ally such as Poland.
- The ability of Polish tourists to use WVP to destinations in the United States will undoubtedly have a positive effect on the tourism industry. Polish tourists now have the ability to travel to countless worldwide destinations without first obtaining the equivalent of a B-2 visitor visa and it is time to open the United States' doors to these tourists and the economic impact of their visits.
- Despite its strong and reliable support of the United States, including contributing troops to the wars in Afghanistan and Iraq, Poland is the only major democratic United States ally and European Union member to be excluded from the Visa Waiver Program. Now is the time to include Poland in VWP.

Due to Poland's positive economic standing and its staunch support of the United States, there is no reason to delay the inclusion of Poland in the Visa Waiver Program.

Thank you for your attention and we look forward to a positive decision.

Very truly yours,

Lucas Fuksa
President

Veleposlanstvo Republike Hrvatske u Sjedinjenim Američkim Državama
Embassy of the Republic of Croatia to the United States of America

Washington, December 2, 2011

The Honorable Mike Quigley
United States House of Representatives
Washington, DC 20515

Dear Representative Quigley,

I avail myself of the opportunity to write to you and thus to extend our full support for the proposed Secure Travel and Counterterrorism Partnership Act of 2011, H.R. 959. As a partner nation and important US NATO ally, Croatia looks upon its inclusion in the US Visa Waiver Program (VWP) as an absolute priority and it is therefore our sincere hope that Congress and the Administration will support the expansion of this Program and Croatia's inclusion in it.

The Republic of Croatia is in full compliance with security and other related requirements and conditions aiming at enhancing US security, having not only entered into all the relevant arrangements with US government departments and agencies, but also having already started their implementation. In this regard, Croatia is ahead of many present or potential VWP members, thus contributing to American homeland security.

However, Croatia has been excluded from the VWP because of a visa refusal rate slightly higher than the one prescribed by current legislation. At present 5.3% of Croatians are denied visas and 3% is the present threshold (FY 2010 data). In absolute numbers it comes only to several hundred refused visa applications. It should be noted that many countries joined the VWP when that threshold was set significantly higher, which was then at 10%.

Croatia is a strong US ally in NATO and is fighting alongside the United States in Afghanistan. In fact, Minnesota, as Croatia's partnership state in the US, has its National Guardsmen operating under Croatian command in Afghanistan and vice versa. Croatia is the US' main partner in South East Europe and will soon join the European Union (Croatia is signing the EU Treaty of Accession on December 9, 2011). While Croatia is not requiring visas for Americans, Croatian citizens cannot enter the United States without a visa thus creating a sentiment among many of being a second class ally.

It is important to underline that Americans of Croatian descent support the proposed legislation on the Secure Travel and Counterterrorism Partnership. The President of the National Federation of Croatian Americans, the Croatian American umbrella organization representing

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Croatian Americans throughout the United States, in his letter from October 4, 2011 requested of Co-chairs and Members of the Congressional Croatian Caucus to co-sponsor HR 959.

The Congressional Croatian Caucus has proved to be a staunch supporter of Croatia and the building of ever closer relations between Croatia and the United States. This includes the bipartisan support developed in the US Congress for Croatia's accession to NATO several years ago, which is particularly remembered and appreciated by Croatian Americans.

Dear Representative Quigley,

Once again, I avail myself of the opportunity to express our support for the Secure Travel and Counterterrorism Partnership Act of 2011, H.R. 959.

Please accept my appreciation for the work you and your office are undertaking with the view of enhancing US and its allies security and mutual interests. I look forward to our future cooperation and wish you all best in your future endeavors.

Sincerely,

Vice Skračić

Chargé d'Affaires, a.i.

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[1] *Croatia signed and has been fully implementing the following arrangements with the United States (in chronological order):*

1. *Memorandum of Understanding for the Reporting of Lost and Stolen Passport (LASP) information (signed 2008);*
2. *Declaration between the Ministry of Interior of the Republic of Croatia and the Department of Homeland Security of the United States of America Regarding Principles of Cooperation on Enhanced Bilateral Security Measures for International travel and the Requirements of the U.S. Visa Waiver Program (signed 2009);*
3. *HSPD-6 Agreement on the Sharing of Terrorist Information (signed 2009);*
4. *Protocol of Implementation of the Memorandum of Understanding for the Reporting of Lost and Stolen Passport (LASP) information (signed 2009);*
5. *Memorandum between the Republic of Croatia and United States of America on combating crime (signed 2009);*
6. *Agreement between the Government of the Republic of Croatia and the Government of the United States of America on Enhancing Cooperation in Preventing and Combating Serious Crime (PCSC; signed 2011);*
7. *Understanding between the Government of the Republic of Croatia and the Government of the United States of America on mutual determination of the application of procedures for the reporting of lost and stolen passport data via the INTERPOL Stolen and Lost Travel Documents database as set forth in the Memorandum of Understanding for the Reporting of Lost and Stolen Passport (LASP) Information (signed 2011).*

Croatia started issuing second generation biometric passports as of June 29, 2009.

Visas for Croatian citizens traveling to Canada were eliminated in March 2009. The decision to eliminate visas was taken following a Risk Assessment Team visit to Croatia. Mexico abolished visas for Croatian citizens in April 2010. Croatian citizens have been travelling to all EU member states and many other countries in the world visa-free for years.

EMBASSY OF ROMANIA
to the United States of America

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The Honorable Mike Quigley
United States House of Representatives
Washington, DC 20515

December 6, 2011

Dear Mr. Quigley,

I am delighted with the opportunity to write to you in light of the upcoming Hearing on *Visa Waiver Program Oversight: Risks and Benefits of the Program*. I am particularly grateful for your visionary leadership to bring this issue forward in Congressional debate. Romania has long been supportive of efforts to reform and expand the U.S. Visa Waiver Program as we truly believe that such a course will advance immediate and long-term transatlantic security and economic interests.

Romania is a true friend of the United States and one of its most trusted allies, who has consistently confirmed its embrace of democratic values and the commitment to transatlantic security, prosperity and progress. Our recent conclusion of a landmark Ballistic Missile Defense Agreement with the United States soundly confirms the depth of our strategic partnership and our joint commitment to transatlantic security.

Romania fully shares U.S. commitments to secure travel, secure borders and secure communities. We also understand U.S. immigration and law enforcement interests and concerns, being one of the most active U.S. partners in fighting organized crime, trafficking, smuggling, cybercrime and money laundering. Romanian-U.S. cooperation in justice and law enforcement matters stands out as one of the most advanced, effective and reliable.

We truly look at the Visa Waiver Program in terms of a robust partnership to ensure secure travel. We are committed, willing and able to meet all the VWP statutory security requirements and we do support your efforts to strengthen the program's integrity while providing a timely opportunity for Romania to join in.

As you know, the Visa Waiver Program has played a critical role in advancing bilateral political, economic and people-to-people relations. We firmly believe that including Romania into the VWP will increase the program's security and law enforcement benefits, will reinforce our cooperation and will adequately address our mutual economic, business and trade interests.

I look forward to continuing to work with you on this important issue and I thank you very much for your friendship.

Yours respectfully,

Adrian Vierita

Dec. 7, 2011

Chairman Lamar Smith
Judiciary Subcommittee on Immigration Policy

Dear Congressman Smith,

Thank you for allowing representatives of the ten million Polish-Americans to express their opinions on the Visa Waiver Program, (VWP). For too long, the United States has treated our friends and families in Poland as second class citizens requiring them to pay hefty fees to apply for visas to visit this country, while Europeans from other countries travel here without visas.

American Consulates in Poland deny the same visa applicants over and over, thus driving up the visa refusal rate to an artificially high level. I personally know many educated and professional people in Poland, who could easily get visas, but are boycotting the United States and instead spend their tourist and shopping dollars in countries where they are welcome. Poland is part of the "Schengen Area" of 25 European nations that allows passport-free travel across borders.

Because Poland is a productive member of NATO and the European Union, its citizens do not need to come to the United States to find work. In fact, during the current economic crisis in Europe, Poland has been a shining example of how to keep its economy moving because it does not have the debt problems of the Eurozone. There is no real empirical evidence showing that Poles overstay their welcome in the United States at levels higher than countries such as Greece, Slovenia, Slovakia, Estonia, Latvia and other nations that have been included in the VWP.

Poland's exclusion from the VWP is an embarrassment for Congress. Poland is one of America's greatest allies and has fought for freedom in Iraq, Afghanistan and always supports the United States. Poles pose no terrorist threat to America, and allowing Poles to visit the United States as tourists would encourage international trade and pump tourism dollars into our economy. By refusing visa free travel for Poles, the United States is pushing away one of its closest allies. Allowing Poles to travel without visas will add to our security and enhance law enforcement and crime-fighting efforts through data-sharing agreements between our respective countries. It is high time to include Poland in the Visa Waiver Program

Sincerely,

Alex Storozynski
President & Executive Director

The Kosciuszko Foundation: The American Center of Polish Culture

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Mr. GALLEGLY. Mr. Quigley, do you agree that if a country does not meet the requirements to sign the agreements that the country should not be designated?

Mr. QUIGLEY. Yes. Countries need to meet the requirements. The bill in question does not lax the requirements. It believes that the Department of Homeland Security and even in the last few months has gotten even more prepared for having a protective system using visa waiver.

Mr. GALLEGLY. Would you agree that additional resources would be necessary to support ICE? And if you do agree with that, would you support additional resources be available to devote specifically to identification information, our removal of foreign nationals who overstay their allotted time in the U.S.?

Mr. QUIGLEY. Well, I do, but I think the Chairman, with all due respect—and I would defer some of this to the Assistant Secretary—I believe that there will be some cost-shifting.

I do believe two things: that there are lost opportunities, financially, by not having a Visa Waiver Program. That is money that doesn't come to our country in the form of tax dollars at the Federal, State, and local level.

I also believe that by not having this program it ties up our consular offices in other regards for people having to go through a visa process. So, by reducing the burden in one area, reducing the burden on people putting visa processes together, it frees up those resources to deal with what is needed to have an appropriate Visa Waiver Program.

Mr. GALLEGLY. I would yield to the gentlelady.

Ms. LOFGREN. Well, first, before asking anything, I would just like to offer my praise to you, Congressman, for the leadership that you have shown in this area.

Mr. QUIGLEY. Thank you.

Ms. LOFGREN. And, you know, when I think about the citizens of Poland and how they are fighting side-by-side with American soldiers in Afghanistan, and then to think that their fellow countrymen have been excluded from this program, you know, it really is an incentive to make sure that this works properly. And your efforts are obviously key and in the forefront on this.

I just—you know, one of the things that I have often thought is that, you know, the refusal rate of consular offices has—there is almost no relationship to anything. And your bill actually tries to tag a metric that is actually meaningful.

One of the things that we need to do is to be able to calculate that, and I wonder if you would like to share any thoughts on how that might progress.

Mr. QUIGLEY. Well, I agree that the overstay rate makes more sense. I think that the other process of trying to determine whether or not someone will overstay or a guess is very subjective, and it is a more appropriate tool to gauge with overstay rates, numbers that I believe we will be getting rather soon. And, again, I would defer to the Assistant Secretary to talk about how that process will work.

But I do agree with your earlier statements, as well. This is very important from a diplomatic point of view. You don't have to just go to the point of Poland defending us and working with us, with

boots on the ground in Afghanistan and other locations. You can go back a hundred years, in terms of the relationship between the United States and Poland. And, unfortunately, I believe we have let them down at several key junctures. And they are literally the front line, and have been for a long time, in protecting this country and Europe from various threats.

So I believe the Assistant Secretary can go into more details, but I do think your point is well taken, that gauging overstay makes far more sense than someone's subjective determination guessing how someone will act when they are in this country. I do believe the improved—the historical analysis, biographical data, will be very, very important as it continues to improve, actually far better than biometric in making us safe and making sure that we know who is coming over and how long they are here.

Ms. LOFGREN. Well, I thank you. And I know that each one of us has multiple obligations all at the same time, so I won't burden you with additional questions. Just to thank you once again for being here and for your leadership on the subject.

And I would yield back, Mr. Chairman.

Mr. QUIGLEY. Thank you.

Mr. GALLEGLY. I thank the gentlelady.

And I would certainly invite Mr. Quigley to sit at the dais for the rest of the hearing if he opts to.

Mr. QUIGLEY. Thank you.

Mr. GALLEGLY. But since he is not a Member of the Committee, he can't participate in the questions and answers, as is the case with my good friend Mr. Chabot, who we certainly invite to share the dais with us.

And thank you very much for being here, Mike.

Mr. QUIGLEY. Thank you so much for having me.

Mr. GALLEGLY. Our second panel, if you would step forward.

I would like to welcome our very distinguished panel of witnesses today.

Each witness' written statement will be entered into the record in its entirety. I would ask each witness to please summarize his or her testimony in 5 minutes so that everyone will have a chance to have an opportunity to ask questions.

And, with that, I would like to introduce our first witness, Mr. David Heyman. Mr. Heyman is Assistant Secretary for Policy at the U.S. Department of Homeland Security. In addition to his time at DHS, Mr. Heyman has served as a senior advisor to the U.S. Secretary of Energy and at the White House Office of Science and Technology Policy. Mr. Heyman received his B.A. From Brandeis University and his master's degree from Johns Hopkins University of Advanced International Studies.

Our second witness today, Mr. Richard Stana, serves as director of homeland security and justice issues at the U.S. Government Accountability Office. During his nearly 35-year career with the GAO, he has served in headquarters, field, and overseas offices and has directed reviews on a wide variety of complex military and domestic issues. Most recently, he has directed GAO's work relating to immigration and border security issues. Mr. Stana earned a master's degree in business administration, with a concentration in financial management, from Kent State University.

Our third witness, Dr. James Jay Carafano, is director of The Heritage Foundation's Center for Foreign Policy Studies as well as the deputy director of the Institute for International Studies. He joined Heritage as a senior research fellow. Dr. Carafano is a graduate of West Point. He holds a master's degree and doctorate from Georgetown University as well as a master's degree in strategy from the U.S. Army War College.

Our fourth witness, Ms. Jessica Vaughan, is the policy director at the Center for Immigration Studies. She has been with the Center since 1991, where her area of expertise is administration and implementation of immigration policy. Prior to joining the Center, Ms. Vaughan was a foreign service officer with the U.S. State Department. She holds a master's degree from Georgetown University and a bachelor's degree from Washington College in Maryland.

So, with that, we will start with you, Mr. Heyman. Welcome.

TESTIMONY OF DAVID F. HEYMAN, ASSISTANT SECRETARY FOR POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HEYMAN. Thank you, Mr. Chairman, Ranking Member, thank you, other distinguished Members, for the opportunity to appear before the Subcommittee today. I also want to thank you just for holding the hearing. This is an important program and an important hearing as such.

I think most people take for granted that they can travel to a large part of the world without a visa, but visa-free travel to the United States is actually relatively new. In 1986, Congress established a pilot project to facilitate low-risk travel to the U.S. and help spur trade and tourism. That program's ability to accomplish these goals has been a success. In fiscal year 2010, nearly 18 million visitors from visa-waiver countries constituted approximately two-thirds of all overseas travelers coming to the United States.

This has great implications for our economy. According to the Department of Commerce, in 2010 spending by international travelers to the U.S. directly supported 827,000 jobs. Moreover, each additional 10 jobs created directly from tourism expenditures generated approximately 3 to 4 additional jobs indirectly in service sectors.

Much has changed since the program's inception. Thanks in large part to congressional action, the Visa Waiver Program has also evolved over the past 25 years. It is now an essential tool for increasing security, advancing information sharing, strengthening international relationships, and promoting legitimate trade and travel to the United States.

The Visa Waiver Program currently allows eligible nationals of 36 countries to travel to the U.S. without a visa and, if admitted, to remain in our country for a maximum of 90 days for tourist and business purposes. In the last decade, Congress and the executive branch have worked together to implement a number of enhancements to the program to address evolving threats to international travel. And now we see in places it is a requirement of partner countries and there are key enhancements in support of and to the benefit of U.S. law enforcement and security.

Specifically, several unique security benefits accrue to the United States: the mandatory bilateral information-sharing agreements regarding potential terrorists and criminals; sharing of lost and sto-

len passport data; inspections of visa-waiver countries' aviation border control and travel document standards; the Electronic System for Travel Authorization, or ESTA, requirement; and vigorous monitoring of changing conditions in visa-waiver countries. All of these security benefits would not accrue without the program.

Two security concerns are often raised when discussing visa waiver. The first is the notion that Moussaoui and Richard Reid both came from visa-waiver countries, and the second is that the Visa Waiver Program lacks a consular interview. In both of these cases, I would note two important points. First, the other 19 hijackers had valid visas and interviews. And, second, more importantly, these events happened in 2001. We have put in place a post-9/11 travel architecture that didn't exist then: watchlisting, information sharing, predeparture screening, the ability to no-board. The Department of Homeland Security had not even been created.

In my written testimony, I will elaborate further on the security and economic benefits of this program and provide a status of the Visa Waiver Program and its implementation.

One element, additional element, I just want to touch on today has to do with overstays and enhanced exit. I am pleased to report that the Department has taken a number of steps to improve its capability to record exits.

