

Statement of
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on behalf of the
American Immigration Lawyers Association
and the
Foreign Trade Association, Inc.
of the Paso del Norte Region
on
Integrity and Security at the Border: The US VISIT Program
Before the
Subcommittee on Infrastructure and Border Security of the Select
Committee on Homeland Security

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Mr. Chairman and distinguished Members of the Subcommittee, I am Kathleen Campbell Walker, Treasurer of the American Immigration Lawyers Association (AILA). I am honored to be here today representing two organizations, AILA and the Foreign Trade Association of the Paso del Norte region.

AILA is the immigration bar association with more than 8,500 members who practice immigration law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association (ABA). AILA members represent tens of thousands of: U.S. families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States; U.S. businesses, universities, colleges, and industries that sponsor highly skilled foreign professionals seeking to enter the United States on a temporary basis or, having proved the unavailability of U.S. workers when required, on a permanent basis; and healthcare workers, asylum seekers, often on a pro bono basis, as well as athletes, entertainers, exchange visitors, artists, and foreign students. AILA members have assisted in contributing ideas for increased port of entry inspection efficiencies and continue to work through their national liaison activities with federal agencies engaged in the administration and enforcement of our immigration laws to identify ways to improve adjudicative processes and procedures.

The Foreign Trade Association of the Paso del Norte region was originally incorporated in 1985 as the El Paso Foreign Trade Association. The mission of the Foreign Trade Association is to enhance and advance bilateral trade in the Paso del Norte region, which includes El Paso, Texas, southern New Mexico, and the northern part of the State of Chihuahua in Mexico, which includes Ciudad Juarez. The Association's membership includes *maquiladora* executives and service industry leaders from both sides of the U.S.-Mexico border. The Association has a history of working with federal, state, and local officials on both sides of the border to implement projects for the improvement of cross-border trade and commerce. For example, the Association spearheaded a four-year project partially funded by the El Paso community to construct the first dedicated commuter lane in Texas using Secure Electronic Network for Travelers Rapid Inspection (SENTRI) technology. It also helped to implement the first FAST lane on the southern border for commercial traffic in the past few months.

Both organizations appreciate the opportunity to testify today on "Integrity and Security at the Border: The US VISIT Program." While our organizations differ in many respects, we both strongly hold the view that it is vitally important to enhance our nation's security in a way which balances our need for enhanced security with our economic dependence on the international and the cross-border flow of people and goods, which helps to pay for our national security.

I am here today to testify on the US VISIT program and to offer suggestions to help potentially ensure that this program works efficiently and effectively, so that we can achieve a viable inspection process and enhance security at our borders. Living in a post September 11 environment demands that we develop new programs that balance a recognition of the fact that our nation is inextricably linked to the world around us with the need to protect ourselves from those who would do us harm. We all have much to learn from our past mistakes as well as our past successes. I hope this testimony contributes to a productive discussion.

What is US VISIT? The United States Visitor and Immigrant Status Indicator Technology program (US VISIT) is the new automated entry/exit system that is being implemented at our nation's ports of entry. It is designed to collect and share information on foreign nationals traveling to the United States (including travel details and biometric identifiers), confirm identity, measure security risks, and assess the legitimacy of travel in an effort to determine who is welcome and who is not, and help speed traffic flow. The overall plan for the implementation of US VISIT calls for the collection of personal data, photos and fingerprints, at U.S. consular offices abroad and at our ports of entry, as well as broad database and information sharing. The system also is intended to

track changes in foreign nationals' immigration status and make updates and adjustments accordingly. Ultimately, the Department of Homeland Security (DHS) plans to make available information captured through US VISIT at all ports of entry and throughout the entire immigration enforcement system.

US VISIT is the latest manifestation of an earlier program, Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) (IIRAIRA). The concept of an entry/exit system to monitor entries at and exits from our nation's ports of entry was first articulated in Section 110, which created an entry/exit system that would have applied to all non-U.S. citizens who entered or exited the United States at any port of entry to identify visa overstayers. Although subsequent laws altered both the deadline and the parameters of the Section 110 entry/exit program, the general framework of Section 110 entry/exit remains the same today. [The Congressional deadline for the entry/exit system was delayed by P.L. 105-259 to October 15, 1998. In P.L. 105-277, the deadline was pushed back to March 30, 2001, for land ports of entry and seaports. This law did not affect the deadline for implementation at airports.]

