

**U.S. Department of Homeland Security
Joint Written Statement**

Richard C. Barth, Assistant Secretary for Policy Development

and

**Robert A. Mocny, Director, U.S. Visitor and Immigrant Status Indicator
Technology (US-VISIT) Program**

before

**United States House of Representatives
Committee on Homeland Security
Subcommittee Border, Maritime and Global Counterterrorism
on the Visa Waiver Program**

July 16, 2008

Chairwoman Sanchez, Representative Souder and Distinguished Members of the Subcommittee: we would like to thank you for the opportunity to appear today to discuss how the Department of Homeland Security (DHS or the Department) is implementing the provisions of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, P.L. 110-53 (9/11 Act). A modernized Visa Waiver Program (VWP) that strengthens our country's national security, law enforcement, and immigration interests is a top priority for the Administration. Section 711 of the 9/11 Act supports this objective by concurrently enhancing the VWP's security requirements and expanding opportunities for countries to become VWP members. Similarly, the 9/11 Act mandates the establishment of a biometric exit system to complement the entry system already in place. Our ability to measure and track those who overstay their lawful periods of admission is necessary for immigration enforcement, and is a valuable homeland security tool as well.

Enhancing the VWP's security requirements and expanding membership opportunities are mutually reinforcing goals. As a result, both current and prospective VWP members will continue to contribute to a secure environment for international travel as well as deepen their cooperation with the United States on security-related issues.

As you know, the Department has formalized a number of security enhancements, including those mandated by the 9/11 Act, into memoranda of understanding (MOUs) and—in collaboration with our colleagues from the Departments of State and Justice—is actively discussing implementing arrangements and agreements that detail the terms of the new security measures. DHS is requiring each member and aspirant country to sign an MOU and to agree to

the appropriate implementing arrangements or agreements, unless other arrangements or agreements already in place fulfill the new security requirements of the VWP legislation.¹

We believe that the bilateral arrangements and agreements under discussion — which include requirements to provide certain information on air passengers, serious crimes, known or suspected terrorists, asylum and migration matters, and timely reporting of lost and stolen passport data, as well as cooperation on airport and aviation security — will provide our operators and analysts with new tools to secure our nation as well as help prevent terrorist and criminal activities in our VWP partner nations. In fact, we are seeing tangible security benefits well in advance of adding new members to the VWP. As a result, the Department can more effectively screen arriving passengers to detect, apprehend, and limit the movement of terrorists, criminals, and other mala fide travellers.

The Department has also taken the appropriate steps to ensure that VWP expansion will not negatively impact U.S. security, law enforcement, or immigration interests. Over the past four months, DHS-led interagency teams have traveled to the Czech Republic, Estonia, Greece, Hungary, Slovakia, Latvia, Lithuania, and South Korea to comprehensively review their counterterrorism capabilities; immigration, citizenship and naturalization laws; passport production and issuance controls; efforts to combat crime; law enforcement cooperation with the United States; and border control mechanisms.² A country cannot be admitted into the VWP until it is designated for admission by DHS, in consultation with the Secretary of State. DHS has also commissioned the required independent Director of National Intelligence (DNI) assessment of these countries to inform the designation process.

As noted earlier in this testimony, the goals of security and expansion are complementary. The 9/11 Act gives the Secretary greater flexibility with regard to the level of the aspirant countries' nonimmigrant visa refusal rate, provided that the Department: (1) certifies that an air exit system is in place that can verify the departure of not less than 97 percent of the foreign nationals who exit through U.S. airports and (2) certifies that an Electronic System for Travel Authorization (ESTA) is fully operational.

As to the first requirement, DHS continues to evaluate and consider various methodologies to verify the departure of at least 97 percent of foreign nationals who exit through U.S. airports. DHS will continue to review these options to ensure the accurate and timely receipt of passenger manifest information and to improve the methodology underpinning air exit calculations. DHS expects to make this certification later this year.