First, we are enhancing our existing biographic air exit system to better be able to match records and, thus, identify overstays with much greater fidelity. This will allow for better reporting of data on overstays for visa-waiver and non-visa-waiver countries alike and improve our ability to prioritize those who constitute a threat to national security or public safety.

Second, as is being announced today, perhaps even at this very moment, by President Obama and Canadian Prime Minister Harper as part of our U.S. and Canada shared vision of perimeter security, the Department of Homeland Security is working to facilitate the exchange of information on U.S. and Canadian entry records so that an entry in one country becomes an exit from the other. Thus, when you enter Canada from the United States, we will be able to register you as exiting from the United States when this is fully operational in 2014.

Beyond these efforts, we remain committed to introducing the biometric component to the exit process when it is financially feasible and benefits are commensurate with the costs.

Let me close by saying just a word or two about the legislation proposed by Congressman Quigley, Senators Mikulski and Kirk. As you may know, President Obama has expressed his strong support for this legislation. We regard this bill as an opportunity to expand the substantial security, political, and economic benefits of a program that has been developed and strengthened over the span of a quarter of a century.

In conclusion, let me reiterate the valuable contribution this program brings to our economy and to national security, and I ask your support for this valuable program, not only for the benefits, the economic benefits, it provides the country, but also to the contributions it makes to our national security and our enduring international partnerships.

Thank you. I am happy to take your questions.

[The prepared statement of Mr. Heyman follows:]

WRITTEN TESTIMONY

of

DAVID F. HEYMAN
ASSISTANT SECRETARY FOR POLICY

before

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

on

Visa Waiver Program Oversight: Risks and Benefits of the Program

DECEMBER 7, 2011

WASHINGTON, D.C.

Chairman Gallegly, Ranking Member Lofgren, and other distinguished Members, thank you for the opportunity to appear before the Subcommittee to discuss the Department of Homeland Security's (DHS or the Department) work in promoting secure travel to the United States through the Visa Waiver Program (VWP).

Since its inception in the mid-1980s, the VWP has evolved and is now an essential tool for increasing security standards, advancing information sharing, strengthening international relationships, and promoting legitimate trade and travel to the United States.

The VWP currently allows eligible nationals of 36 countries to travel to the United States without a visa and, if admitted, to remain in our country for a maximum of 90 days for tourist or business purposes. Visa-free travel to the United States builds on our close bilateral relationships and fosters commercial and personal ties among tourist and business travelers in the United States and abroad. It is also reciprocal; providing Americans visa free travel abroad.

In the last decade, Congress and the Executive branch have worked together to implement a number of enhancements to the VWP to address evolving threats to international travel. As a result, and perhaps most importantly, the VWP has provided benefits to U.S. law enforcement and security interests.

For example, in the aftermath of the 9/11 terrorist attacks, new requirements were put in place to tighten passport security standards for VWP use and to increase the frequency of the mandatory country reviews for continuing designation in the VWP from once every five years to at least once every two years. In addition, the *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act) required VWP countries to abide by new or enhanced security standards, changed the criteria for countries to attain VWP designation, and mandated the advance screening of individual VWP travelers, leading to the implementation of the Electronic System for Travel Authorization (ESTA).

In my testimony, I will review the VWP program and the many benefits it brings to the United States. Specifically, I will: 1) address the VWP's security benefits; 2) describe how DHS and its partners are working with VWP countries to ensure their compliance with the information sharing requirements of the 9/11 Act; 3) provide an update on our efforts to track overstays, including from VWP countries, via an enhanced exit system; and 4) talk about the VWP's economic benefits and the prospects for expanding the program by designating new VWP countries.

VWP Security Benefits

One of the VWP's most important contributions is its enhancement of U.S. law enforcement and security interests. The 9/11 Act transformed the VWP from a program that evaluated security threats broadly on a country-by-country basis into one that has the added capability to screen individual travelers for potential threats that they may pose to the security or welfare of the United States and its citizens. In addition, the 9/11 Act

mandates more robust information sharing between the United States and its VWP partners. Since the enactment of the 9/11 Act, DHS, its partner agencies, and VWP countries have worked diligently to implement the new requirements.

In particular, the VWP provides several unique security benefits for the United States. For example, all VWP travelers—regardless of their country of nationality—must use secure travel documents that meet internationally recognized standards for machine readability; second, the majority of VWP travelers, depending on the country and date of issuance, are required to use e-passports, which have an embedded chip that includes the bearer's biometric information and are difficult to falsify. Third, VWP countries are also required to meet heightened security standards—including entering into information sharing agreements with the U.S. Government (USG) concerning known or potential terrorists and criminals and the reporting of lost and stolen passport (LASPs) data to the United States. Fourth, VWP countries are required to undergo initial and periodic country reviews that DHS conducts to inspect, among other things, the country's security standards for passport issuance and border screening. And fifth, to complement these inspections, DHS has developed a continuous and vigorous monitoring process to ensure awareness of changing conditions in VWP countries. This process includes regular communication with the relevant U.S. Embassies abroad and foreign embassies in Washington for updates on law enforcement or security concerns related to the VWP.

Additionally, a critical innovation of the 9/11 Act was the requirement to develop and implement the ESTA system, which allows for the pre-travel and recurrent screening of VWP travelers to the United States. This capability is critical because it enables DHS to preclude some travelers who are ineligible for the VWP from initiating travel to the United States. Travelers whose ESTA applications are denied must obtain a visa by applying for one at a U.S. Embassy or Consulate abroad prior to undertaking travel to the United States.

Since ESTA use became mandatory for all VWP travelers in January 2009, DHS has worked to make the implementation of ESTA as smooth as possible for VWP partners, travelers, and stakeholders. Of the more than 15 million VWP travelers who have come to the United States so far this calendar year, 99.5% of them have complied with the requirement to complete an ESTA application prior to their travel.[1] DHS Customs and Border Protection (CBP) continues to work with air and sea carriers to ensure that VWP travelers do not board air or sea vessels bound for the United States without approved ESTA applications.

ESTA provides DHS with the capability to conduct advance screening of VWP travelers. As a result, we have seen tangible security benefits, such as identifying matches to the Terrorist Screening Database maintained by the Federal Bureau of Investigation's Terrorist Screening Center (TSC) and almost 34,000 lost or stolen passport matches before the traveler boarded a flight to the United States.

[1] Statistics are current through November 25, 2011.

Status of VWP Information-Sharing Agreements

Overview

A provision of the 9/11 Act requires VWP countries to enter into information sharing agreements with the United States. DHS—with the support of interagency partners at the Department of State (DOS), the Department of Justice (DOJ), and the National Security Staff— has determined that this requirement can be fulfilled through the completion of a Preventing and Combating Serious Crime (PCSC) Agreement to share information on potential criminals, a Homeland Security Presidential Directive-6 (HSPD-6) arrangement to share information on known and suspected terrorists, and a diplomatic note or equivalent mechanism to share information on lost and stolen passports with the United States through INTERPOL or the Regional Movement Alert System (RMAS). The nine countries that were designated as VWP countries between 2008 and 2010, after the 9/11 Act came into force, were required to meet the Act's information-sharing requirements in advance of their VWP designation, as will any other countries designated in the future.

Progress to Date and Plans to Move Forward

Over the last several years, we have focused on bringing the 27 pre-2008 VWP countries into compliance with the 9/11 Act information sharing requirements by June 2012. To date, the Department—in cooperation with its partner agencies—has made substantial progress in this endeavor. For example:

- Currently, 35 of the 36 VWP countries have completed an exchange of diplomatic notes or an equivalent mechanism for the requirement to enter into an agreement to share information on lost and stolen passports with the United States through INTERPOL or other means designated by the Secretary of Homeland Security. Most importantly, all VWP countries report lost and stolen passport data to INTERPOL or other means designated by the Secretary of Homeland Security.

- PCSC Agreements—which establish the framework for a new method of law enforcement cooperation by providing each party electronic access to their fingerprint databases on a query (hit/no hit) basis—have been signed with 20 VWP countries: Australia, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Portugal, South Korea, Spain, and Slovakia. In addition, the UK was deemed to have an equivalent agreement or arrangement in place to exchange information on potential criminals. Another three PCSC Agreements with VWP countries have been completed, with signatures pending. DHS and the U.S. Department of Justice lead negotiations for the USG on PCSC.

  Negotiations to conclude several additional PCSC Agreements are under way and making good progress.

- Twenty-one of the 36 VWP countries have also signed HSPD-6 arrangements. Negotiations to conclude the balance of HSPD-6 arrangements are also under way. The DOS and the TSC are the lead for negotiating and implementing the HSPD-6 arrangement, the details of which are classified.

To ensure compliance with the 9/11 Act's information sharing requirements, the USG, has developed and adopted a compliance strategy that sets June 2012 as the target date for concluding required information sharing agreements. This interagency effort seeks to ensure that any country in VWP complies with the program's requirements. While our preference and goal is to work with VWP countries to maintain their VWP designation, DHS – in consultation with other relevant agencies – may implement appropriate corrective actions or other measures as necessary, including possible suspension or termination from the VWP based on non-compliance with program requirements.

Remaining Challenges

Despite our progress to date in concluding PCSC Agreements with the pre- 2008 VWP countries, some work remains. Signing agreements is only one important part of the process. Implementation of the PCSC Agreements is legally and technologically complex, and several factors have contributed to a slower than desired implementation. For example, many of the signed PCSC Agreements require ratification by foreign parliaments before information can be exchanged. Resource allocation questions among various U.S. federal agencies have also delayed implementation of the signed PCSC Agreements. DHS and DOJ have commenced the process of implementing the agreements with five countries, and are working on the technical arrangements that will allow data to flow on an automated basis.

Overstays and Enhanced Exit

We understand that accurately determining who is lawfully in the United States depends on our ability to record both entries and exits of foreign nationals. This is not a concept unique to the VWP – although it is affected – but is a core function of a high quality, functioning immigration system.

DHS is taking a number of steps in order to improve its capabilities in recording exits, which will allow for better reporting of data on VWP and non-VWP countries alike.

First, DHS is enhancing its existing biographic air exit system to better be able to match records and thus identify overstays. In May 2011, the Department began a coordinated effort to vet all potential overstay records against intelligence community and DHS holdings for national security and public safety concerns. In total, the Department reviewed the backlog of 1.6 million overstay leads within US-VISIT and referred leads based on national security and public safety priorities to U.S. Immigration and Customs Enforcement for further investigation.

A beneficial by-product of this effort was the identification of efficiencies gained through automation, as well as other enhancements. Through a new automated system, we will be able to enhance automated matching, eliminate gaps in travel history, and aggregate information from multiple systems. As a result, DHS will be able to quickly and accurately identify overstays, and prioritize those who constitute a threat to national security or public safety.

Second, DHS is conducting new research and working closely with National Institute of Standards and Technology (NIST) to develop new concepts for the development of a biometric air exit program. DHS remains committed to introducing a biometric component to the exit process. DHS has directed its Science and Technology Directorate (S&T) to establish criteria and promote research for emerging technologies that would provide the ability to capture biometrics at a significantly lower operational cost. S&T is working closely with NIST in this initiative, and we expect to have a report shortly detailing potential next steps and a road map for the next several years concerning potential capabilities for a future biometric air exit system, including how anticipated technology enhancements can fit within the DHS operational environment.

Third, and as is being announced today as part of the joint announcement by President Obama and Canadian Prime Minister Harper, DHS is working toward a system to create an exit program on the United States northern land border, to facilitate the exchange of U.S. and Canadian entry records, so that an entry to one country becomes an exit from another. One aspect of the Beyond the Border initiative is the development of an entry/exit system for both Canada and the United States on the common land border of the two countries. The program will evolve in stages through 2014 and will involve the exchange of biographic entry data between the two countries. This will help solve one of the most vexing problems with the development of an entry/exit system for the United States, which is how to record exits at the land border without disrupting the flow of lawful travel and trade.

The Department's program of enhancements to its existing biographic air exit program is a step to secure our borders today, by making strategic security investment decisions that prioritize those capabilities needed for the implementation of a future biometric exit system while providing security value now. This strategy will allow the Department to:

1. Significantly enhance our existing capability to identify and target for enforcement action those who have overstayed their period of admission and who represent a public safety and/or national security threat by incorporating data contained within law enforcement, military, and intelligence repositories.

2. Establish an automated entry-exit capability that will produce information on individual overstays and determine overstay percentages by country.

3. Take administrative action against confirmed overstays by providing the DOS with information to support visa refusal or revocation, prohibiting Visa Waiver Program travel, and placing individuals on lookout lists, in accordance with existing Federal laws.

4. Establish greater efficiencies to our Visa Security Program, allowing for research and analytic activities to be carried out in the United States and investigative and law enforcement liaison work overseas.

5. Provide the core components of an entry-exit and overstay program that will incorporate and use biometric information, as technologies mature and DHS can implement an affordable biometric air exit system.

Economic Benefits of the VWP and the Potential for Expansion

Beyond the security benefits, the VWP contributes to the U.S. economy as well. International travel and tourism is an important U.S. export, accounting for approximately 24% of U.S. service exports and 6% of all U.S. exports. Although more data is needed to estimate the benefit of conferring VWP status on a specific country, anecdotal evidence from South Korea's entry into the program in November 2008 suggests that the economic benefits to the United States could be substantial.

After declining steadily from 2003 through 2008, the U.S. market-share of long-haul travel and tourism from South Korea increased from a 26% market share in 2008 to a 37% market share in 2010.[2] This change corresponded to an increase in travel and tourism receipts from South Korea of approximately 1.6 billion dollars in 2010 over the previous four year average. Moreover, VWP travel was less affected by the post-September 11 downturn than non-VWP travel: VWP admissions returned to pre-9/11 levels by as early as 2006. For Fiscal Year 2010 VWP arrivals accounted for close to 18 million of the approximately 27 million arrivals of overseas visitors to the United States. In Calendar Year 2010, VWP admissions generated revenues of approximately $60 billion in export revenues for the United States.[3]

Secure Travel and Counterterrorism Partnership Act

Given the security and economic benefits of the VWP to the United States and the program's important role in strengthening international partnerships, DHS has long supported a carefully managed expansion of the VWP to select countries that meet the statutory requirements and are willing and able to enter into a close security relationship with the United States.

On May 27, 2011, in a letter to Senators Mikulski and Kirk and Representative Quigley, President Obama expressed his strong support for the *Secure Travel and*

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[2] Obtained from the IVIS Online Database, a source of international tourism market data maintained by the U.S. Travel Association.

[3] FY2010 arrivals are based on Department of Homeland Security I-94 entrance. The CY 2010 revenue estimate is derived from Department of Commerce data.

Counterterrorism Partnership Act (S.497/H.R. 959). The Administration strongly supports this effort and regards this bill as an opportunity to expand the substantial security, political, and economic benefits of a program that has been developed and strengthened now over the span of a quarter of a century. In DHS's view, passage of the bill, with some suggested technical modifications that have been proposed by the Administration to the bill's sponsors, would update VWP designation requirements, protect U.S. immigration interests, and expand the pool of eligible countries to several strong candidates that have demonstrated a commitment to security cooperation with the United States. Moreover, the bill will retain all the enhanced security and information sharing requirements introduced by the 9/11 Act.

Conclusion

In conclusion, let me reiterate the valuable contribution of the VWP to our national security. The VWP is a vital part of a robust travel security system for many reasons: the ESTA requirement; the mandatory bilateral information sharing agreements regarding potential terrorists and criminals; the sharing of LASP data; the inspections of VWP countries' aviation, border control, and travel document security standards; and the vigorous, ongoing monitoring of changing conditions in VWP countries. Thus, expansion of the program not only provides economic benefits to our country, it will also contribute positively to our national security and strengthen our international partnerships.

Chairman Gallegly, Ranking Member Lofgren and other distinguished Members, thank you again for the opportunity to appear before you today and for your consideration of this important topic.

I would be happy to answer any questions that you might have.

Mr. GALLEGLY. Thank you, Mr. Heyman.
Mr. Stana?

TESTIMONY OF RICHARD M. STANA, DIRECTOR OF HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STANA. Thank you, Chairman Gallegly and Ranking Member Lofgren, for the opportunity to testify at today's hearing on the related issues of visa waiver, US-VISIT, and visa overstays.

Each year, millions of visitors come to the United States for various reasons like to either tour or for medical reasons or to visit family. From fiscal years 2005 to 2010, about 98 million visitors came through the Visa Waiver Program for stays of about 90 days or less. Another 36 million came during that 6-year period for varying durations and for various reasons.

I would like to spend my time in my oral statement to discuss—really put some perspective and context around some of the issues and numbers that we have heard about making changes to the Visa Waiver Program and things that maybe Congress could consider in that regard.

First, let me begin with a few observations on the Visa Waiver Program itself. Since the program was made permanent in 2000, we have issued six reports that, when taken together, show progress that the Department has made in managing the program, but also show some persistent problems that haven't gone away yet.

