

**Testimony Before the
House Judiciary Committee**

**IMPLEMENTATION OF AN ENTRY-EXIT SYSTEM:
Still Waiting After All These Years**

**Testimony of
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Chairman Goodlatte, Ranking Member Conyers, Members of the Committee, I appreciate the opportunity to testify before you about the enforcement implications of an Entry/Exit system.

My name is Julie Myers Wood, and I am President of Guidepost Solutions, an investigative and compliance firm. In that position, I work with companies on their internal compliance programs, create web-based solutions to assist businesses with export and immigration compliance challenges, and consult with companies that work with the government. I am also a member of the American Bar Association's Commission on Immigration and as a Member of the Constitution Project's Committee on Immigration.

I am testifying today solely in my personal capacity and not as a representative of any group or organization.

Before joining the private sector, I served as the head of Immigration and Customs Enforcement (ICE) for nearly three years. I also served in a variety of other government positions, including Assistant Secretary for Export Enforcement at the Department of Commerce, Chief of Staff for the Criminal Division at the Department of Justice and Deputy Assistant Secretary (Enforcement – Money Laundering and Financial Crimes) at the Department of Treasury. In these roles, I saw first-hand the government’s challenges in developing an overstay enforcement system that works, as well as the law enforcement need for accurate data on individuals who are in our country.

It is widely acknowledged that one of the most significant problems with current immigration enforcement is the inability of the government to address the problem of visa overstays. It is estimated that approximately 40% of individuals who are in the United States without authorization today initially entered the United States legally. When their visas expired, these “overstays” have blended into American society with little concern that they will be held accountable by any federal law enforcement. Indeed, a recent GAO reports notes as of June 2013, DHS has more than one million unmatched arrival records in ADIS (that is, arrival records for which ADIS does not have a record of departure or status change), which do not meet ICE’s enforcement priorities.¹ Although ICE has limited resources and must prioritize, one million known - but ignored - records is not the sign of a working immigration system. Efforts to secure the border or reform

¹ “Overstay Enforcement: Additional Actions Needed To Assess DHS’s Data and Improve Planning for a Biometric Exit Program,” July 30, 2013, available at <http://www.gao.gov/assets/660/656316.pdf> (last viewed September 28, 2013).

our immigration process must include efforts to transform overstay enforcement. We need both a system that works and a commitment to enforcement of overstays.

A significant reason that these individuals who overstay their visas are able to blend into society is the fact that we do not have an adequate exit system (“Exit”), despite seventeen years and eight statutes requiring an Exit program. The lack of an adequate Exit program was highlighted by the 9/11 Commission:

DHS, properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system. As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit ... should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the U.S. on expired visas.²

Knowing the urgency of these efforts, DHS has made substantial progress since 9/11 in developing and refining an entry program, and working to develop an exit program. During the time that I was at DHS, the Department was working to expand entry biometrics from two to ten fingerprints, and wrestling with integrating the U.S. VISIT (recently renamed the Office of Biometric Identity Management (OBIM)) generated data into the work of the enforcement agencies. As such, during this period, the Department’s exit work focused on a biographic methods to record exits and ways to refine data analysis gathered through the biographic methods, such as passenger records. Although this was frustrating to law enforcement interests both inside and outside DHS, it was understandable given cost restraints, capacity, and technological limitations at the time.

² A total of 5 of the 9/11 hijackers had overstayed their visas.

Five years later, law enforcement remains frustrated with the focus on biographic solutions because of the loopholes in such a program. While a biographic Exit program is better than no program at all, the lack of biometrics leaves a significant gap for criminals and others to abuse. Indeed, ICE, CBP and other DHS agencies have long recognized that biographic data is not sufficient to meet its mission. Even senior DHS officials told GAO in April 2013 that DHS officials stated that the department had not reported overstay rates because it had not had sufficient confidence in the quality of its overstay data. DHS officials stated at the time that, as a result, the department could not reliably report overstay estimates in accordance with the statute.³ The GAO went on to link the lack of confidence in overstay data to the current biographic data system, and lack of a biometric system to verify identities.⁴

The law enforcement and the intelligence community is well aware, and today rely heavily on, effective biometrics to verify identity immediately and provide real-time assurance that people are who they say they are, rather than just the people they are pretending to be. As CBP noted in its recent Exit report:

Biographic data is a good start but is not enough to meet law enforcement, national security and other needs. Relying solely on Biographic matches based on data such as names and document numbers provide significant evidence that the traveler is genuine, but biometrics should offer a greater degree of assurance that the individual is who he or she claims to be, and whether the individual has actually departed the United States. With improved matching capabilities, the ability to match biometric entry and exit data would become more accurate and complete.⁵

³ “Overstay Enforcement: Additional Actions Needed To Assess DHS’s Data and Improve Planning for a Biometric Exit Program,” p. 14, July 30, 2013, available at <http://www.gao.gov/assets/660/656316.pdf> (last viewed September 28, 2013).