The development of the ESTA program is also well underway. The ESTA program will strengthen substantially the security of the VWP by providing DHS with the capability to conduct enhanced advance vetting of VWP travelers. Under the ESTA, VWP travelers will be required to submit electronically biographic and other information as required by the I-94W Nonimmigrant Alien Arrival/Departure Form to DHS prior to their departure for the United States. ESTA applications will then be queried against appropriate databases, enabling DHS to make a determination on each individual's eligibility to travel to the United States under the VWP. Travelers denied a travel authorization via ESTA will be referred to the appropriate U.S. embassy or consulate to apply for a visa.

¹ To date, eight countries have signed MOUs — the Czech Republic, Estonia, Hungary, the Republic of Korea, Latvia, Lithuania, Malta, and Slovakia. Talks are also underway with several current VWP members on compliance with the new requirements.

² Although DHS is actively engaged with each of the Roadmap countries, Greece is the only VWP-candidate country that has been formally nominated for designation by the Department of State.

In support of ESTA, DHS is developing a web-based application and screening mechanism for direct access by VWP travelers. The system is designed for future volume increases and for peak periods of travel. DHS published an Interim Final Rule on June 9, 2008, following a June 3, 2008, announcement by Secretary Chertoff outlining the new system. DHS intends for ESTA to go online on August 1, 2008, in English only and with limited capacity. This fall, DHS anticipates that ESTA will have full capacity and will be available in multiple languages. On January 12, 2009, DHS anticipates that all VWP travelers will be required to have a travel authorization via ESTA to travel to the United States under the VWP. With support from the Departments of State and Commerce, as well as from the travel and tourism industries, DHS has initiated an extensive public outreach campaign to promote ESTA awareness among VWP travelers.

ESTA is essential to transforming the VWP from one that evaluates security threats on a country-by-country basis to one that is capable of making traveler-by-traveler judgments. In addition to enhancing security, ESTA will provide for greater efficiencies in the screening of international travelers by reducing traveler delays at the ports of entry.

Equally critical to DHS efforts to promote secure and legitimate travel is the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program. The establishment of US-VISIT and the creation of an integrated immigration and border screening system represent major achievements, not only in efforts to reform the Nation's immigration and border management system, but also in the enhancement of our Nation's security. Through its use of biometrics, the US-VISIT Program collects, stores, and shares digital fingerscans and photographs for subsequent verification. This biometric information is paired with biographics pertaining to a particular individual to verify that person's identity.

US-VISIT's Automated Biometric Identification System (IDENT) plays an important role in biometric screening and verifying the identity of non-U.S. citizens for other Federal agencies. For example, US-VISIT directly supports the DOS' BioVisa program and shares information with the Federal Bureau of Investigation (FBI) on expedited removals.

US-VISIT deployed biometric entry procedures to airports and seaports on January 5, 2004. The original scope of this effort covered only those individuals applying for admission with nonimmigrant visas. Starting on September 30, 2004, US-VISIT expanded biometric entry procedures to include those individuals applying for admission under the VWP. US-VISIT's deployment of biometric capabilities focused on entry for security reasons but also because infrastructure and processes on which to build already existed. In contrast, the exit process at air, sea, and land ports has little or no established infrastructure, processes, or available government personnel. As a result, deployment of biometric capabilities for recording exit requires substantially more planning and innovation.

To that end, DHS has performed significant planning and testing over the past three years, examining possible solutions for integrating US-VISIT biometric exit requirements into the international air and sea departure process. The options of deployment at airline ticket counters, TSA checkpoints, and airline boarding gates, and in airport terminals were considered. Between 2004 and 2007, US-VISIT ran biometric exit pilots at 14 air and sea locations. These pilots evaluated the use of both automated kiosks and mobile devices in port terminals. The pilots ended in May 2007. While the pilots demonstrated that the technology works, they also revealed the need to embed biometric exit procedures into the traveler's existing departure process to address low voluntary compliance by travelers.