On the positive side, the major information gaps that we found early on, regarding the reporting of lost and stolen passports, has pretty much been addressed. And to the Department's credit and to INTERPOL's credit, 35 of the 36 visa-waiver countries now routinely report, and, although the information isn't always timely and perfect, it is there. Another positive is that the Department has put more staff on the case to manage the program. And DHS has smoothly implemented ESTA, and now they have about a 99 percent compliance rate from the airlines.

On the other hand, while over half the countries in the program have signed the required agreements to share biographical, biometric, and watchlist information, only several have actually begun implementing those agreements. And DHS is more than a year overdue on the required biennial security risk assessments for half of the visa-waiver countries, in some cases 2 years or more.

Finally, another challenge is with the ESTA program. The compliance rate of 99 percent indicates some success, but that leaves hundreds of thousands of travelers who are not cleared before boarding airlines to the United States. In 2010, there were 360,000 such passengers. And, upon reflection, it appears that about at least 650 should have not been permitted to board. DHS has begun to analyze a small portion of these cases to see if they are of legitimate concern or if there is a systemic weakness to the program.

Now, related to the integrity of the Visa Waiver Program is our ability to determine traveler compliance with the terms of their visas. And this gets us into US-VISIT. Since 2002, DHS obligated about $193 million to develop air, sea, and land exit solutions, but, again, there is good news and there is some not-so-good news.

The good news is, on the entry side, it is pretty well up and running at the 300 land, air, and sea ports of entry, and it appears to generally be working well, in that biometric information is collected and used by our officers at ports of entry and by consular officials overseas.

The not-so-good news is that the exit records are not there. We do not have a biometric exit capability at airports, seaports, and land ports. We have biographic information from airline departure manifests that could help identify overstays, and ICE uses it for that purpose. But, again, DHS does not, itself, use that information for mandatory and statutory reports on overstay rates. So doing a country-by-country assessment would be even more difficult.

Finally, let's talk about overstays. The Pew Hispanic research center in 2006 estimated that about one-third to one-half of the illegal alien population in the United States entered with a valid visa and overstayed. That is a very large figure. To its credit, ICE uses a risk-management process to focus its attention on the greatest security risk of those it identifies. But, again, you are talking about ICE arresting only about 1,200 visa overstays per year, against 4.5 million to 5 million overstays in the United States. Clearly, DHS and ICE need to do more to get on top of that issue.

In closing, we recognize that the Visa Waiver Program can help to find the appropriate balance between facilitating legitimate travel and attending to security concerns. Much progress has been made to shore up the vulnerabilities that we identified, and we are in a much better position today than we were when the program started to address these concerns.

Now, that said, we also recognize that the program has lots of information gaps and management challenges and that adding more countries before addressing these gaps and challenges could further strain ICE's and DHS's ability to effectively manage this program. We have made a number of recommendations to DHS and State to help ensure that visa-waiver countries meet the stringent criteria that Congress established for meeting the program's security requirements.

This concludes my oral statement, and I would be happy to answer any questions that the Subcommittee Members may have.

[The prepared statement of Mr. Stana follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, House of Representatives

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VISA WAIVER PROGRAM

Additional Actions Needed to Address Risks and Strengthen Overstay Enforcement

Statement of Richard M. Stana, Director
Homeland Security and Justice

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Highlights

Highlights of GAO-12-287T, a testimony before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, House of Representatives

December 7, 2011

VISA WAIVER PROGRAM

Additional Actions Needed to Address Program Risks and Strengthen Overstay Enforcement

Why GAO Did This Study

The Department of Homeland Security (DHS) manages the Visa Waiver Program, which allows nationals from 36 member countries to apply for admission to the United States as temporary visitors for business or pleasure without a visa. From fiscal year 2005 through fiscal year 2010, over 98 million visitors were admitted to the United States under the Visa Waiver Program. During that time period, the Department of State issued more than 36 million nonimmigrant visas to other foreign nationals for temporary travel to the United States. DHS is also responsible for investigating overstays—unauthorized immigrants who entered the country legally (with or without visas) on a temporary basis but then overstayed their authorized periods of admission. The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) required DHS, in consultation with the Department of State, to take steps to enhance the security of the program. This testimony is based on GAO reports issued in September 2008, April 2011, and May 2011. As requested, it addresses the following issues: (1) challenges in the Visa Waiver Program, and (2) overstay enforcement efforts.

What GAO Recommends

GAO made recommendations in prior reports for DHS to, among other things, strengthen plans to address certain risks of the Visa Waiver Program and for overstay enforcement efforts. DHS generally concurred with these recommendations and has actions planned or underway to address them.

View GAO-12-287T or key components. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

What GAO Found

GAO has reported on actions that DHS has taken in recent years to improve the security of the Visa Waiver Program; however, additional risks remain. In May 2011, GAO reported that DHS implemented the Electronic System for Travel Authorization (ESTA), required by the 9/11 Act, and took steps to minimize the burden associated with this new program requirement. DHS requires applicants for Visa Waiver Program travel to submit biographical information and answers to eligibility questions through ESTA prior to travel. In developing and implementing ESTA, DHS made efforts to minimize the burden imposed by the new requirement. For example, although travelers formerly filled out a Visa Waiver Program application form for each journey to the United States, ESTA approval is generally valid for 2 years. However, GAO reported that DHS had not fully evaluated security risks related to the small percentage of Visa Waiver Program travelers without verified ESTA approval. In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of Visa Waiver Program passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the program without verified ESTA approval. In May 2011, GAO reported that DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program and recommended that it establish timeframes for regular review. DHS concurred and has since established procedures to review a sample of noncompliant passengers on a quarterly basis. Further, to meet 9/11 Act requirements, DHS requires that Visa Waiver Program countries enter into three information-sharing agreements with the United States; however, only 21 of the 36 countries had fully complied with this requirement as of November 2011, and many of the signed agreements have not been implemented. DHS, with the support of interagency partners, has established a compliance schedule requiring the remaining member countries to finalize these agreements by June 2012. Moreover, DHS, in coordination with the Departments of State and Justice, has developed measures short of termination that could be applied on a case-by-case basis to countries not meeting their compliance date.

Federal agencies take actions against a small portion of the estimated overstay population, but strengthening planning could improve overstay enforcement. ICE's Counterterrorism and Criminal Exploitation Unit (CTCEU) is the lead agency responsible for overstay enforcement. CTCEU arrests a small portion of the estimated 4 to 5.5 million overstays in the United States because of, among other things, competing priorities, but ICE expressed an intention to augment its overstay enforcement resources. From fiscal years 2006 through 2010, ICE reported devoting about 3 percent of its total field office investigative hours to CTCEU overstay investigations. ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which apprehends and removes aliens subject to removal from the United States. In April 2011, GAO reported that by developing a time frame for assessing needed resources and using the assessment findings, as appropriate, ICE could strengthen its planning efforts. DHS concurred and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.

Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee:

I am pleased to be here today to discuss the Visa Waiver Program, which allows nationals from 36 countries to apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consular office abroad.[1] This statement also addresses activities to identify and take enforcement against overstays—individuals who were admitted to the United States legally on a temporary basis—either with a visa, or in some cases, as a visitor who was allowed to enter without a visa such as under the Visa Waiver Program—but then overstayed their authorized periods of admission.[2] From fiscal year 2005 through fiscal year 2010, over 98 million visitors were admitted to the United States under the Visa Waiver Program. During this same time period, the Department of State issued over 36 million nonimmigrant visas for business travel, pleasure, tourism, medical treatment, or for foreign and cultural exchange student programs, among other things.[3] In

[1]In order to qualify for the Visa Waiver Program, a country must meet various requirements, such as entering into an agreement with the United States to report lost or stolen passports within a strict time limit and in a manner specified in the agreement. Currently, 36 countries participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. Visitors who are also allowed to seek admission without a visa include citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) under certain circumstances.

[2]In-country overstays refer to nonimmigrants who have exceeded their authorized periods of admission and remain in the United States without lawful status, while out-of-country overstays refer to individuals who have departed the United States but who, on the basis of arrival and departure information, stayed beyond their authorized periods of admission.

[3]Temporary visitors to the United States generally are referred to as "nonimmigrants." For a listing and descriptions of nonimmigrant categories, see 8 U.S.C. § 1101(a)(15); see also 8 C.F.R. § 214.1(a)(1)-(2). Generally, nonimmigrants wishing to visit the United States gain permission to apply for admission to the country through one of two ways. First, those eligible for the Visa Waiver Program apply online to establish eligibility to travel under the program prior to departing for the United States (unless they are seeking admission at a land port of entry, in which case eligibility is established at the time of application for admission). Second, those not eligible for the Visa Waiver Program and not otherwise exempt from the visa requirement must visit the U.S. consular office to obtain a visa. Upon arriving at a port of entry, nonimmigrants must undergo inspection by U.S. Customs and Border Protection officers, who determine whether or not they may be admitted into the United States.

addition, the most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays.[4]

The Visa Waiver Program was established in 1986 to facilitate international travel without threatening U.S. security.[5] The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) called for DHS, which implements the Visa Waiver Program, to take steps to enhance the security of the program.[6] Among the mandated changes were (1) the implementation of an electronic system for travel authorization designed to determine in advance of travel the eligibility of Visa Waiver Program applicants to travel to the United States under the program, (2) a requirement that all Visa Waiver Program countries enter into agreements to share information with the United States on whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States, and (3) a requirement that all Visa Waiver Program countries enter into agreements with the United States to report or make available lost and stolen passport data to the United States. Prior to these changes, Congress also mandated in 2002 that DHS evaluate and report on the security risks posed by each Visa Waiver Program country's participation in the program at least once every 2 years.

DHS has certain responsibilities for implementing the Visa Waiver Program as well as for overstay enforcement efforts. Overall, DHS is responsible for establishing visa policy, including policy for the Visa Waiver Program. Within DHS, U.S. Customs and Border Protection (CBP) is tasked with, among other duties, inspecting all people applying for entry to the United States to determine their admissibility to the country and screening Visa Waiver Program applicants to determine their eligibility to travel to the United States under the program. DHS's U.S. Immigration

[4]Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

[5]The Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 100 Stat. 3359) created the Visa Waiver Program as a pilot in 1986. It became a permanent program in 2000 under the Visa Waiver Permanent Program Act (Pub. L. No. 106-396, 114 Stat. 1637 (2000)).

[6]Pub. L. No. 110-53, § 711(d), 121 Stat. 266, 341-45.

and Customs Enforcement (ICE) is the lead agency for enforcing immigration law in the interior of the United States and is primarily responsible for overstay enforcement. Within ICE, the Counterterrorism and Criminal Exploitation Unit (CTCEU) is primarily responsible for overstay investigations, including investigations of Visa Waiver Program participants who overstay their authorized periods of admission. Further, the Department of State is responsible for adjudicating visas for foreign nationals seeking admission to the United States.

Since September 11, 2001, GAO has published 5 reports on the Visa Waiver Program. The reports have examined, for example, DHS's assessment of security risks associated with the program and proposed changes to the program. As requested, my testimony will cover the following key issues: (1) challenges and weaknesses in the Visa Waiver Program; and (2) efforts to take enforcement action against overstays and reported results. This testimony is based on our prior reports on the Visa Waiver Program, and overstay enforcement efforts published in September 2008 and May 2011, and April 2011, respectively.[7] For these reports, we examined program documentation, such as standard operating procedures, guidance for investigations, and implementation plans. We also interviewed DHS and Department of State officials. Additional details on the scope and methodology are available in our published reports. We updated selected information from these reports on, for example, the number of signed information-sharing agreements by examining updated documents from September and November 2011 such as correspondence provided by DHS. All of our work was conducted in accordance with generally accepted government auditing standards.

[7]GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, GAO-08-967 (Washington, D.C.: Sept. 15, 2008), *Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks*, GAO-11-335 (Washington, D.C.: May 5, 2011); and *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs*, GAO-11-411 (Washington, D.C.: Apr. 15, 2011).

Further Steps Are Needed to Address Potential Risks in the Visa Waiver Program

As we reported in May 2011, DHS implemented the Electronic System for Travel Authorization (ESTA) to meet a statutory requirement intended to enhance Visa Waiver Program security and took steps to minimize the burden on travelers to the United States added by the new requirement.[8] However, DHS had not fully evaluated security risks related to the small percentage of Visa Waiver Program travelers without verified ESTA approval. DHS developed ESTA to collect passenger data and complete security checks on the data before passengers board a U.S. bound carrier. DHS requires applicants for Visa Waiver Program travel to submit biographical information and answers to eligibility questions through ESTA prior to travel. Travelers whose ESTA applications are denied must apply for a U.S. visa for travel to the United States. In developing and implementing ESTA, DHS took several steps to minimize the burden associated with ESTA use. For example, ESTA reduced the requirement that passengers provide biographical information to DHS officials from every trip to once every 2 years. In addition, because of ESTA, DHS informed passengers who do not qualify for Visa Waiver Program travel that they need to apply for a visa before they travel to the United States. Moreover, most travel industry officials we interviewed in six Visa Waiver Program countries praised DHS's widespread ESTA outreach efforts, reasonable implementation time frames, and responsiveness to feedback, but expressed dissatisfaction over ESTA fees paid by ESTA applicants.[9]

In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of the Visa Waiver Program passengers prior to boarding, but the remaining 2 percent— about 364,000 travelers— traveled under the Visa Waiver Program without verified ESTA approval. In addition, about 650 of these passengers traveled to the United States with a denied ESTA. As we reported in May 2011, DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program. At the time of our report, DHS officials told us that there was no official agency plan for monitoring and oversight of ESTA. DHS tracked some data on passengers that traveled under the Visa Waiver Program without verified ESTA approval but did not track other data that would help officials know the extent to which noncompliance

[8]See 8 U.S.C. § 1187(h)(3).

[9]In September 2010, the U.S. government began to charge ESTA applicants a $14 fee when they applied for ESTA approval, including $10 for the creation of a corporation to promote travel to the United States and $4 to fund ESTA operations.

poses a risk to the program. Without a completed analysis of noncompliance with ESTA requirements, DHS was unable to determine the level of risk that noncompliance poses to Visa Waiver Program security and to identify improvements needed to minimize noncompliance. In addition, without analysis of data on travelers who were admitted to the United States without a visa after being denied by ESTA, DHS could not determine the extent to which ESTA was accurately identifying individuals who should be denied travel under the program. In May 2011, we recommended that DHS establish time frames for the regular review and documentation of cases of Visa Waiver Program passengers traveling to a U.S. port of entry without verified ESTA approval. DHS concurred with our recommendation and has established procedures to review quarterly a sample of noncompliant passengers to evaluate potential security risks associated with the ESTA program.

Further, in May 2011 we reported that to meet certain statutory requirements, DHS requires that Visa Waiver Program countries enter into three information-sharing agreements with the United States; however, only half of the countries had fully complied with this requirement and many of the signed agreements have not been implemented.[10] The 9/11 Act specifies that each Visa Waiver Program country must enter into agreements with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States and to report lost or stolen passports. DHS, in consultation with other agencies, has determined that Visa Waiver Program countries can satisfy the requirement by entering into the following three bilateral agreements: (1) Homeland Security Presidential Directive (HSPD) 6, (2) Preventing and Combating Serious Crime (PCSC), and (3) Lost and Stolen Passports.[11]

- HSPD-6 agreements establish a procedure between the United States and partner countries to share watchlist information about known or suspected terrorists. As of January 2011, 19 of the 36 Visa Waiver

[10]See 8 U.S.C. § 1187(c)(2)(D), (F).

[11]For the HSPD-6 and PCSC agreements, DHS made the determination in consultation with State and Justice. For the Lost and Stolen Passports agreement, DHS made the determination in consultation with State.

Program countries had signed HSPD-6 agreements, and 13 had begun sharing information according to the signed agreements. Noting that the federal government continues to negotiate HSPD-6 agreements with Visa Waiver Program countries, officials cited concerns regarding privacy and data protection expressed by many Visa Waiver Program countries as reasons for the delayed progress. According to these officials, in some cases, domestic laws of Visa Waiver Program countries limit their ability to commit to sharing some information, thereby complicating and slowing the negotiation process. In November 2011, a senior DHS official reported that 21 of the 36 Visa Waiver Program countries have signed HSPD-6 agreements.

- The PCSC agreements establish the framework for law enforcement cooperation by providing each party automated access to the other's criminal databases that contain biographical, biometric, and criminal history data. As of January 2011, 18 of the 36 Visa Waiver Program countries had met the PCSC information-sharing agreement requirement, but the networking modifications and system upgrades required to enable this information sharing to take place have not been completed for any Visa Waiver Program countries. According to officials, DHS is frequently not in a position to influence the speed of PCSC implementation for a number of reasons. For example, according to DHS officials, some Visa Waiver Program countries require parliamentary ratification before implementation can begin. Also U.S. and partner country officials must develop a common information technology architecture to allow queries between databases. A senior DHS official reported in November 2011 that the number of Visa Waiver Program countries meeting the PCSC requirement had risen to 21.

- The 9/11 Act requires Visa Waiver Program countries to enter into an agreement with the United States to report, or make available to the United States through Interpol or other means as designated by the Secretary of Homeland Security, information about the theft or loss of passports. As of November 2011, all Visa Waiver Program countries were sharing lost and stolen passport information with the United States, and 35 of the 36 Visa Waiver Program countries had entered into Lost and Stolen Passport agreements according to senior DHS officials.