The Data Management Improvement Act of 2000 (P.L. 106-215) (DMIA) amended Section 110 to require that the entry/exit system use data that already was being collected from foreign nationals and prohibited the Immigration and Naturalization Service (INS) from imposing additional entry or exit documentary or data collection requirements for purposes of the entry/exit system. The act mandated the development of a searchable centralized database and staggered the entry/exit implementation deadlines into three very difficult to achieve time frames as follows:

- Airports and Seaports—December 31, 2003
- Top 50 high traffic land border ports—December 31, 2004
- Remaining implementation for all other ports—December, 31, 2005

While the system set forth by Section 110, and amended by the DMIA, must record entry and exit for foreign nationals without establishing additional documentary or data collection requirements for the purposes of the entry/exit system, the laws do not prohibit DHS from developing new documentary or data collection requirements to implement provisions contained in other laws. Certainly, the mandate of US VISIT—to enroll applicants for visas and admission to the U.S. via the collection of two print fingerprints and a digitized photograph—is beyond current procedures. The potential remains for DHS to include within US VISIT categories of foreign nationals now exempt from program participation, including legal permanent residents, Canadian citizens, and Visa Waiver Program participants.

In the post-9/11 environment, Congress took another look at the Section 110 entry/exit system in the USA PATRIOT Act of 2001 (P.L. 107-56) (PATRIOT Act). The law encouraged the development of the entry/exit system with “all deliberate speed” and as “expeditiously as practicable,” and established a taskforce made up of governmental and private industry representatives to review the establishment of an entry/exit system. The law also mandated that the entry/exit system use biometric technology and requires tamper-resistant documents readable at all ports of entry.

With the passage of the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) (Enhanced Border Security Act), Congress addressed the entry/exit system as a program that balances security with the economic realities of our busy ports. To strike this balance, the act mandated that the entry/exit program utilize technologies that facilitate the efficient flow of commerce and travel, including interoperable data bases that aid in the determination of who should be allowed entry into the U.S. Congress here clearly recognized the need to balance improved border security with our nation's economic security as it relates to the flow of people and goods through our nation's ports of entry.

The First Phase of US VISIT

Testing for the first phase of the US VISIT program's implementation at airports and seaports began in the Hartsfield International Airport in Atlanta during November 2003. DHS reported that during the pilot testing phase, over 140,000 individuals were enrolled in US VISIT and 21 individuals were intercepted upon entry. DHS has not indicated whether these individuals would have been admitted to the U.S. if the typical pre-VISIT inspections process had been used.

On January 5th, the first phase of US VISIT became operational at 14 seaports and 115 airports nationwide. DHS explained the five-day delay in implementation (the program was originally set to begin on December 31, 2003) as an effort to avoid disrupting holiday travel. This delay, however, was more than a magnanimous overture, because the first part of the year is traditionally a slow travel season. Implementing US VISIT while travel is light has led to reports that US VISIT's procedures do not cause appreciable delays. US VISIT, as currently implemented at our ports of entry, does not involve any biometric security check prior to admission. And, subsequent applications for admission by US VISIT enrollees will only require a biometric check to verify the identity of the enrolled foreign national.

US VISIT currently is set-up so that nonimmigrant visa holders applying for admission to the U.S. through one of the US VISIT designated airports or seaports will undergo the standard inspection process and simultaneously will be enrolled in the US VISIT system. If these individuals leave through a port with US VISIT exit capabilities (of which there currently is only one airport and one seaport), these travelers must comply with US VISIT exit procedures upon their departure from the U.S. Unfortunately, such procedures are still sketchy at best and the consequences for failure to comply can be severe, according to the US VISIT interim final implementing regulations published at 69 *Fed. Reg.* 467-481.

Enrollment at the Ports of Entry under US VISIT

During the first phase of US VISIT's implementation, only nonimmigrant visa holders who enter the U.S. through an air or seaport that has US VISIT capability will be enrolled in the program. The first time DHS enrolls a traveler into US VISIT at a port, the individual's travel documents will be scanned, a digital photo and inkless fingerprints of both index fingers will be taken, and the individual's name will be checked against the Interagency Border Inspection Service (IBIS) database and the wants and warrants section of the National Crime Information Center (NCIC) database. Both of these checks are text (not biometric) checks. IBIS contains certain terrorist watch list information from the TIPOFF database maintained by the Department of State (DOS).