⁴ “Immigration Enforcement: Preliminary Observations on DHS’s Overstay Enforcement Efforts”, May 2013.

⁵ “Comprehensive Exit Plan,” U.S. Customs & Border Protection, dated September 27, 2013.

For these reasons, it is encouraging to see the interest of this Committee and the Department in developing a workable biometric Exit program. Although historically some technological challenges may have been obstacles to the government from implementing a valid program, advances in technology mean that this is no longer a valid excuse.

Biometrics are now part of mainstream industry and security efforts. They are available on your iPhone, and utilized at locations as diverse as casinos and an amusement park. Similarly, biometrics should also be utilized to determine Exits of foreign nationals from the United States. CBP appears to be recognizing this shift and improvements in technology by partnering with S&T to identify and leverage pilot approaches. Building upon this work, any new immigration reform statute should mandate a robust, biometric Exit program, and give the DHS sufficient resources to implement and enforce this program.

Instant, verified biometric Exit data would be extremely useful to law enforcement, for both terrorism cases and routine immigration enforcement.⁶ First, biometric exit would be extremely effective in particular national security cases. Significant national security risks may try to leave the country unnoticed. Biographic-centered exit systems do little to prevent these determined individuals from escaping the clutches of Joint Terrorism Task Forces or other law enforcement efforts. One example of this is the Times Square bomber, who evaded a biographic-only exit system (but was fortunately apprehended on the runway). More recently, the Joint Terrorism Task Force

⁶ Biometric exit would also transform the metrics and information used by the government in evaluating the visa waiver programs, and also reduce traveler errors caused by confusing or inaccurate biographic information.

lead provided by the Russian government on Boston Marathon bomber Tamarlan Tsarneav, who was a legal immigrant subject to immigration controls, was significantly stymied when Tsarneav's name was misspelled by the airline. As a result, the FBI did not ever know he had actually departed the country. A biometric exit would have instantly verified Tsarneavi's identity, whether or not his name was spelled correctly.

ICE's routine enforcement efforts would also be enhanced with an effective, biometric Exit program. Such a system would allow ICE to more effectively enforce immigration laws against individuals who overstay their visas. Currently there are approximately 300 dedicated Counter Terrorism Compliance Enforcement Unit (CTCEU) agents. They prioritize leads based on a threat matrix developed in cooperation with the intelligence community. Because we do not have an effective exit system, many times ICE agents are inadvertently referred or focus on high priority leads who have already left the country. This is a waste of law enforcement efforts. Without a biometric component, doing the checking that is involved to guarantee that that individual has actually left (and not an imposter, etc.), often ICE has to engage and even deploy overseas resources to confirm that the individual has left the country. This is not a simple paperwork exercise. Often this requires agents going out in the field and verifying or validating departure. Such efforts are not only a waste of time, but a significant drain on ICE's limited financial resources. Such a sap on resources would be unnecessary with a biometric component.

An effective biometric Exit program would also be useful to confirm certain types of Voluntary Departures. These departures require the individual to check in with the consulate. Often this is not done, or the individuals do not understand that they need to

do it. ICE agents are required to investigate and confirm that departures have occurred. This takes ICE and State Department hours.

Even more generally, a robust Exit program would provide enhanced value in investigations and criminal cases of all kinds where government is proving travel as part of the conspiracy or in furtherance of the criminal behaviors.

Despite the many benefits of Exit, the overall value of a robust biometric system is greatly diminished if the enforcement agencies will not enforce violations that such a system identifies. One of the biometric Exit data's core missions is to help restore the integrity of the immigration system. Thus, while ICE will be grateful for clear data on overstays, not having the resources or focus to ensure the law is enforced against overstays will frustrate much of the value of the good work of implementing biometric exit. To ensure that we have successful immigration reform, a commitment to build Exit must also be accompanied by a commitment to enforce the law.