DHS, with the support of interagency partners, established a compliance schedule requiring the last of the Visa Waiver Program countries to finalize these agreements by June 2012. Although termination from the

Visa Waiver Program is one potential consequence for countries not complying with the information-sharing agreement requirement, U.S. officials have described it as undesirable. DHS, in coordination with the Department of State and the Department of Justice, developed measures short of termination that could be applied to countries not meeting their compliance date. Specifically, DHS helped write a classified strategy document that outlines a contingency plan listing possible measures short of termination from the Visa Waiver Program that may be taken if a country does not meet its specified compliance date for entering into information-sharing agreements. The strategy document provides steps that would need to be taken prior to selecting and implementing one of these measures. According to officials, DHS plans to decide which measures to apply on a case-by-case basis.

In addition, as of May 2011, DHS had not completed half of the most recent biennial reports on Visa Waiver Program countries' security risks in a timely manner. In 2002, Congress mandated that, at least once every 2 years, DHS evaluate the effect of each country's continued participation in the program on the security, law enforcement, and immigration interests of the United States.[12] According to officials, DHS assesses, among other things, counterterrorism capabilities and immigration programs. However, DHS had not completed the latest biennial reports for 18 of the 36 Visa Waiver Program countries in a timely manner, and over half of these reports are more than 1 year overdue. Further, in the case of 2 countries, DHS was unable to demonstrate that it had completed reports in the last 4 years. DHS cited a number of reasons for the reporting delays. For example, DHS officials said that they intentionally delayed report completion because they frequently did not receive mandated intelligence assessments in a timely manner and needed to review these before completing Visa Waiver Program country biennial reports. We noted that DHS had not consistently submitted these reports in a timely matter since the legal requirement was made biennial in 2002, and recommended that DHS take steps to address delays in the biennial country review process so that the mandated country reports can be completed on time. DHS concurred with our recommendation and reported that it would consider process changes to address our concerns with the timeliness of continuing Visa Waiver Program reports.

[12]See Pub. L. No. 107-173, § 307(a)(2), 116 Stat. 543, 556.

Federal Agencies Take Actions against a Small Portion of the Estimated Overstay Population

ICE Investigates Few In-Country Overstays, but Its Efforts Could Benefit from Improved Planning

As we reported in April 2011, ICE CTCEU investigates and arrests a small portion of the estimated in-country overstay population due to, among other things, ICE's competing priorities; however, these efforts could be enhanced by improved planning and performance management. CTCEU, the primary federal entity responsible for taking enforcement action to address in-country overstays, identifies leads for overstay cases; takes steps to verify the accuracy of the leads it identifies by, for example, checking leads against multiple databases; and prioritizes leads to focus on those the unit identifies as being most likely to pose a threat to national security or public safety. CTCEU then requires field offices to initiate investigations on all priority, high-risk leads it identifies.

According to CTCEU data, as of October 2010, ICE field offices had closed about 34,700 overstay investigations that CTCEU headquarters assigned to them from fiscal year 2004 through 2010.[13] These cases resulted in approximately 8,100 arrests (about 23 percent of the 34,700 investigations), relative to a total estimated overstay population of 4 million to 5.5 million.[14] About 26,700 of those investigations (or

[13]CTCEU also investigates suspected Visa Waiver Program overstays, out-of-status students and violators of the National Security Entry-Exit Registration System, a program that requires certain visitors or nonimmigrants to register with DHS for national security reasons. For the purpose of this discussion, these investigations are referred to collectively as "overstay" investigations. In addition to CTCEU investigative efforts, other ICE programs within Enforcement and Removal Operations may take enforcement action against overstays, though none of these programs solely or directly focus on overstay enforcement. For example, if the Enforcement and Removal Operations Criminal Alien Program identifies a criminal alien who poses a threat to public safety and is also an overstay, the program may detain and remove that criminal alien from the United States.

[14]The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays. Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

77 percent) resulted in one of three outcomes.[15] In 9,900 investigations, evidence was uncovered indicating that the suspected overstay had departed the United States. In 8,600 investigations, evidence was uncovered indicating that the subject of the investigation was in-status (e.g., the subject filed a timely application with the United States Citizenship and Immigration Services (USCIS) to change his or her status and/or extend his or her authorized period of admission in the United States). Finally, in 8,200 investigations, CTCEU investigators exhausted all investigative leads and could not locate the suspected overstay.[16] Of the approximately 34,700 overstay investigations assigned by CTCEU headquarters that ICE field offices closed from fiscal year 2004 through 2010, ICE officials attributed the significant portion of overstay cases that resulted in a departure finding, in-status finding, or with all leads being exhausted generally to difficulties associated with locating suspected overstays and the timeliness and completeness of data in DHS's systems used to identify overstays.

Further, ICE reported allocating a small percentage of its resources in terms of investigative work hours to overstay investigations since fiscal year 2006, but the agency expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. Specifically, from fiscal years 2006 through 2010, ICE reported devoting from 3.1 to 3.4 percent of its total field office investigative hours to CTCEU overstay investigations. ICE attributed the small percentage of investigative resources it reported allocating to overstay enforcement efforts primarily to competing enforcement priorities. According to the ICE Assistant Secretary, ICE has resources to remove 400,000 aliens per year, or less than 4 percent of the estimated removable alien population in the United States. In June 2010, the Assistant Secretary stated that ICE must prioritize the use of its resources to ensure that its efforts to remove aliens reflect the agency's highest priorities, namely nonimmigrants, including suspected overstays, who are identified as high

[15]Investigations resulting and not resulting in arrest do not total 34,700 due to rounding.

[16]With regard to the second outcome, that the subject is found to be in-status, under certain circumstances, an application for extension or change of status can temporarily prevent a visitor's presence in the United States from being categorized as unauthorized. See Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the [Immigration and Nationality] Act," memorandum, Washington, D.C., May 6, 2009.

risk in terms of being most likely to pose a risk to national security or public safety. As a result, ICE dedicated its limited resources to addressing overstays it identified as most likely to pose a potential threat to national security or public safety and did not generally allocate resources to address suspected overstays that it assessed as non-criminal and low risk. ICE indicated it may allocate more resources to overstay enforcement efforts moving forward, and that it planned to focus primarily on suspected overstays who ICE has identified as high risk or who recently overstayed their authorized periods of admission.

ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which has responsibility for apprehending and removing aliens who do not have lawful immigration status from the United States. However, ERO did not plan to assume this responsibility until ICE assessed the funding and resources doing so would require. ICE had not established a time frame for completing this assessment. We reported in April 2011 that by developing such a time frame and utilizing the assessment findings, as appropriate, ICE could strengthen its planning efforts and be better positioned to hold staff accountable for completing the assessment. We recommended that ICE establish a target time frame for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment. DHS officials agreed with our recommendation and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.

More Reliable, Accessible Data Could Improve DHS's Efforts to Identify and Share Information on Overstays

DHS has not yet implemented a comprehensive biometric system to match available information provided by foreign nationals upon their arrival and departure from the United States. In 2002, DHS initiated the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) to develop a comprehensive entry and exit system to collect biometric data from aliens traveling through U.S. ports of entry. In 2004, US-VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States. In August 2007, we reported that while US-VISIT biometric entry capabilities were operating at air, sea, and land ports of entry, exit capabilities were not, and that DHS did not have a comprehensive plan or a complete schedule for biometric exit

implementation.[17] Moreover, in November 2009, we reported that DHS had not adopted an integrated approach to scheduling, executing, and tracking the work that needed to be accomplished to deliver a comprehensive exit solution as part of the US-VISIT program. We concluded that, without a master schedule that was integrated and derived in accordance with relevant guidance, DHS could not reliably commit to when and how it would deliver a comprehensive exit solution or adequately monitor and manage its progress toward this end. We recommended that DHS ensure that an integrated master schedule be developed and maintained. DHS concurred and reported, as of July 2011, that the documentation of schedule practices and procedures was ongoing, and that an updated schedule standard, management plan, and management process that are compliant with schedule guidelines were under review.

In the absence of a comprehensive biometric entry and exit system for identifying and tracking overstays, US-VISIT and CTCEU primarily analyze biographic entry and exit data collected at land, air, and sea ports of entry to identify overstays. In April 2011, we reported that DHS's efforts to identify and report on visa overstays were hindered by unreliable data. Specifically, CBP does not inspect travelers exiting the United States through land ports of entry, including collecting their biometric information, and CBP did not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. Nonimmigrants departing the United States through land ports of entry turn in their forms on their own initiative. According to CBP officials, at some ports of entry, CBP provides a box for nonimmigrants to drop off their forms, while at other ports of entry departing nonimmigrants may park their cars, enter the port of entry facility, and provide their forms to a CBP officer. These forms contain information, such as arrival and departure dates, used by DHS to identify overstays. If the benefits outweigh the costs, a standard mechanism to provide nonimmigrants with a way to turn in their arrival and departure forms could help DHS obtain more complete and reliable departure data

[17]The purpose of US-VISIT is to provide biometric (e.g., fingerprint) identification—through the collection, maintenance, and sharing of biometric and selected biographic data—to authorized DHS and other federal agencies. See GAO, *Homeland Security: U.S. Visitor and Immigrant Status Program's Longstanding Lack of Strategic Direction and Management Controls Needs to Be Addressed*, GAO-07-1065 (Washington, D.C.: Aug. 31, 2007).

for identifying overstays. We recommended that the Commissioner of CBP analyze the costs and benefits of developing a standard mechanism for collecting these forms at land ports of entry, and do so to the extent that benefits outweigh the costs. CBP agreed with our recommendation and in September 2011 stated that it planned to complete a cost-effective independent evaluation of possible solutions and formulate an action plan based on the evaluation for implementation by March 2012.

Further, we previously reported on weaknesses in DHS processes for collecting departure data, and how these weaknesses impact the determination of overstay rates. The 9/11 Act required that DHS certify that a system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports in order for DHS to expand the Visa Waiver Program.[18] In September 2008, we reported that DHS's methodology for comparing arrivals and departures for the purpose of departure verification would not inform overall or country-specific overstay rates because DHS's methodology did not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of admission.[19] Rather, DHS's methodology started with departure records and matched them to arrival records. As a result, DHS's methodology counted overstays who left the country, but did not identify overstays who have not departed the United States and appear to have no intention of leaving. We recommended that DHS explore cost-effective actions necessary to further improve the reliability of overstay data. DHS concurred and reported that it is taking steps to improve the accuracy and reliability of the overstay data, by efforts such as continuing to audit carrier performance and working with airlines to improve the accuracy and completeness of data collection. Moreover, by statute, DHS is required to submit an annual report to Congress providing numerical estimates of the number of aliens from each country in each nonimmigrant classification who overstayed an authorized period of admission that expired during the fiscal year prior to the year for which the report is made.[20] DHS officials stated that the department has not provided Congress annual overstay estimates regularly since 1994

[18] 8 U.S.C. § 1187(c)(8).

[19] GAO-08-967.

[20] 8 U.S.C. § 1376(b).

because officials do not have sufficient confidence in the quality of the department's overstay data—which is maintained and generated by US-VISIT. As a result, DHS officials stated that the department cannot reliably report overstay rates in accordance with the statute.

In addition, in April 2011 we reported that DHS took several steps to provide its component entities and other federal agencies with information to identify and take enforcement action on overstays, including creating biometric and biographic lookouts—or electronic alerts—on the records of overstay subjects that are recorded in databases. However, DHS did not create lookouts for the following two categories of overstays: (1) temporary visitors who were admitted to the United States using nonimmigrant business and pleasure visas and subsequently overstayed by 90 days or less; and (2) suspected in-country overstays who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety. Broadening the scope of electronic lookouts in federal information systems could enhance overstay information sharing. In April 2011, we recommended that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Under Secretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for these two categories of overstays. Agency officials agreed with our recommendation and have actions under way to address it. For example, agency officials stated that they have met to assess the costs and benefits of creating lookouts for those categories of overstays.

This concludes my prepared testimony statement. I would be pleased to respond to any questions that members of the Subcommittee may have.

Contacts and Acknowledgments

For further information regarding this testimony, please contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov. In addition, contact points for our Offices of Congressional relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Rebecca Gambler, Acting Director; Anthony Moran, Assistant Director; Kathryn Bernet, Assistant Director; Jeffrey Baldwin-Bott; Frances Cook; Kevin Copping; and Taylor Matheson.

Related GAO Products

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Mr. GALLEGLY. Thank you, Mr. Stana.
Dr. Carafano?

TESTIMONY OF JAMES JAY CARAFANO, DIRECTOR, DOUGLAS AND SARAH ALLISON CENTER FOR FOREIGN POLICY STUDIES, DEPUTY DIRECTOR, THE KATHRYN AND SHELBY CULLOM DAVIS INSTITUTE FOR INTERNATIONAL STUDIES, THE HERITAGE FOUNDATION

Mr. CARAFANO. Thank you, sir. And I would like to thank the Committee for holding this important hearing.

I believe that this is the single most important visa issue that the Congress and the President can address, just because the majority of visitors who come lawfully through this country use this visa program, so it is our single most important visa program, but also because this is the wave of the future. If you go out there, you look at the trends in international travel and when you look at countries who are doing innovative work like Australia, this is the trend of where we are going. So this is the future. And getting this program right, well, I don't think, in terms of international travel, anything is more important.

The Heritage Foundation, I am very proud to say, has dedicated substantial resources to looking at homeland security issues. I believe that we have the largest—and I am proud of the work that we have done. And in every issue that we have looked at, we have held the same standard, which was we insist on programs and answers and solutions that keep the Nation safe, free, and prosperous, and we won't compromise on any three of those objectives. And there are few issues that we have dedicated more resource and time to than looking at the Visa Waiver Program.

So, in my testimony, I wanted to highlight what I thought really are the key issues to be addressed. The first one is the linkage between biometric exit and authority for visa-waiver caps. The second is the issue of using refusal rates versus overstay rates for authority to enter into an agreement to the program and to remain in the program as a country. And the third is the future of the Visa Waiver Program. And I would like to address each of those very, very quickly.

On the first, whatever—you know, I am not going to—I mean, it doesn't make any sense to really look at whatever the rationale was and why people thought biometric exit was a really great idea or why linking that to the Visa Waiver Program was a really good idea. And, you know, I can make arguments either way. Those arguments were made several years ago, and I think we have to evaluate where the program is and where its future is going based on the reality today.

So, by our count, there have been at least 43 known terrorist attacks aimed at the United States since 9/11 that have been thwarted—43. Increasingly, most of those have been homegrown. Increasingly, I believe you have to give a lot of the credit for that for the fact that the United States and countries that have adopted similar initiatives to the United States, like Australia, are becoming harder targets for transnational terrorists. So, from a criminal perspective or from a terrorist perspective, what we are doing must be working.

And I think you have to look at not just an individual program like Visa Waiver but the complement of all the tools that we are using to thwart criminal and terrorist travel, when you really

evaluate that and to figure out what additional value, either from an immigration perspective or criminal law enforcement perspective or counterterrorism perspective, that biometric brings to the table. And I think it is very, very difficult to argue, that you would really only gain very, very marginal benefits at all, at extremely significant additional cost. So I really don't see where the cost-benefit analysis of linking those two programs together, at this point in time, really makes sense anymore.

On refusal versus overstay rates, I think the issues on refusal rates as a valid predictor and as a measure of overstay propensity are legion. We have had them for years. Clearly, the standard by which we run the program, overstay would be a much, much more effective metric. We should move toward that metric. And it is important to get that metric right because it is valuable for determining whether countries should not just enter the program but whether they should remain in the program and also to identify what are the best practices, what are the lessons learned, what are the ways to adapt and improve the program over time. So I think moving toward the overstay rate is not only the right metric, it is the metric that we need to really evaluate and keep this program healthy for decades to come.

On the third issue of whether the Visa Waiver Program—it is estimated in about 10 years the value of international travel is going to double, to about $2 trillion. The U.S. percentage of that is shrinking, and it is going to shrink in the future if we don't improve access to this country. And that is not just an economic issue, although right now I think it supports millions of—2 million plus jobs on international travel, but it is going to affect us in terms of public diplomacy, in terms of intellectual capital, and a whole other realm. We have to get back into the business of bringing people safely into this country.

We really have two alternative strategies: expanding and improving visa-waiver or expanding visa-access programs, or lowering the standards for visa-access programs. Expanding the speed of the way we issue visas would require significant capital investments or lowering standards, which would increase risks. I think the alternative of enhancing the Visa Waiver Program and using that as an instrument to bridge to the future is a much, much more cost-effective way of getting back our legitimate share of international travel.

And, conversely, of course, as you add countries to the program, you free up resources, not just in the State Department but in DHS, for strengthening the Visa Waiver Program and focusing visa resources on countries that are truly countries of concern.

And so what would my recommendation be? It would be that, look, this Administration needs to learn how to walk and chew gum; they need to learn how to expand this program and how to address and strengthen the management of the program at the same time.