The enrollment process is supposed to take about 10 to 15 seconds. The primary reason for the speed of this process is that the security check against the applicable biometric database, Automated Biometric Identification System (IDENT), occurs after the visa holder is admitted to the U.S. If DHS inspectors ran the IDENT checks during the admissions process, it would add about five minutes to every US VISIT enrollment, thus generating such lengthy backlogs that the ports of entry would essentially shut down.

The IDENT database, is a legacy INS database based on the same two index prints as US VISIT as well as a digitized photograph. The system was created in 1994 and widely deployed from 1997 to 1998. It originally contained a recidivist database and a lookout database including all foreign nationals apprehended by the INS. The DOS also maintains such a biometric database of all Mexican laser visa holders (formerly known as border crossing cardholders). These laser visa holders all were vetted through an IDENT check. Except for in the US VISIT context, the IDENT checks at ports of entry currently always occur during secondary and not primary inspection, where the time required to process information through IDENT is less of a concern.

Once the visa holder is enrolled in US VISIT, his or her arrival information will be stored in the IDENT biometric database. Therefore, the information for applicants for admission under US VISIT with no criminal record or apprehension record with legacy INS or DHS are contained in the same database as the individuals for whom DHS is on the lookout. Such proximity between two distinct classes of foreign nationals will lead to confusion as inspectors will have to determine which individuals in IDENT are inadmissible to the U.S. and which have merely been enrolled in US VISIT.

After visa holders enroll in US VISIT, they still will have to provide fingerprints and have a digital photograph taken upon each application for entry to the U.S. Ideally, future enrollees will be able to swipe their biometric passport or visa, provide index fingerprints and photo, and be checked for identity against the US VISIT database without further delay. This system would rely on US VISIT to identify the enrollee and the usual text-based IBIS database check. Again, this procedure will not provide for a rapid biometric check against any criminal or other biometric watch list database.

Departure from the U.S. under US VISIT

Nonimmigrant visa holders are required to document their departure from the United States with US VISIT **only** if they depart the U.S. through an air or seaport that has US VISIT exit capability. Since January 5, 2004, US VISIT only has exit capability at the Baltimore-Washington International (BWI) airport in Baltimore, Maryland and at the Miami seaport. However, DHS plans to expand US VISIT exit capabilities to other ports of entry throughout 2004. At the moment, the exit stations for US VISIT are self-service kiosks that closely resemble automated teller machines (ATMs). DHS has indicated that the kiosks will be located within the secure area of air and seaports. The Department also has stated that attendants will be assigned to monitor the kiosk area and offer assistance. In addition, DHS has announced that during 2004, it will test various exit methods, possibly including a hand-held device that will permit DHS personnel to register the departure of nonimmigrant visa holders. One of the problems with such mobile units in the past has been lack of database connectivity. For example, at land ports, passenger vehicle lanes are usually not equipped with machine readable document scanners and mobile units with access to the TECS (Treasury Enforcement Communications System) database are used. Information has to be typed into the system and database access is limited. Upon departure, database review is again limited and not conducted against a criminal biometric database such as IDENT.

DHS considers exit registration mandatory for visa holders who depart from an air or seaport with US VISIT exit capability. According to DHS, entry/exit information is constantly updated, and if a visitor overstays his or her authorized period of stay, US VISIT will record the failure to depart. However, prior experience with databases designed to display the status of a foreign national indicated that inspectors are not often given access to these resources. Legacy INS experimented with the CLAIMS III database, which indicated the immigration status of foreign nationals. Unfortunately, the use of that database was frustrated by the fact that it was often down and not accessible. U.S. Citizenship and Immigration Services also maintains an internet-based on-line case status inquiry system which is not hooked up to inspection lanes, and inspectors have a difficult time utilizing this resource.

In addition to concerns about the usability of the US VISIT database, there are serious concerns regarding the accuracy of the entry/exit information it contains. Inaccurate entry/exit data can have a serious impact on visa holders in a variety of ways since presence in or out of the U.S. is a critical issue for certain immigration benefits such as: eligibility in terms of overstays and removals; physical presence requirements for substantial presence determinations under our tax laws; legal permanent residence abandonment issues; time spent in the U.S. for naturalization purposes; etc.

Statements made by the DHS indicate that the Department appreciates the potential negative effects of recording exit information before the exit systems are fully operational and is considering a grace period regarding exit requirements. However, there has not been any confirmation of whether such a grace period exists, or whether failure to exit properly will result in a case-by-case review similar to the review permitted under Special Registration/National Security Entry/Exit Registration System (NSEERS).