To that end, we must be realistic as to whether biometric Exit will make a significant difference in improving immigration enforcement and reducing the flow of overstays given ICE's current posture on overstay enforcement. The July 2013 GAO report confirmed that routine overstay enforcement is not a priority of the Department. ICE HSI currently spends only 1.8% of its enforcement hours on enforcement against overstays.⁷ In addition, as OBIM has increased its data mining methods and contractors understood what ICE was looking for in terms of usable exit data, more and better leads have been provided to ICE every year since 2005. Despite the increase in leads, the

⁷ "Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program," July 2013, available at <http://www.gao.gov/assets/660/656316.pdf> (last viewed on September 28, 2013).

number of cases ICE deems worthy of opening for investigations continues to go down. In 2005, for example, 13,000 non-priority leads were sent to ICE and the agency opened 4,600 for investigations. In 2012, over 212,000 non-priority leads were sent to ICE, but the agency only opened 2,800 investigations.⁸

Further data provided in the GAO July 2013 report highlights the lack of enforcement activity against routine overstays. As a part of its review, the GAO identified 1.6 million unmatched overstay records that had not been cleared and were open. DHS agreed to review those records. The GAO Report notes,

[a]s a result, DHS closed approximately 863,000 records for individuals who had departed, were in status, or had adjusted status, and removed them from the backlog by conducting additional automated checks. Second, DHS reviewed the remaining 757,000 records against national security and law enforcement databases to identify potential national security or public safety threats. As part of this national security and public safety review, DHS also reviewed approximately 82,000 additional records identified by CTCEU that were unresolved or had not yet undergone full review because they did not meet ICE's enforcement priorities (a total of approximately 839,000 combined records). As a result of these reviews, DHS reprioritized 1,901 of the 839,000 records because the subjects of the records could pose national security or public safety concerns and provided them to CTCEU for further review and consideration for enforcement action.⁹

Out of the 1901 records that were determined to be potential public safety or national security risks through this process, ICE took action on very few of them:

Arrested:	9
Could not be located: (investigation closed pending new information)	266
Referred to Enforcement & Removal Operations (ERO): (no further response provided, see below)	481
Previously arrested/in proceedings:	43

⁸ Id.

⁹ Id. at 13.

These results are concerning. CTCEU made a significant number of referrals to ICE ERO as part of this process, based on potential concerns that these individuals were a public safety threat (presumably they did not meet the HSI threshold). However, there is no indication whether any of those individuals were arrested or placed on a priority list at ERO. Indeed, as ERO officials explained to the GAO, “few records of potential overstays have met ERO’s priorities.”¹⁰ The information from CTCEU also does not indicate what communications exist between CTCEU and ERO on these overstays which were specially referred to ERO. Without further explanation, there appears to be a potential disconnect between these parts of ICE – one that benefits those who overstay, but reduces the chances of effective enforcement.

To put these numbers in perspective:

Your chances of being audited by the IRS: 1 in 175.¹¹

Your chances of being struck by lightning once in your lifetime: 1 out of 3000.¹²

If you were part of the 839,000 unmatched records specifically identified in the GAO report, the chances that ICE would arrest you for being out of status: 1 out of 16,134.¹³

¹⁰ *Id.* at 15.

¹¹ “What are your chances of winning the lottery,” *Popular Science*, November 2012, available at <http://www.popsci.com/science/article/2012-11/dismal-odds-winning-lottery-infographic> (last viewed on September 28, 2013).

¹² “Flash Facts About Lightning,” *National Geographic*, June 2005, available at http://news.nationalgeographic.com/news/2004/06/0623_040623_lightningfacts.html (last viewed on September 28, 2013).

¹³ GAO July Report, Table 3 at 15. ICE HSI indicated that there were 9 arrests out of the 1901 national security cases, and that an additional 43 people were identified as previously arrested, in removal proceedings, or the subject of an investigation. A total of 52 arrests/removal proceedings commenced out of 839,000.

Such a low level of enforcement suggests that even with biometric Exit in place, the number of overstays may continue to grow unabated due to a lack of enforcement, resources and direction.

Enforcement always requires resources and appropriate prioritization, and any immigration reform bill must include appropriate resources to address these needs, so that the benefit of a biometric Exit does not surpass the immigration components that need it the most to do its job.

Thank you for the opportunity to testify before you about the enforcement implications of an Exit system. I would ask that my entire testimony be placed into the record, and I am happy to answer any questions you have at this time.