The new countries that are coming into the program, they are not the problem. They are the most compliant, they most want to be there, they are the least security risk. And when you bring these countries into the program, that actually, I think, strengthens your position to go to existing countries in the program and present

them with the challenge of meeting the standards that other countries have demonstrated that they can meet. You learn new lessons. I mean, you know, we have already seen this with United States and Australia, where as we make initiatives, they are learning—as we are making initiatives, they are learning from us. So I think bringing countries into the program actually is going to allow us to pull other countries which are not quite up to standard yet into the future.

Thank you very much.

[The prepared statement of Mr. Carafano follows:]

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CONGRESSIONAL TESTIMONY

"Next Steps for the Visa Waiver Program"

Testimony before
Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary
United States House of Representatives

Hearing on "Visa Waiver Program Oversight: Risks and Benefits of the Program"

December 7, 2011

James Jay Carafano, Ph.D.
Deputy Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Director of

the Douglas and Sarah Allison Center for Foreign Policy Studies
The Heritage Foundation

My name is Dr. James Jay Carafano. I am the Deputy Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Director of the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Thank you for the opportunity to appear before the committee today and address this vital subject. According to the Congressional Research Service, in "FY2009, 16.2 million visitors entered the United States under this program [the Visa Waiver Program], constituting 50.5% of all overseas visitors." That makes the Visa Waiver Program arguably the nation's most important visa program. Getting it right ought to be a top priority for the Congress and the President.

In my testimony today, I would like to concentrate on what I see as three key issues in addressing the next steps for the Visa Waiver Program: (1) decoupling the requirement for a biometric exit registry for those leaving the U.S. at port of entry from management issues related to the Visa Waiver Program; (2) adopting visa overstay rates rather than visa refusal rates as the metric to determine qualification for and participation in the Visa Waiver Program; and (3) ensuring high-security standards while promoting the participation of additional qualified countries. I would like to address these three issues in turn.

My responsibilities at The Heritage Foundation comprise supervising all of the foundation's research on public policy concerning foreign policy and national security. Homeland security has been a particular Heritage research priority. The foundation produced the first major assessment of domestic security after 9/11.[1] Over the past decade, we have assembled a robust, talented, and dedicated research team. I have the honor and privilege of leading that team.

Heritage analysts have studied and written authoritatively on virtually every aspect of homeland security and homeland defense. The results of all our research are publicly available on the Heritage Web site at *www.heritage.org*. We collaborate frequently with the homeland security research community, including the Center for Strategic and International Studies (CSIS), the Aspen Institute, the Center for National Policy, the Hudson Institute, the George Washington University Homeland Security Policy Institute, and the Strategic Studies Institute and Center for Strategic Leadership at the Army War College. Heritage analysts also serve on a variety of government advisory efforts, including task forces under the Homeland Security Advisory Council and the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities. Our research programs are nonpartisan, dedicated to developing policy proposals that will keep the nation safe, free, and prosperous.

I am particularly proud of The Heritage Foundation's long and substantive record of research on visa management and related security and immigration. This effort reflects

[1] L. Paul Bremer III and Edwin Meese III, *Defending the American Homeland: A Report of the Heritage Foundation Homeland Security Task Force* (Washington, D.C.: The Heritage Foundation, 2002).

the foundation's commitment to advancing public policies that enhance our security by thwarting terrorist travel; encouraging economic growth by promoting the legitimate exchange of goods, peoples, services, and ideas among free nations; and fostering a free and open civil society—all at the same time.

The Visa Waiver Program: Progress and Problems

The Visa Waiver Program allows for visa-free travel—for leisure or business—for up to 90 days among member states. It encourages commerce, tourism, and professional and cultural interchange between allies. Best of all, it enhances security. Countries participating in the Visa Waiver Program must meet higher-than-normal standards in combating terrorism and in law enforcement, border control, document security, and reporting information on lost and stolen passports. More important, they agree to share much more security-related information about travelers than what we get from the standard visa process. This information sharing helps identify and track suspected terrorists and their supporters, international criminals, and visitors who overstay their allotted time in country.

After 9/11, as part of its mission to strengthen our national security, the Department of Homeland Security restructured the program both to beef up the security requirements and to bring more countries into the program. Nine new countries were brought into the improved Visa Waiver Program. Now, however, current law prevents adding new countries with a visa refusal rate greater than 3 percent until Homeland Security develops and implements a system to biometrically track the departure of foreign visitors, a program that will likely never happen and has nothing to do with the Visa Waiver Program.

Requirement for Biometric Exit Outdated

As you well know, the directive for implementing biometric exit—recording of a uniquely identifiable intrinsic physical characteristic (most often fingerprints) at the point of departure from the United States at land, sea, or airport point of entry—predates 9/11. After almost two decades, the federal government has failed to implement this Congressional mandate. Regardless of what merits the framers of the requirement believed biometric exit would have served in the past, either as an immigration management tool, a criminal enforcement measure, or a counterterrorism initiative, the need for this program needs to be reassessed in light of current requirements.

From a counterterrorism perspective, it is difficult to justify the expense of biometric exit. When this program was originally conceived, there were few effective tools for tracking terrorist travel. Today, there are many. It is clear that the U.S. has become a much harder target for transnational terrorism than it was before 9/11. Law enforcement agencies have foiled at least 43 terrorist plots since the attacks on New York and Washington in 2001.[2]

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[2] James Jay Carafano, "Foiling 43d Terror Plot Test for Administration's Priorities," Heritage Foundation WebMemo No. 3415, November 21, 2011, at *http://thf_media.s3.amazonaws.com/2011/pdf/wm3415.pdf*,

Increasingly, we find that these plots are "homegrown," in part because it has been more difficult for transnational terrorist groups to organize operations overseas and dispatch operatives to the United States.

Even where we have seen the requirement for tracking suspects trying to exit the United States in "real time," we have seen where these tasks can be conducted effectively using existing enforcement tools. No case is more illustrative than the apprehension of Faisal Shahzad, the Times Square bomber, who was placed on a terrorist watch list, indentified, and arrested attempting to flee the country on an international flight less than two days after the aborted attack.

From the perspective of both immigration and criminal enforcement, biometric exit would be a very limited tool. Federal authorities lack the resources to investigate every lead such a system might produce. Furthermore, by itself, a report that an individual had failed to register an exit and potentially was unlawfully present in the United States would have scant utility in prioritizing law enforcement resources. Such a report might simply be a false-positive—the individual's status might have changed. The report alone would provide no assessment of risk.

In terms of both immigration and criminal enforcement, biographical data (name, date of birth, and country of origin) provide suitable data for most enforcement activities. For immigration purposes, the most useful information is trends in overstays from individual countries and classes of users. This information would help to identify accurately where consular officers and officers at the port of entry ought to focus their efforts. Likewise, it would help to identify where U.S. visa policies toward individual countries ought to be reassessed. In addition, for most high-priority immigration violation or criminal investigations, biographical data ought to be sufficient.

In particular, for the management of the Visa Waiver Program where the issue concerns general compliance with visa policies rather than specific individual cases, biographical data should be more than sufficient to provide the U.S. government the information it needs to manage the program effectively.

James Jay Carafano, "Forty-Second Plot Highlights State-Sponsored Terrorism Threat," Heritage Foundation *WebMemo* No. 3392, October 12, 2011, at *http://www.heritage.org/research/reports/2011/10/forty-second-plot-highlights-state-sponsored-terrorism-threat*; James Jay Carafano, Matt Mayer, and Jessica Zuckerman, "Forty-First Terror Plot Foiled: Homegrown Threat Thwarted by Local Law Enforcement and Intelligence," Heritage Foundation *WebMemo* No. 3376, September 29, 2011, at *http://www.heritage.org/research/reports/2011/09/forty-first-terror-plot-foiled-homegrown-threat-thwarted-by-local-law-enforcement-and-intelligence*; James Jay Carafano and Jessica Zuckerman, "40 Terror Plots Foiled Since 9/11: Combating Complacency in the Long War on Terror," Heritage Foundation *Backgrounder* No. 2604, September 7, 2011, at *http://www.heritage.org/research/reports/2011/09/40-terror-plots-foiled-since-9-11-combating-complacency-in-the-long-war-on-terror*.

Given the costs of implementing comprehensive biometric exit, the fiscal constraints that will likely be imposed on the Department of Homeland Security in the years ahead, and the department's many priorities, the biometric exit mandate can no longer be justified. It is past time to repeal the requirement. Decoupling the mandate for biometric exit from the authority of the government to add new countries is a logical first step.

Overstay vs. Refusal Rates

As a qualification for the Visa Waiver Program, "refusal rates"—the percentage of visa applications denied by consular officers—have been used to determine a country's eligibility to participate in the program. The rates were interpreted as a measure of the propensity to "overstay," to remain unlawfully in the United States beyond the 90-day period authorized under the Visa Waiver Program.

There is ample evidence to suggest, however, that refusal rates are not an optimum metric for assessing the potential to overstay. For example, if an individual submits five visa applications in a year and all are denied, they are all counted toward the refusal rate—thus inflating the rate. While it is true that if a subsequent application is approved in the same year, the previous refusals are not counted against the rate, the reality is that often, as the number of refusals climbs, the likelihood of a subsequent approval does not. Furthermore, individuals may be denied visas for reasons other than a propensity to overstay (including, for example, health-related issues and criminal concerns).

With the advances in biographical exit records management, it would be far more prudent to rely directly on visa overstay rates as an appropriate metric for qualifying for VWP. Strengthening biographical exit records management and compliance, as well enhancing and ensuring compliance with the Electronic System for Travel Authorization (ESTA) ought to be the Department of Homeland Security's priorities. While it would also be prudent to invest more in improving automated entry-exit of existing biographical data, it is time to make the switch from refusal to overstay rates.

Furthermore, it should be remembered that even under the Visa Waiver Program, the U.S. retains mechanisms to deter likely overstays. Individuals, for example, can be denied authorization to travel to the U.S. when they register under the ESTA. Additionally, CBP officers at the port of entry may make determinations of inadmissibility such as seeking work without proper legal certification.

Expanding the Ranks

For both security and economic reasons, it makes sense to judiciously add more countries to the family of the Visa Waiver Program nations.

From a security perspective, the U.S. obtains far more and more useful information for immigration and criminal enforcement and effective counterterrorism from partner Visa Waiver Program countries than from those where visas are required.

From an economic perspective, boosting international travel ought to be a priority. Inbound travel to the U.S. already supports almost 2 million American jobs. The value of global travel is expected to double over the next 10 years to over $2 trillion. Unfortunately, right now, the U.S. share of that business is shrinking. For example, the U.S. share of long-distance travel is down considerably over the past decade.

If the trend line continues, the U.S. could be shedding jobs in this sector of the economy rather than adding them. On the other hand, if America recaptured its fair share of international travel, by some estimates over an additional 1 million jobs could be created over the next decade.

The most effective way to encourage travel is through the Visa Waiver Program. In some countries, wait times for visas have ballooned to unreasonable lengths. *The Wall Street Journal*, for example, recently reported that in Brazil, the wait times for these interviews run up to four months. It is far more cost-effective to expand VWP than to add the infrastructure that would be required to speed visa processing and management. Expanding VWP will not only allow for bringing in more qualified nations, it will also permit the Departments of State and Homeland Security to shift resources to countries where the demand for visas is outstripping the US government's capacity to issue them in a timely and effective manner.

Thank you for the opportunity to speak today on this important issue. I urge the Congress to decouple the Visa Waiver Program from the biometric exit program, rethink the metrics for qualification for the Visa Waiver Program, and urge the Administration to expand the program to qualified nations as rapidly as practical.

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Mr. GALLEGLY. Ms. Vaughan?

TESTIMONY OF JESSICA M. VAUGHAN, DIRECTOR OF POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES

Ms. VAUGHAN. Thank you for the opportunity to be here.

In my view, these proposals to modify the Visa Waiver Program, with the result that would expand participation in it, are very premature. We have heard about some of the benefits of the program, which are real, for foreign visitors, obviously, and also the travel industry and the State Department. And we are all aware of the risks and problems that are associated with any relaxation of entry requirements and screening—not just security risks, which other experts here have emphasized today, but also the problems associated with illegal immigration.

The risk I see is that if the Visa Waiver Program is modified or expanded before better security measures, better visitor tracking, and better interior immigration law enforcement is in place, Americans are going to be more vulnerable to attack and more exposed to transnational crime and the country is going to experience even more illegal immigration, all of which comes at enormous fiscal and social cost to the Nation.

And I would also argue that, yes, the program has worked well in expanding travel here, but part of the reason for that is because we have been relatively strict about which countries are admitted.

We have heard from Mr. Heyman about the potential for very important security enhancements that we hope will eventually be implemented, but, at this time, most of those enhancements are really very much aspirational. We really need to give DHS a chance to catch up and develop tools to evaluate the results since the last major expansion of the program, which occurred right in the middle of some enormous economic and political upheaval.

And, of course, we can still pursue security enhancements, like information sharing, even outside of the framework of the Visa Waiver Program. There is no reason we can't seek those agreements, regardless, with these other countries.

Mr. Stana has covered most of the issues related to the Department of Homeland Security's slow progress in meeting congressional expectations, so I am going to focus my remarks mainly on the issue of overstay metrics.

But before I do, I just want to make one quick comment about ESTA. I agree that ESTA can help determine—can help with screening people for terrorism ties or criminal ties. But one thing that ESTA cannot do is help overcome a country's basic issues with eligibility and compliance. Just because someone is not a known terrorist or a criminal, which is what mainly ESTA can determine, does not mean that they qualify for entry.

So what kind of overstay metrics do we need? Well, we have known for some time that visa overstayers represent about 4 million to 6 million people within the illegal alien population. A few have become terrorists; some commit crimes. But, in general, they are costly to the taxpayers, based on reputable studies, that is about between $3 billion and $5 billion every year.

We also know that we need better data, but I question whether the biographic matching system that DHS has proposed, based on

ADIS, will be able to deliver what Congress mandated and what Federal agencies need to maintain the integrity of the system. Since ADIS is maintained by the airlines, not the government, there could be data integrity problems. It is not biometric, so it can't actually authenticate the identity of travelers. It is more susceptible to fraud. The users of the system tell me that, as it is operating now, because it is biographic, it can have difficulty producing matches. And it is so inexact that sometimes people using it either get hundreds of matches, which is not helpful, or none at all because the system can't match records where people change their names.

I would agree with Mr. Carafano that once we have credible data, the overstay rates are superior to refusal rates for determining likely compliance from visitors. But I would caution that they should not be considered in isolation from refusal rates or other key metrics like adjustment-of-status requests and so on.

And it is certainly premature to speculate about what an acceptable overstay rate might be because we have no reliable information about what is happening now. A low overstay rate might be an indication of a high refusal rate that is right-on, or it could be an indication for countries, for example, from the Western Hemisphere, where a lot of the people who are coming here illegally are actually entering over the land border, not with visas. So mere reliance on the overstay rate is going to be misleading with some of those countries.

Obviously, we have to accept some risk in our admissions, and we know that there are going to be mistakes. Therefore, we also have to make sure that we have a satisfactory level of interior immigration law enforcement. And, right now, we don't have that.

There are 2 million, roughly, criminal aliens living here, according to ICE. There are about 7 million illegal aliens working here in jobs that we need for Americans and legal immigrants. We have sanctuary cities and States that refuse to cooperate with Federal efforts and attract illegal immigration. We don't have mandatory status verification at the workplace. And the current Administration is broadcasting that it is targeting only those illegal aliens who are convicted of serious offenses for enforcement.

So expanding the Visa Waiver Program too fast or irresponsibly is going to make it that much harder for ICE, and the price will be paid by those Americans who are victims of crimes committed by people who shouldn't be here or who lose job opportunities.

Thank you.

[The prepared statement of Ms. Vaughan follows:]

Visa Waiver Program Oversight:
Risks and Benefits of the Program

U.S. House of Representatives Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
Washington, DC

December 7, 2011

Statement of Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies

Chairman Gallegly, Ranking Member Lofgren, and other subcommittee members, thank you for the opportunity to be here today to discuss the risks and benefits of the Visa Waiver Program (VWP), which are important to consider in light of proposals to modify the eligibility criteria and expand the number of participating countries. In my view, such proposals are very premature. The Department of Homeland Security has yet to implement the Congressional mandates for systems that can produce metrics that would permit a proper evaluation of countries' eligibility – most importantly, an effective visitor exit recording system. DHS also has failed to fully implement and properly manage the security enhancements that were used to justify the last VWP expansion. In addition, we currently lack a robust interior immigration enforcement capability to address the inevitable abuses of the program. Finally, there are legitimate law enforcement concerns about visitors from some of the countries on the short list for consideration. If the program were to be expanded before better visitor tracking and enforcement is in place, Americans will be more vulnerable to terrorist attack and more exposed to organized criminal enterprises, and country will experience even more illegal immigration, all of which comes at enormous fiscal and social cost to the nation.

Besides, what is the hurry to expand the VWP? The U.S. travel industry, which is one of the organized interests that is perennially pushing for VWP expansion, is not an industry in crisis. Furthermore, lawmakers and agency leaders have yet to determine if the global economic problems that unfolded just as we were undertaking the last VWP expansion have affected the eligibility of some of the more marginal participating countries, such as Greece, Ireland and Portugal. It is important that Congress vigilantly exercise its oversight authority to ensure that DHS provides the missing security and enforcement pieces to minimize the inherent risk in the VWP, so that the benefits can be fully realized.