Based on the analysis of these pilots, review of a range of other potential options, pre-existing biometric exit requirements, and the 9/11 Act's mandate to establish a biometric air exit program by June 2009 or face suspension of the Secretary's VWP waiver authority, DHS published a proposed rule on April 24, 2008 to establish a biometric exit system at all air and sea ports of departure in the United States.³ The proposed rule would require commercial air carriers and cruise line owners and operators to collect and transmit international visitors' biometric information to DHS within 24 hours of their departure from the United States. Carriers are already required to transmit biographic information for these passengers to DHS.⁴ DHS is committed to protecting the privacy of international visitors and will require that any new systems meet the Department's transmission capability and data security requirements. The proposed rule does not designate a specific location within the port of departure for biometric collection and does not apply to small carriers or vessel owners and operators or to general aviation.

The proposed rule does not require carriers to process exit data but only to collect and forward that information to DHS. The ultimate shape of the Air/Sea Biometric Exit solution will be the result of an open and thorough vetting through the public rulemaking process. During the comment period that ended on June 23, 2008, DHS received numerous and detailed comments in response to the NPRM, both in written form and during a public hearing on June 13, 2008. The department is in the process of reviewing these comments and will publish a final rule this year, in accordance with the Administrative Procedure Act, other applicable statutes, and established policy.

Once DHS begins receiving the biometric exit data, it will pair that data with corresponding biographic exit data; match entry and exit records; determine overstay status; vet against, and update, watchlists; and forward information that may be appropriate for further investigation to U.S. Immigration and Customs Enforcement. In addition to identifying those individuals who have not left the country in accordance with the terms of their admission, overstay information is important for other purposes. For example, information on individuals who overstayed but then departed the United States is relevant to future immigration determinations, such as a subsequent application for admission to the United States, visa renewal, or other immigration benefits. Overstay information also plays a role in counterterrorism. A critical aspect of counterterrorism efforts is recording the arrival of travelers

³On April 24, 2008, DHS published a Notice of Proposed Rulemaking (NPRM) requesting public comment. This will be followed by a Final Rule addressing public comments, as required by the Administrative Procedure Act, 5 U.S.C. 553. Depending on the final decisions resulting from the NPRM, the Final Rule will need to amend the Code of Federal Regulations in a number of places.

⁴ The NPRM relies on section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Pub. L. No. 107-173, as does the collection of information from carriers through the Advance Passenger Information System (APIS). EBSVERA revised section 231 of the Immigration and Nationality Act (INA) (8 U.S.C. § 1221) to make statutory that each commercial vessel or aircraft taking passengers on board at any seaport or airport in the United States destined for any place outside the United States provide certain manifest information concerning each passenger, crew member, and other occupant to be transported. Subsection 231(c) of the INA, as revised by EBSVERA, expressly identifies certain items of identifying information that carriers must provide to DHS, including: (1) complete name; (2) date of birth; (3) citizenship; (4) gender; (5) passport number and country of issuance; (6) country of residence; (7) U.S. visa number, date, and place of issuance; (8) alien registration number, as applicable; and (9) U.S. address while in the United States. Paragraph (10) requires carriers to provide "such other information the . . . [Secretary of Homeland Security] determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security."

from areas of the world with significant terrorist or criminal activity. Awareness of travelers from these areas coupled with knowledge about the terms of their admission, including overstay information, is essential to assessing risk and to enhancing the integrity of the immigration and border management system. Finally, comprehensive trend analysis is likely to assist DHS and DOS in identifying specific visa-issuing posts, visa categories, VWP countries, and other criteria that might be common to an unacceptably high overstay rate. This knowledge will enable DHS and DOS to increase scrutiny and to focus efforts according to any identified threat.

DHS is committed by year's end to strengthening the VWP in a substantive way, admitting new, qualified members into the program, and implementing the biometric exit system. As we have outlined today, the Department is well on its way to achieving these goals. We appreciate your continued support of programs that help secure U.S. borders, strengthen the U.S. economy, improve relations with our closest allies, and promote a safer international travel environment.

Chairwoman Sanchez, Representative Souder and Members of the Subcommittee, we want to thank you for the opportunity to present this testimony today. We would be pleased to respond to any questions you might have at this time.