What are the Benefits of the Visa Waiver Program?

The main benefits to the United States are:

- Encourages legitimate travel, which benefits the U.S. economy.
- Helps focus consular resources on higher-risk travelers.
- Negotiations over participation have increased information-sharing to identify travelers who are a threat to national security and public safety.
- Reciprocity for U.S. travelers.

What are the Risks of the Visa Waiver Program?

Immigration policymakers on the Hill and in the Executive Branch have understood for well over a decade that visa overstayers represent a significant share of the illegal alien population, estimated to be

11 million in 2010. The most recent overstay estimate ranges from one-third to one-half of the illegal alien population, or between four to six million illegal aliens. These illegal settlers present a possible national security risk -- several of the 9/11 hijackers were visa overstayers, and others have been caught working in critical infrastructure facilities or other sensitive locations. They commit crimes. For example, among the most violent criminal gangsters that ICE has arrested under its anti-gang program known as Operation Community Shield are several murderers who originally entered on non-immigrant visas or the VWP. In addition, like other illegal immigrants, visa overstayers are costly to taxpayers. The total net cost of illegal immigration runs about $10 billion per year at the federal level, after taxes are accounted for, so the share of that cost attributable to visa overstayers is likely between three to five billion dollars per year.

Rudimentary Exit Recording, But Still No Reliable Overstay Reporting.

Most observers agree that collecting and analyzing information on visa overstayers is key to maintaining the integrity of the immigration system. Congress first mandated the development of an entry-exit system in 1996, after the first World Trade center bombing. In addition to producing actionable enforcement leads, a true entry-exit recording system would enable policymakers to see which travelers are not complying with the law. Visa overstay data would provide information on how travelers actually behave, and would be less speculative than refusal rates, which reflect the aggregate of consular officers' assessment of possible behavior.

This data is also important to the State Department, which needs better information to use in making visa policy and issuance decisions. It is especially important in making an objective and sound determination of which countries might qualify for the Visa Waiver Program.

As a condition for granting DHS the sole authority and discretion for determining membership in the Visa Waiver Program, in 2007 Congress directed the agency to establish a biometric exit recording system for air travelers that can account for at least 97% of those who depart by air. This was in addition to long-standing requirements for DHS to implement an exit recording system as part of US-VISIT, and long-ignored requirements for DHS to produce annual estimates of how many travelers have overstayed visas and the nationality of visa overstayers (the Data Management Improvement Act of 2000 and the Visa Waiver Permanent Program Act).

In December, 2009 testimony before the Senate Judiciary Committee, DHS Secretary Janet Napolitano signaled that the agency would not be moving forward to establish a biometric exit recording system.[1] In September, 2011, Napolitano told the Senate Homeland Security Committee that the agency was moving on a "fast track" to create a different system, presumably based on the tracking of air and sea passenger information from passenger manifests. This biographic matching system, known as the Arrival Departure Information System (ADIS), has been in place since the beginning of 2004.

Although ADIS is helpful, it does not fulfill the Congressional requirements for a true exit system and can produce only limited data for program evaluation metrics. Currently it is used by ICE to identify overstayers who might present security or safety risks and by consular officers to verify an applicant's record of compliance on prior visits. But the ADIS system has a number of limitations:

- ADIS is maintained by the airlines, so there is no way to verify the accuracy of the information or ensure that all travelers comply with a departure reporting requirement.
- It is a biographic system, not the Congressionally-mandated biometric system, so it cannot authenticate the identity of departing passengers. This means it would be easy for someone to

[1] http://cis.org/vaughan/napolitanoexittracking.

create a record of leaving the country without actually leaving. In addition, the lack of biometrics makes it less useful for law enforcement, when it is preferable to have the most reliable identity match possible.

- Because it is biographic, the system can have difficulty producing matches, and inexact matches can produce either too many records for review or none at all. If an alien has changed names, such as through marriage, the system cannot match the records.
- ADIS checks are neither automatic nor required as part of the visa adjudication process. They are performed only at the discretion of individual consular offices; some may use the system diligently, others may never bother. At this time, lawmakers cannot not assume that ADIS is playing a large role in preventing or deterring overstayers just because it is available.

Moreover, while DHS has been using the information generated by ADIS for operational purposes – to identify possible overstayers, to create lookouts for ICE and for consular officers, it resisted and tried to avoid, and twisted congressional requirements to produce regular reports on the total number of overstays, their citizenship, visa categories, and other key data.

Is There a Magic or Acceptable Overstay Rate?

While I would argue that (once we have credible data) the overstay rates are superior to refusal rates for determining likely compliance for foreign visitors, I would caution that they should not be considered rigidly or in isolation from refusal rates or other key metrics. It is certainly pre-mature to speculate about what the acceptable overstay rate should be, since we have little reliable information on what is happening now.

For enforcement purposes, ICE needs flexibility to determine when a subject raises concerns. A grandmother who overstays by one month to help take care of a sickly new baby in the family is obviously of less concern than a young man from a country associated with terrorism, who has gone missing one week after the start of an English language or airplane mechanic training program that allegedly was the reason for his visit.

For VWP evaluation purposes, a low overstay rate might be an indication of an appropriately high refusal rate; it does not necessarily mean that the country should participate in the VWP. DHS should also consider the number and type of adjustment of status applications from citizens of candidate countries – not only those that are approved, but those that are denied. These figures could indicate if visitors are using temporary visas or visa waiver admissions to bypass the regular legal immigration rules.

In general, I suspect that the three percent overstay rate proposed in H.R. 959 is probably too high to serve as a good indicator of VWP eligibility. The most recent study of overstays that I am aware of, from the Pew Hispanic Center[2] estimated that the overstay rate for Mexican holders of Border Crossing Cards (a type of short-term visitor visa) was 1.7 percent. This seemingly-low overstay rate, at least by the standards of H.R. 959 supporters, produces hundreds of thousands of illegal immigrants per year, and of course no one in their right mind would suggest that the United States should offer Mexican nationals visa-free travel.

The case of Brazil illustrates another reason why visa overstay rates cannot be the sole measure of a country's readiness for VWP participation. Assuming for the moment that DHS can actually calculate a meaningful overstay rate, it easily can understate the problem of illegal migration from certain countries, if a substantial number of the illegal aliens from that country do not enter on temporary visas, as is the case with Brazil and other South American countries. A significant share of illegal immigrants from

[2] Pew Hispanic Center Fact Sheet, "Modes of Entry for the Unauthorized Migrant Population," May 22, 2006.

these countries do not seek visas, but instead travel to Mexico and enter illegally over the over the land border. Their numbers are reflected in the overall estimates of the illegal population, but they will not be reflected in the overstay calculations.

Electronic Travel Authorization of Limited Use in Detecting Unqualified Travelers.

The implementation of the Electronic System for Travel Authorization (ESTA) process has been touted as a major security enhancement to the Visa Waiver Program. It is important to recognize that while this process will provide the opportunity for advance database checks on travelers before they arrive, and may succeed in alerting officials to the pending arrival of people who may be of interest, the ESTA tool is really of very limited utility in determining the eligibility of travelers or screening out terrorists and criminals, and certainly no substitute for a consular interview. Much as a doctor can best make a diagnosis by seeing and talking with the patient, the consular interview is the best tool for evaluating the qualifications of prospective visitors. And qualifying for admission to the United States is not simply a matter of not being a known terrorist or criminal. To be admitted, visitors need to demonstrate that they have a legitimate reason for travel and that they are likely to return home. That determination simply cannot be done electronically.

Moreover, the GAO has reported that some passengers are being allowed to board planes for the US even if they have not obtained ESTA approval, in violation of program rules, and defeating one of the main purposes of the program, which is to prevent the travel of unqualified and/or potentially dangerous individuals. The same GAO report noted other security elements of the program centered on information sharing that have yet to be implemented.

Proposed Expansion Countries Raise Security and Law Enforcement Concerns.

The State Department once stated in a response to a GAO report, "The Department recognizes that a major reason for the [Visa Waiver] Program's success lies in the strict standards for participation."[3] Because we currently lack the safeguards to prevent large numbers of inadmissible travelers from entering, and because we lack the ability to identify and remove those who overstay, the expansion of the program to include more than the clearly-qualified countries is risky. Among the countries that have been proposed for expansion: Brazil, Argentina, Chile, Croatia, Uruguay, Poland, and Taiwan. While some on the list appear to be closer to eligibility than others, none is an obvious candidate. A number of these countries are associated with serious law enforcement problems such as organized crime and visa fraud, and a number have huge visa demand, large numbers of visa applicants who are not qualified, large populations of settled illegal immigrants, and weak records of visa compliance.

Of the group, Taiwan is the only short-list country under discussion that has a per capita income and standard of living that is on par with that of the average VWP nation or the United States,[4] meaning that, on paper at least, in general its citizens might have less economic motivation to overstay. The refusal rate for Taiwanese nationals seeking short-term visitor visas is also relatively low, averaging four percent in the last three years. On the other hand, Taiwan has a long tradition of immigration to the United States, a sizeable diaspora here, and significant pent-up visa demand, judging by the popularity of the visa lottery and investor visa categories, all of which suggests that there is some risk of VWP abuse. Like South Korea, Taiwan also has a history of its citizens manipulating U.S. visa rules in order to access

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

[4] According to the International Monetary Fund's scale measuring Gross National Product and Purchasing Power Parity per capita, the average national wealth of the United States is $46,900. The GDP/PPP per capita of the average VWP country is $34,400. Taiwan's is $35,600. The other proposed countries: Brazil - $11,300, Argentina - $15,900, Chile - $15,000, Croatia - $17,800, Uruguay - $14,300, Poland, $19,000.

the U.S. public educational system and establish a foothold for future permanent residence. In addition, the existence of sophisticated and violent organized crime syndicates and gangs with ties to Taiwan raises law enforcement concerns.

Argentina also has had a relatively low refusal rate of just over three percent in recent years. Argentina was a participant in VWP from 1996 to 2002, when an economic crisis prompted many of its citizens to attempt to settle illegally in the United States, causing it to be disqualified. This country might be a good candidate again once DHS has fully implemented Congressional requirements on exit tracking, shown satisfactory compliance based on reliable overstay figures, and passed muster with a full security evaluation.

Poland has been lobbying incessantly to be included in VWP for the last several years, and unfortunately some who are associated with this campaign have tried to emotionalize the VWP eligibility issue and characterize it as a measure of bilateral friendship. In reality there are some serious hurdles for Poland to overcome before it can make a credible case to participate. More than 10 percent of the Polish visitor visa applicants over the last several years have not qualified, which no doubt reflects the substantial standard of living gap between our countries and the difficult economic conditions that have caused the noticeable migration of Polish young people to other countries. The Poles seem to have a poor record of visa compliance and visa fraud, sometimes linked to the Polish organized crime groups that are embedded in the sizeable illegal Polish population here. In addition, Poland sometimes has been uncooperative in accepting its citizens for deportation from the United States.

Like Poland and Taiwan, Brazil sends large numbers of immigrants to the United States, both legally and illegally. In fact, Brazil is one of the ten countries with the largest illegal alien populations (180,000), and in 2010 was number six on the list of countries with the most aliens removed. Few countries are the source of more illegal immigrants to the United States than Brazil. Like the Polish illegal population, the Brazilian illegal population is concentrated in certain parts of the United States, and therefore the impact is profound in a few localities, but largely unnoticed by the rest of the country. And, as noted above, this significant level of illegal immigration may not be captured by overstay estimates alone.

Interior Enforcement Is Lacking.

Besides lacking adequate screening to prevent the entry of terrorists, criminals and illegal immigrants, the federal government devotes relatively few resources to identifying and removing illegal immigrants, or to keeping them from becoming established here.

The immigration enforcement agency (ICE) has just a few thousand special agents and deportation officers to cope with an illegal alien population of 11 million, plus tens of thousands of criminal aliens who are not here illegally but are removable because they have committed serious crimes. ICE estimates that there are approximately 2.1 criminal aliens living in the United States, costing taxpayers about $1.6 billion each year. The Obama administration is content to remove fewer than 400,000 illegal and criminal aliens per year, and a large share of these removals occur in the border zone, not the interior. In addition, it has relaxed certain USCIS policies that formerly discouraged visitors from using temporary admission to cut in front of the millions of applicants waiting to immigrate legally from outside the States. In general, The Obama administration has broadcast widely that only those who are convicted of serious crimes will be subject to immigration law enforcement.

Only a handful of states require employers to verify the immigration status of new workers, and workplace enforcement is not the top priority for ICE, so few employers feel any urgency to comply voluntarily with the laws forbidding the hiring of illegal workers. A couple of states still issue drivers

licenses to illegal aliens and temporary visitors. These documents can be used to obtain employment, bank accounts, and firearms, among other trappings of a legal existence. Even if DHS is able to determine which visitors overstay, there is little chance that ICE will act on the information.

So while the expansion of the Visa Waiver Program may serve foreign policy goals and benefit certain foreign travelers, any expansion comes at a price. This price will be paid by those Americans who become victims of crimes committed by people taking advantage of the lack of visa controls, by those who lose job opportunities to new illegal immigrants overstaying their welcome, and by taxpayers who must shoulder the burden of public services, criminal justice expenses, and increased immigration law enforcement that will be necessary as a result. Congress must do what it can to try to reduce the security and fiscal cost of the program by insisting that DHS fulfill its obligations to implement a genuine exit recording system, produce the best possible overstay estimates, and comply with the other security requirements in the authorizing legislation. In addition, while there is no statutory requirement for this, the pending expansion of the VWP should be accompanied by an infusion of additional resources for law enforcement as well as the implementation of measures, such as mandatory verification of immigration status in the workplace, that will discourage visa overstayers, and all prospective illegal immigrants, from settling here. Lastly, Congress should clarify regulations to limit more strictly any possibilities for adjusting status after entry under the VWP or with a regular non-immigrant visa.

Respectfully submitted by,

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Mr. GALLEGLY. Thank you, Ms. Vaughan.

Mr. Heyman, DHS has told the Committee staff that DHS has identified 757,000 in-country overstay leads. How many agents does DHS currently have that are specifically assigned to make sure that those 757,000 illegal immigrants are located and de-

ported? How many specifically do you have assigned to take on the task of 757,000? Is it less than 10,000?

Mr. HEYMAN. So let me give you context of that number. This summer, we decided, as part of our review of the Visa Waiver Program and looking at overstays, to make an effort to—there was a 1.6 million backlog dating back to 2004. We ran it through a number of databases, which we had not done before previously. And just in the checks against the databases, we were able to get—all but 757,000 were cleared, as in people who had left the country or changed status or otherwise. The 757,000 possible overstays were then vetted by CBP and the National Counterterrorism Center for national security and other rules, and we were able to get that number down even further.

Let me tell you the—jump ahead to the short story. The investigative leads that came out of that numbered only in the couple of dozens after we ran through the number of data checks and evaluations. And, of those, we—ICE was given those leads, a number of them were duplicate records, a number of them were people who were in status, some were departed. The answer is, it came up with only two investigations that were required by the field, and they both turned out not to be of concern.

Mr. GALLEGLY. Mr. Heyman, I understand all the wonderful work they are doing. I am just trying to determine whether we have enough wonderful people to do all the work that needs to be done.

Of the 757,000—I will ask the question one more time—how many people are specifically tasked to—I would like—obviously, you have to have an exact number or within two or three.

Mr. HEYMAN. Yeah, there are sufficient resources for the internal enforcement, which is now based upon prosecutorial discretion. And, as I said, the 757,000—we are not required to do field investigations.

Mr. GALLEGLY. Okay. Can you tell me how many people specifically are assigned just for the purpose of field investigation?

Mr. HEYMAN. It is in the thousands. I will get you the exact number.

Mr. GALLEGLY. I am sorry?

Mr. HEYMAN. It is in the thousands. I will get you the exact number.

Mr. GALLEGLY. Okay. I would appreciate that, and we will make it a part of the record of the hearing.

[The information referred to follows:]

DHS Responded to Mr. Gallegly's question

*"Among the missions of the Department of Homeland Security is the removal of aliens who are not legally present in the United States. In response to the Chairman's questions it is important to point out that many people support all of the missions of the Department in various ways and at different levels. Within the Department, ICE is charged with removal of aliens not authorized to be in the United States and subject to removal orders. At the end of the last fiscal year, ICE Enforcement and Removal Operations (ERO) had 7,376 funded 1801 (officer) positions. The 1801 officers are the primary "removal" force. However, their efforts would not be possible without the support from the Criminal Investigators, of which ICE Homeland Security Investigations at the end of the last fiscal year had 7,407 funded positions. Additionally, given the need to prepare each removal case within the parameters of US law, it is necessary to note that ICE retains approximately 950 attorneys in its Office of the Principal Legal Advisor. All three of these divisions work would not be possible without the support of an additional layer of support personnel"

Mr. GALLEGLY. Of the 757,000, or whatever that magic number is, in the last 12 months how many have been deported?

Mr. HEYMAN. As I said, those are not all overstays. The number actually gets down to about two investigations. One was somebody who was a changed status, so they were legitimately present, and one who had already left the country.

Mr. GALLEGLY. Of all of those that—and we do know that there are a lot of individuals in this country that are clearly visa overstays. In fact, when we talk about all the illegal alien problems that we have in this country, it is not just the folks crossing the southern border. And I think most would agree that that number is somewhere around 40 percent of the people that are illegally in this country are visa overstays. Is that not correct?

Mr. HEYMAN. I think that is correct.

Mr. GALLEGLY. Okay. Now, if you could please tell me, of the 11 million, 20 million, or whatever that would be overstays in this country, how many were formally—how many were removed from the country last year, a number?

Mr. HEYMAN. I don't have that number for you.

Mr. GALLEGLY. Would you say it is less than 500,000?

Mr. HEYMAN. Yes.

Mr. GALLEGLY. Less than 100,000?

Mr. HEYMAN. I don't have that number for you. I can get it for you.

Mr. GALLEGLY. Probably less than 10,000?

Mr. HEYMAN. Well, what we have done is we are looking at the national security and public safety risk. And we have made every attempt to investigate those of concern——

Mr. GALLEGLY. Sir, with all due respect, public safety is our primary responsibility, but the law also calls for this. If you don't have

enough folks, say, "We need more help," and I would like to know what that number is.

So, obviously, you don't know what the number is, you don't know how many people you have working out there, you don't know how many people have been removed. I would think that number would be fairly simple to come up with.

Dr. Carafano, you have stated that you believe that the biometric program needs to be reassessed; is that correct?

Mr. CARAFANO. Yes, sir.

Mr. GALLEGLY. Could you tell me, when an immigrant that has a visa leaves this country, what better method do you have of identifying whether they actually left than through a biometric program?

Mr. CARAFANO. Well, the question is, what is the additional value of that biometric qualification versus a biographic qualification.

Mr. GALLEGLY. Well, identification, I would think, would be one——

Mr. CARAFANO. So, obviously, you could spend a billion dollars and have a home that is perfectly secure, and then you could ask, okay, well, if I just got a burglar alarm and locked my doors, which maybe I would spend $100 for, is that reasonable security? And I think the answer is, we have to make a decision about what is reasonable versus what is——

Mr. GALLEGLY. So, in other words, you would, kind of, maybe prefer the honor system?

Mr. CARAFANO. No, sir, I think I have very carefully stated not. I think biographic data is perfectly adequate for what the system is intended for, which is to show you trends and compliance with the law. If you are interested in tracking specific individuals because they are a terrorist concern or a criminal concern or because there is some kind of immigration concern, there is plenty of data in the current system to find and track those individuals.

So if you are asking me if it is worth it to spend all that additional money to gain very little additional capability, I would tell you "no." It would be like somebody who wanted to take a trip, you know, downtown, and instead of going in a Piper Cub, they said, "No, I want an F-35."

Mr. GALLEGLY. Well, I am not sure I understand that specific analogy, and reasonable minds can differ.

I would yield to the gentlelady, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

As I listened here to the witness from The Heritage Foundation, it is pretty clear that having an expanded Visa Waiver Program—you are the conservative think tank. I mean, this is not some flighty liberal proposal. And I think it is important to be very hardheaded about what is being discussed here.

Mr. GALLEGLY. But—would the gentlelady just yield for a moment? Just for the record——

Ms. LOFGREN. I would yield.

Mr. GALLEGLY. Just for the record, Mr. Carafano is the Democrats' witness today.

Ms. LOFGREN. That is right. And it is a sad day when the Democrats have to invite the conservative Heritage Foundation. But I

was happy to do it to make this point, and I think it is an important one. This is a mainstream proposal, and it is accountable.

You know, I think it is important to be practical and to weigh apples to apples. We are talking about 757,000 potential overstays. Some of those are duplicates, so it is not that high. But those include—that is not visa-waiver people; that is everybody. It is people who came in with visas, people who came in with visa waivers. So to say that somehow that is an argument against the Visa Waiver Program is completely illogical.

And it is important to note that if you are in the Visa Waiver Program, it doesn't mean that you have a right to enter if we think there is a problem with you. That is why the background is done and the enhanced background is done, and you are turned away if there is a reason why you should not be admitted to the United States.

So I would like to actually ask you, Mr. Heyman—and I thank you for being here—what is the enhanced information that we get on this Visa Waiver Program?

And confirm this information, if you will. It is my understanding that all the newcomers into the Visa Waiver Program have complied with all of the requirements. The only issue in terms of lagging on compliance is the countries that were in from before the new ones were added. Is that correct?

And then please describe why this makes us safer. I mean, what else do we get for nations that join in to this program?

Mr. HEYMAN. Thank you for the question.

It is true that the implementation of the Visa Waiver Program has been much more than aspirational. There are about five or six requirements that are fully implemented. Secure travel documents are now fully implemented, including e-passports; that is fully implemented, that requirement. The lost and stolen passports, as we heard from the GAO, has been fully implemented, 35 out of 36 of the countries. The ESTA program is now fully implemented, 99.5 percent compliant. And we have continuous and vigorous monitoring across all the countries as it pertains to aviation security and border security.

So, absolutely right, these are actually in—programs that have been implemented. Some of the information-sharing agreements need to get concluded. We are on track for getting those concluded next year. And then it requires those partner countries to have their technology updated, to have their legislation passed, so that they can actually implement it fully.

Ms. LOFGREN. Just a comment before I do a follow-up. I was interested in Ms. Vaughan's testimony. And we get classified briefings from time to time, and obviously we can't go into what we are told in the classified briefings, but I think we are allowed to say what we are not told. And we get reports on who is coming across the land border by ethnicity and by country. And I have never been told that anybody from Brazil has been apprehended. So that is not a violation of our oath; it is what we were never told in a classified setting. And I just thought it was important to make that point.

Getting to the cost-benefit analysis, I mean, unless we want to have no one enter the United States, which would be a catastrophe

for our country, how do we best spend our funds to make sure that we have the most vigorous system to protect our security?

Mr. Heyman, you and also Mr. Carafano suggested that the biographic system is worthy of expansion. And I am wondering if some of the money that has been programmed for the biometric system that really hasn't been implemented because—you know, I know the pilot program really didn't work except when it was at, you know, the door of the airplane—whether that would be a source that could be used to really upgrade this biographic system well.

I mean, Mr. Carafano and Mr. Heyman, maybe you could both comment on that.

Mr. HEYMAN. Sure.

Look, the enhanced biographic exit program that we are in the process of implementing provides greater fidelity of the data for overstays. That will be helpful for the Visa Waiver Program. As everyone, I think, on this panel has acknowledged, that is a better metric, a useful metric for visa-waiver designation. It will also help us in terms of the ability to do better targeting for enforcement actions and the like.

The process of implementing that is on the order of—for automating that—we can do it manually now with great fidelity, but it takes a lot of resources, somewhere between $15 million and $20-some-odd million. It would be useful to take the biometric resources to help us on that right now, particularly given that biometric estimates, at the minimum, are somewhere at $3 billion to have an effective biometric program.

Ms. LOFGREN. Right.

Before my time is up, Mr. Carafano, do you want to briefly comment on that?

Mr. CARAFANO. Well, I have been in this business a long time. You know, if this was a mandate that could have been easily fulfilled, it would have been fulfilled back in the 1990's when it was first implemented. I don't think we are arguing between biographic versus biometric because I doubt this government is ever going to be able to afford or implement biometric. So I really think we are kind of having a false debate here.

Ms. LOFGREN. Thank you very much.

Before I yield back, I would just like to echo your comments, Mr. Chairman, about Mr. Stana and his long service to our country.

And I guess this is your last hearing. It is great to see you, and we appreciate you.

Thank you, Mr. Chairman.

Mr. STANA. Thank you, Ms. Lofgren.

Mr. GALLEGLY. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I do thank the witnesses. And I especially thank Mr. Stana for a lot of years of service. And I am sure that I have contributed to the difficult times of your service here. I appreciate the product that came from that hard work.

And, first, I would just turn to Mr. Heyman. I am trying to understand here what our optimum policy is and what we would like to do. You know, we should all start with, if we could draw this out so it is the best it could possibly be and then work on how we get to that goal. And so I am looking at a Visa Waiver Program,

a US-VISIT program, a prosecutorial discretion policy that may be a program for administrative amnesty, the way I see it. I have not seen the will within an Administration to enforce immigration law since I have been close enough to actually look. And so I lack a lot of confidence in what we might do to grant more license for more open borders because I don't quite see yet—I don't see the philosophy, I don't see the mission within the Administration, this one or the previous three.

And so I would just take you to this. If you could have this thing operating, functioning the way you would like to have it function, without regard to the cost or the ability to put the resources together—and Christmas is coming—what would your ask be?

Mr. HEYMAN. Well, the best ask for the quickest turnaround for the most fidelity both for enforcement but also for visa-waiver expansion would be to get the enhanced biographic exit system up and automated as soon as possible. It is a few million dollars. It would be worth doing.

The ability to track and monitor overstays—and I should just add for the record that, in our pilots looking at the data to make sure we could have better fidelity of overstays, it is quite clear that the visa-waiver countries are substantially lower in terms of overstays than other countries. And I think it is something that will bear out as we are able to get that data up and useful.

Mr. KING. We still, though, have this situation, if we had US-VISIT working in and out, and they were biometric, then we would have finally that list of those people that are here in the United States and we would have the definitive list of the overstays that the Chairman says might be 757,000. I don't see any heartburn about that growing number of people here in the United States—or there is a little, I hear a little, but I don't see it being led with that policy.

So do you have a sense of what the price is to this society for the, I will say, criminal actions that take place here in the United States because of visa overstays?

Mr. HEYMAN. So I would just like to say that, first and foremost, I think this Administration has an outstanding record of enforcement actions, having record removals for this year beyond any other preceding years. And I think that that speaks for itself.

I do think that, if you look at overstays, you are going to have to make the distinction between those that are of national security or public safety concern versus those that are not. The proper——

Mr. KING. Does the law make that distinction?

Mr. HEYMAN. Sorry?

Mr. KING. Does the law make that distinction?

Mr. HEYMAN. The law does not make that distinction, but what makes that distinction, as is the case for all——

Mr. KING. Is prosecutorial discretion.

Mr. HEYMAN. Yeah, is the ability for us to provide guidance given limited resources. There is no way we could do everything, and so we have to make distinctions on what is more important. We are going to take those criminal actions——

Mr. KING. Mr. Heyman, would you be more comfortable if Congress actually granted prosecutorial discretion and defined the dif-

ference between visa overstay people according to who is a risk and who isn't?

Mr. HEYMAN. Well, I would leave it to Congress to do that, although there is a history of every Attorney General, I think, going back, you know, throughout history, of using that.

Mr. KING. That is a long discussion on prosecutorial discretion, but I think this Administration has taken it as far as any I have seen, at least with regard to immigration.

And it seems to me this House, at least, voted to make it a crime for overstaying a visa some years ago. Do you recall that?

Mr. HEYMAN. Yes.

Mr. KING. And do you think it might be a good idea for this Congress to come back and revisit that and perhaps draw that distinction so it would be easier for the prosecutorial discretion appliers to determine between a dangerous and a nondangerous visa overstayer? And perhaps we might be able to draft into law that if someone is a risk to society, we will make it a crime for them to overstay their visa, but if they are not, we just kind of let them go and be part of that 757,000?

Mr. HEYMAN. Well, one of the things that the Visa Waiver Program does which is, I think, unique to the Visa Waiver Program is it allows us to do this advance screening for the ESTA program. So we are actually doing——

Mr. KING. Is that biometric?

Mr. HEYMAN. That is biographic, but you do collect the biometrics for ESTA.

And one of the things we do prior to anybody giving travel authorization is we screen them against all the immigration databases to see if they violated the immigration laws, to see if there are overstay records, as well as all the terrorist and criminal——

Mr. KING. I thank you, Mr. Heyman.

I would like to turn quickly to Mr. Stana and wouldn't want to let you leave this hearing without getting asked one last question before you go off into retirement.

But do you have any knowledge of the price to society for those who have, one category, illegally crossed the border into the United States and the other half of that category being those visa overstayers? Do you have a sense in the loss in American life that would be the cumulative loss of life here in the United States due to people who have overstayed their visas and/or crossed the border illegally?

Mr. STANA. I don't know that anyone has calculated the loss of economic opportunity or loss of life owing to the illegal alien population in the United States. As you know, there are thousands and thousands of illegal aliens, criminal aliens, who are in our Federal, State, and local prisons. They run up the cost to the American taxpayer in terms of per diems and other costs that way, costs to law enforcement.

So those costs are there and they are documented, and I believe a report that we did for you not all that many months ago documented that. But, beyond that, the loss of life, the lost economic opportunity of a victim, I don't recall seeing any data like that.

It is interesting when you make the distinction between overstays and other illegal aliens, because the overstays, you might

argue, are subject to far less enforcement action. About 3 percent of ICE enforcement resources are devoted to the overstay population. And this number we are throwing around of 757,000, that is the top of the funnel. By the time it gets down, you are talking about 1,200 arrests a year. And, of those, it is hard to say how many are actually deported. There might be delays in deportation because they are in jails or they are awaiting deportation for another reason. But this 757,000 winnows down to a little over 1,000 a year.

Mr. KING. Does 25,064 homicide arrests of criminal aliens ring a bell?

Mr. STANA. Yes, it does. That was in the report.

Mr. KING. Thank you very much, Mr. Stana.

I thank all the witnesses. I regret I am out of time, and I yield back the balance of whatever might be available.

Mr. GALLEGLY. I thank the gentleman from Iowa.

The gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman.

I would like to thank the witnesses for being here today to help us better understand what our policies are.

I would like to direct this question to Mr. Heyman. I think you would be the correct one. And maybe this was discussed before, maybe everyone else knows; I don't. How does a country indicate its interest? Do we initiate invitations to countries, or do countries apply, or how does this happen, for them to become a part of the program?

Mr. HEYMAN. Thank you. No, it has not been discussed.

Countries indicate usually to the State Department officially that they are interested in being designated a visa-waiver country. They oftentimes will also approach the Department for technical discussions about what the requirements are, how does one become designated. And then they must meet the obligations set forth by Congress to be designated.

Ms. WATERS. I noticed that there are no African countries that are part of the acceptable countries that are in the program. Do you know if there have been any applications from any African countries?

Mr. HEYMAN. No. And what I do know is that the countries have not met the requirements as set by Congress at this point, and that is probably why you haven't seen them.

Ms. WATERS. All African countries that have applied have not met the requirements?

Mr. HEYMAN. Those who have requested, and I don't think we have had very many.

Ms. WATERS. That have requested?

Mr. HEYMAN. Yes.

Ms. WATERS. Thank you very much.

I will yield to the gentlelady from California. She has some more questions.

Ms. LOFGREN. Thank you to my colleague.

I just wanted to make a quick comment on Mr. King's point, because I think there has been a lot of beating up of the Administration for its priorities. But there is an express requirement in 6 U.S. Code 202 that directs the Department of Homeland Security to es-

tablish, quote, "national immigration enforcement priorities and policies." And, for years, the appropriations bills have directed that additional enforcement and funding for removal priorities, including through Secure Communities and 287(g) and the Criminal Alien Program, be directed toward removal of criminal aliens.

So I just thought it was worth getting that on the record. And I thank the gentlelady for yielding. And we yield back our time.

Mr. GALLEGLY. Without objection, that will be added to the record.

And I would like to thank all of our witnesses today and, again, recognize Mr. Stana for his years of dedicated service. I know I have had the honor of participating in many hearings where he has testified.

And I want to say, for myself and I am sure the Committee, how much we appreciate your public service and wish you well in your retirement years. Lots of blue skies and green lights to you.

Mr. STANA. Thank you, Mr. Chairman. It has been a privilege to work for GAO and for the Committee.

Mr. GALLEGLY. Thank you so much.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as possible so that the answers can be made a part of the record of the hearing.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And, with that, the Subcommittee stands adjourned. Thank you.

[Whereupon, at 3:02 p.m. the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Response to Post-Hearing Questions from David F. Heyman, Assistant Secretary for Policy, U.S. Department of Homeland Security

Question#:	1
Topic:	VWP 1
Hearing:	Visa Waiver Program Oversight: Risks and Benefits of the Program
Primary:	The Honorable Ted Poe
Committee:	JUDICIARY (HOUSE)

Question: As you know, Taiwan has made great strides in recent years to meet the eligibility requirements for the U.S. Visa Waiver Program. Given this progress, would you endorse a review by the Department of Homeland Security of Taiwan's Visa Waiver Program eligibility and encourage the State Department to nominate Taiwan as a candidate to join the VWP as soon as possible? What is holding up this process?

Response: The Department of Homeland Security, in close coordination with the American Institute in Taiwan, the Department of State, and the Department of Justice, has been engaging the authorities on Taiwan on VWP issues since October 2010, when Taiwan first met the low nonimmigrant visa refusal rate requirement for VWP eligibility. Over the past year, Taiwan has undertaken significant efforts to improve its law enforcement and document security standards to meet the strict requirements for VWP eligibility. In addition to these measures, on December 20, 2011, Taiwan concluded the last of the enhanced information sharing agreements required by section 217(c)(2)(F) of the Immigration and Nationality Act, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007. Specifically, Taiwan concluded a bilateral Preventing and Combating Serious Crime Agreement.

Once Taiwan met these requirements, the Department of State determined that foreign policy and operational conditions warranted nominating Taiwan for VWP designation. On December 22, 2011, Secretary Clinton wrote to Secretary Napolitano to nominate Taiwan for consideration for VWP designation. Following the State Department's nomination, DHS will now seek to initiate a comprehensive review to determine Taiwan's suitability to participate in the VWP, as U.S. law requires. This review, including an in-depth site visit, will assess the impact Taiwan's VWP designation would have on U.S. security, law enforcement, and immigration enforcement interests.

The Department of Homeland Security fully recognizes the importance of the relationship between the people of the United States and the people on Taiwan and, in conjunction with the Department of State and through the American Institute in Taiwan, will continue to work with the authorities on Taiwan regarding the requirements for VWP designation.

Question#:	2
Topic:	VWP 2
Hearing:	Visa Waiver Program Oversight: Risks and Benefits of the Program
Primary:	The Honorable Dennis Ross
Committee:	JUDICIARY (HOUSE)

Question: Can you explain if countries participating in the VWP provide information that is more useful for thwarting terrorist travel than what the U.S. obtains from countries where visas are required?

If we allow for the expansion of VWP, will that enable the U.S. to increase its share of international travel? If so, do any of you have estimates on how many jobs may be created by bolstering travel to the U.S.?

Response: VWP countries are required, pursuant to section 217(c)(2)(D) and (F) of the Immigration and Nationality Act (INA), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), to conclude formal information sharing agreements with the United States.

One of the required agreements commits VWP countries to providing lost and stolen passport data to the U.S. government, either through INTERPOL or other mechanisms. Primarily as a consequence of the VWP requirements, over 60 percent of all records held in INTERPOL's stolen and lost travel document database come from the thirty-six VWP countries. In comparison, most countries outside of the VWP rarely report lost and stolen passport information to INTERPOL.

The other two information sharing agreements that the United States has signed with VWP countries are designed to fulfill the requirement in section 217(c)(2)(F) of the INA, as amended by the 9/11 Act, to share information regarding whether citizens and nationals of the VWP country traveling to the United States represent a threat to the security or welfare of the United States or its citizens. These agreements establish agreed protocols for exchanges of information about persons considered to represent possible threats to the people of the United States. Also, these agreements are in various stages of negotiation and implementation, and some information has already been exchanged. As implementation of these agreements proceeds, they will supplement the informal, ad hoc sharing of information with formal mechanisms to promote more consistent exchange of information with VWP countries, giving U.S. officials additional tools which can be used to identify potential threats to U.S. interests.

The 9/11 Act also amended the INA to require VWP travelers to obtain advance authorization to travel to the United States through the Electronic System for Travel Authorization (ESTA). In general, an ESTA authorization is valid for up to two years. Both VWP travelers and visa travelers are continually vetted against U.S. databases,

Question#:	2
Topic:	VWP 2
Hearing:	Visa Waiver Program Oversight: Risks and Benefits of the Program
Primary:	The Honorable Dennis Ross
Committee:	JUDICIARY (HOUSE)

however, information held in ESTA is updated by travelers at least every two years, while information obtained through the visa process is usually updated when the traveler requires a new visa – which can be up to once every ten years for most VWP countries.

Besides strengthening homeland security through enhanced security standards and closer and more systematized information sharing with foreign partners, the VWP also contributes significantly to the economic security of the United States. Nearly two-thirds of overseas visitors to the United States come from countries in the VWP, generating $60 billion in revenues for U.S. businesses each year. When new countries join the Visa Waiver Program, the number of foreign visitors to the United States increases. More visitors means more money spent on American goods and services. For example, annual travel and tourism receipts from South Korean visitors after South Korea's designation in the VWP in late 2008 rose by as much as 1.6 billion dollars.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA
1615 H STREET, N.W.
WASHINGTON, D.C. 20062

RANDEL K. JOHNSON
SENIOR VICE PRESIDENT
LABOR, IMMIGRATION, &
EMPLOYEE BENEFITS

December 12, 2011

The Honorable Elton Gallegly
Chairman
House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member
House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
Washington, DC 20515

Re: For the hearing record, concerning the December 7, 2011 hearing on:
Visa Waiver Program Oversight: Risks and Benefits of the Program before the House Judiciary Committee Subcommittee on Immigration Policy and Enforcement

Dear Chairman Gallegly and Ranking Member Lofgren:

On behalf of the U.S. Chamber of Commerce, we would like to express our support for expansion of the Visa Waiver Program. Of course appropriate safeguards to address security concerns must always be a significant part of the program. The Chamber applauds the Subcommittee for holding this hearing on a topic with direct impact to our nation's economic recovery, and requests that this letter be included in the hearing record.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector, and region across the United States. As you are aware, the U.S. Chamber has long advocated for initiatives which promote and facilitate travel to the U.S. for both business and tourism including expanding the visa waiver program and improving the current B-1 and B-2 visa application process.

Travel and tourism is a small-business-centered sector that accounts for more than $700 billion in revenues and 7.4 million American jobs. When business visitors travel to the U.S. to buy products or participate in conferences, training, and trade shows, they strengthen America's role as the center of innovation and global commerce. By increasing

efficiency in the visa processing system and reversing the perception that the U.S. does not welcome international travelers, the U.S. could restore its share of the travel market to its 2000 level of 17% and create an additional 1.3 million jobs by 2020.

Expansion of the Visa Waiver Program from its current state of 36 countries will help our country gain back its 2000 share of the global travel market creating thousands of jobs for American workers. In addition to increasing travel to the United States, expansion of the Visa Waiver Program allows for greater information sharing between partnering countries on a variety of important issues including national security.

Thank you for your consideration of this issue.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration and
Employee Benefits

NATIONAL FEDERATION OF CROATIAN AMERICANS
CULTURAL FOUNDATION
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October 24, 2011

The Honorable Lamar Smith, Chairman
Judiciary Committee
2138 Rayburn HOB
US. House of Representatives
Washington, DC 20515

RE: Request Regarding the Visa Waiver Program Bill – H.R. 959

Dear Chairman Smith :

As President of the National Federation of Croatian Americans (NFCA), the Croatian American umbrella organization representing more than 130,000 Croatian Americans throughout the United States, we respectfully request that your Committee soon consider H.R. 959, the Secure Travel and Counterterrorism Partnership Act of 2011, and report the bill to the Full House for consideration.

The NFCA has continued to remain a staunch supporter of the Republic of Croatia and the building of ever-closer relations between Croatia and the United States. This includes the bipartisan support developed in the US Congress for Croatia's accession to NATO several years ago, which is particularly remembered and appreciated by Croatian Americans.

H.R. 959 is another crucial milestone for the Caucus. The Secure Travel and Counterterrorism Partnership Act of 2011 would enable Croatia to join the **Visa Waiver Program (VWP).** While Croatia is not requiring visas for Americans, the U.S. requires Croatians to have visas when traveling to America.

As part of the current VWP, citizens of 36 foreign countries can travel to the United States for up to 90 days without a visa. To be admitted to the VWP, a country must meet various security and other requirements. These matters understandably include enhanced law enforcement and counterterrorism, ramped up security-related data sharing with the United States, and timely reporting of both blank and issued lost and stolen passports.

Croatia is in full compliance with these conditions having not only entered into all the relevant arrangements with US government departments and agencies, but the Croatian government has already started their implementation. In this regard, Croatia is ahead of many present or potential VWP members, thus enhancing American homeland security.

However, Croatia has been excluded from the VWP because of a visa refusal rate slightly higher than the one prescribed by current legislation. At present, 5.3% of Croatians are denied visas and 3% is the present threshold. In absolute numbers it comes only to several hundred refused visa applications, not thousands or tens of thousands! It should be noted that many countries joined the VWP when that threshold was set significantly higher, which was then 10%.

The Secure Travel and Counterterrorism Partnership Act of 2011 changes this qualifying criterion by abandoning visa refusal rates and introducing overstay rates, allowing countries with an overstay rate of less than 3% to be included in the VWP. As significantly fewer than 3% of Croatians who come to America stay longer than allowed on their visas, Croatia would be entitled to join the VWP.

Croatia is one of America's greatest allies in NATO and is fighting alongside the United States in Afghanistan. In fact, Minnesota, as Croatia's partnership state in the US, has its National Guardsmen operating under Croatian command in Afghanistan and vice versa. Croatia is one of the main US partners in South East Europe and will soon join the European Union. However, Croatian citizens cannot enter the United States without a visa thus creating a sentiment among many of being a second-class ally.

As President of the National Federation of Croatian Americans Cultural Foundation, I respectfully request that your Committee express its support for the Republic of Croatia to be included in the Visa Waiver Program and report out the bill to the Full House for consideration as soon as possible.

If the NFCA may be of additional assistance on this important matter for Croatia, please have a member of your staff contact NFCA Executive Vice President Zvonk Labas at the address and telephone noted above.

Thank you.

Bill Vergot
President

CC: Honorable John Conyers, Ranking Member
Judiciary Committee
US House of Representatives

BV:jpf

Prepared Remarks of
Michael W. McCormick
Executive Director and Chief Operating Officer
Global Business Travel Association

United States House of Representatives Committee on Judiciary
Subcommittee on Immigration Policy and Enforcement

"Visa Waiver Program Oversight: Risks and Benefits of the Program"

December 12, 2011

Mr. Chairman and Members of the Committee: The Global Business Travel Association (GBTA) appreciates the opportunity to provide testimony on the Visa Waiver Program (VWP) and its impact on the business travel industry.

GBTA is the world's premier business travel and corporate meetings organization. GBTA and its regional affiliates – GBTA Asia-Pacific, GBTA Australia / New Zealand, GBTA Canada, GBTA Europe, GBTA Latin America, GBTA Mexico, and GBTA USA – serve a network of more than 17,000 business travel professionals around the globe with industry-leading events, networking, education and professional development, research, news and information, and advocacy. GBTA members - numbering more than 5,000 in 30 nations - are the corporate and government travel and meetings managers and travel service providers.

Our members support the continued expansion of the VWP, which has proven successful in its ability to enable secure and efficient global travel. As you know, global business travel spending fuels the U.S. and global economies. In 2011, global business travel spending will reach nearly $1 trillion. Accessible, safe and secure business travel is not only important to our members; it is required to compete in today's difficult economy. International travel is a cornerstone to the success of our member companies,

facilitating millions of international business exchanges and generating tens of billions of dollars in international commerce.

Global business travel is a solid economic investment: GBTA estimates for every $1 increase in business travel spending by an organization, company profits increase by $20 on average.

The Impact of the Visa Waiver Program on Travel

One of the primary objectives of the VWP is to facilitate legitimate travel without jeopardizing security. The program has met this objective and then some. It is estimated that from fiscal year 2005 through fiscal year 2010, over 98 million visitors were admitted to the United States under the VWP—both leisure and business travelers. In November of 2008, South Korea was added to the list of countries that no longer require a visa to enter our country, allowing the state department to reallocate those resources in other areas. Since then, we have seen a tremendous increase in the number of South Korean visitors to the U.S. mainland and the Hawaiian Islands. In fact, since joining the program, the number of Korean travelers visiting the U.S. jumped 49 percent.

These are not insignificant numbers and clearly demonstrate the value of the VWP in promoting and facilitating travel.

Importance of Business Travel to the Economy

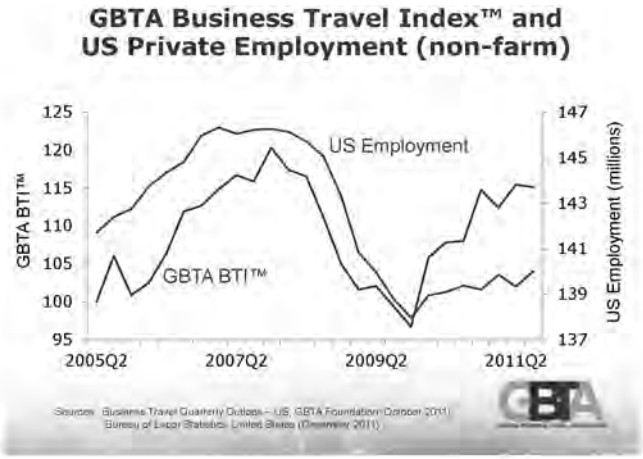
The impact of international travel on the U.S. economy is well documented. What is not as well known is the impact of ***business*** travel on the economy.

In the United States alone, direct spending on business travel will total nearly $250 billion in 2011. On their journeys, business travelers buy transportation services in the air and on the ground, use taxis and rental cars, stay in hotels, eat in restaurants, entertain clients, buy souvenirs for loved ones, attend conferences and meetings, and spend on a host of other necessities. Sensible expansion of the VWP facilitates international business travel which, in turn, drives economic growth and millions of U.S. jobs.

As part of its work, GBTA actively tracks business travel trends through the Business Travel Quarterly Outlook (BTQ). The latest projections show business travel maintaining an upward trajectory in 2012. While the U.S. economy faces challenges, many markets abroad, particularly in Asia, continue to grow at a much faster pace. U.S. companies operating globally are enjoying export booms and gains in their overall competitiveness. GBTA is projecting that corporations are expected to book 3.3% more trips abroad in 2012 and increase their international travel spend 7.7% to $34.3 billion. This follows 2011 growth of 9.1% in international travel spend as currently forecast.

In addition to the BTQ, GBTA has conducted an analysis of the relationship between the GBTA Business Travel Index™, a proprietary measure of business travel spending derived from the BTQ, and U.S. non-farm civilian employment from the year 2000 to the present. Our analysis shows the GBTA Business Travel Index™ is a leading indicator of U.S. employment:

- If the GBTA BTI™ increases during a particular quarter, there is a very high likelihood U.S. employment will also increase during the following quarter.
- As shown below, during the fourth quarter of 2010 and the first quarter of 2011, the GBTA BTI™ saw a significant increase; three months later, U.S. employment increased by 658,000.



The reason is simple: when businesses are confident in a growing economy, they send their employees on the road to secure even more business. This results in an increase in sales for companies, necessitating the hiring of more staff to fill those sales, more employees to accommodate the needs of business travelers and a ripple effect throughout the economy.

The continued expansion of the VWP enhances the ability of our members and the nation as a whole to travel internationally safely, securely and with greater ease.

Promoting Efficient Business Travel thru the VWP

We believe H.R. 959, the "Secure Travel and Counterterrorism Partnership Act" represents a major step towards opening business travel to the United States. We support all reasonable efforts to expand the VWP and all mechanisms to provide an efficient and secure system for promoting business travel to the United States.

On behalf of GBTA's 5,000-plus members, we appreciate this opportunity to highlight the impact of business travel on the U.S. economy and the importance of the VWP on business travel globally. We applaud the Subcommittee's efforts to examine this important program.

For more than 40 years, GBTA has been the source for critical information concerning the business travel industry. We look forward to sharing our expertise and working with all stakeholders toward the goal of expanding the VWP and supporting international business travel.

Expedia
Where you book matters.

The Honorable Elton Gallegly
Chairman
Subcommittee on Immigration Policy and Enforcement
House Committee on the Judiciary
B-353 Rayburn House Office Building
Washington, DC 20515

December 8, 2011

Dear Chairman Gallegly:

Thank you for taking the time to hold today's hearing to examine the risks and benefits of the Visa Waiver Program (VWP).

In an increasingly globalized world, people from every country face a tremendous array of choices in where to travel—whether for a business meeting, a honeymoon, a reunion, or a family vacation. This forces countries to compete for visitors as never before.

While the United States is unique in the breadth and variety of its tourist offerings and in its ability to attract travelers, it is nevertheless true that added costs—whether in the form of currency or time— act as a disincentive to new visitors. Long wait times for visa processing, expensive filing fees, and in-person interview requirements serve to make a visit to the United States difficult for some would-be visitors.

The Visa Waiver Program is a key element of the United States' ongoing efforts to promote travel and tourism. By eliminating visa requirements for participating countries and making it easier for short-term travelers to visit the United States and spend money within our nation's borders, the Visa Waiver Program is an important commercial and foreign policy tool.

Expedia, Inc. supports policies that will reduce or eliminate barriers to entry for prospective travelers to the U.S. from abroad. On behalf of Expedia and its member web sites, I encourage you and your fellow Committee members to support the expansion of the Visa Waiver Program by allowing new countries to join the VWP provided they meet all necessary security safeguards. Encouraging new visitors to travel to the United States for business or leisure travel will help to foster international goodwill, encourage cultural and commercial exchange, and promote jobs in American communities that support the domestic travel and tourism economy.

Thank you again for your attention to this important matter. If I can be of assistance in any way, please do not hesitate to call my office at (202) 449-4739.

Sincerely,

Brent Thompson
Vice President, Global Government Affairs
Expedia, Inc.

1120 G Street | Suite 410 | Washington, DC 20005 | Phone 202.449.4740 | Fax 202.449.4741

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