U.S. Consulates' Role in US VISIT

Certain U.S. consulates have begun enrolling nonimmigrant and immigrant visa applicants into the US VISIT system when processing the new biometric visa. Individuals enrolled at the consulates will still be "visited" upon their entry to the U.S., in that they will have their entry recorded via a biometric identity review. Currently, only certain consular posts are issuing biometric visas. However, the State Department is required to start issuing these visas at all 211 consular posts by October 26, 2004—an extremely ambitious deadline. As with port VISIT enrollment, two digital index finger prints and a photo are taken of visa applicants. Such biometric information, however, is checked against the IDENT database before visa issuance. Recently, at the U.S. Consulate in Vancouver, visa issuance times were increased from same day processing to 3-day processing due to the IDENT clearance. This delay is marking the end of same-day visa issuance and results in additional processing burdens on consular officers without the necessary staff increases to attend to such demands in a more timely manner. In addition, insufficient additional resources are apparently being allocated to address these database check delays at the source.

This IDENT requirement subsumes the personal appearance waiver policy announced in 2003 by DOS that required interviews of applicants between the ages of 16 and 60. Note that the IDENT check done by DOS applies in both the nonimmigrant and immigrant visa application process. Currently, US VISIT only applies to nonimmigrant visa holders.

In addition to these delays, consulates in Visa Waiver countries will likely suffer from additional delays due to an increased number of visa applicants. A congressional mandate in the PATRIOT Act requires Visa Waiver countries to issue tamper-proof machine-readable passports (MRPs) that include biometric identifiers by October 26, 2004. Individuals without a biometric MRP will have to apply for a visa at a U.S. consulate and will be subject to US VISIT enrollment at the post. Their admission will then be recorded under US VISIT procedures at the port of entry.

The Relationship between NSEERS and US VISIT

Special Registration/NSEERS at the ports of entry continues even after the launch of US VISIT this January. Registration for NSEERS and enrollment for US VISIT will continue to be separate processes until US VISIT incorporates NSEERS. (Such incorporation is not anticipated until US VISIT is fully developed.) Also, the two processes involve the intake of different levels of data. Thus, it is difficult to conceptualize an NSEERS process without a secondary inspection component, which is typically not involved in most US VISIT admissions.

Persons subjected to call-in or port of entry Special Registration still must register their departure via NSEERS and must leave the U.S. through a designated NSEERS port of departure. According to preliminary reports, if US VISIT has an operational exit kiosk at this port, and an individual already has registered his or her departure at that airport via NSEERS, the visa holder is not obligated to document his departure with US VISIT. Thus, someone subject to NSEERS departure control will not need to register departure via both methodologies. There is, however, no written confirmation of this procedure. Considering that those who fail to comply with departure control rules under NSEERS may be subject to inadmissibility under INA section 212(a)(3)(A)(ii), many foreign nationals subject to both US VISIT and NSEERS exit requirements (as well as their

counsel) are not clear on how to ensure that their compliance is well documented in both systems. A public information program is critical to help those wishing to comply to do so.

Expansion of US VISIT to Land Ports of Entry

Although DHS has not announced a timeframe for the implementation of new exit capabilities at our nation's airports and seaports, DHS plans on deploying biometric document readers to all air, sea, and land ports of entry by October 26, 2004. (Of course, the Mexican biometric laser visa for business and tourist admissions has been in existence for years, and yet such scanners have not been deployed to all ports.)

Implementing US VISIT at our land ports of entry must take into account the complex realities of these ports. For instance, after September 11, 2001, when port officers attempted to subject all applicants for admission to IBIS (text based) database reviews, the resulting delays led to a modification of the policy. Such checks were not conducted at passenger and commercial vehicle lanes due to infrastructure limitations.

Unless Congress acts to delay the implementation of US VISIT deadlines, DHS will be required to expand the entry/exit program to the top 50 high traffic land border ports by December 31, 2004 and to the remaining ports of entry by December 31, 2005. Expanding US VISIT to land ports of entry raises a multitude of issues beyond those that arise at airports, and presents a host of infrastructure, staffing, and database challenges.

Border communities depend on the cross border flow of goods and people for their economic survival. For example, in 2001, \$22.7 billion in imports and \$16.1 billion in exports passed through El Paso's international bridges, constituting 19% of total trade through southern U.S. Customs Districts. Local El Paso economists estimate that between 15% and 30% of El Paso's retail sales are derived from Mexican nationals. Just in time inventory management in cross-border manufacturing operations requires that Mexican and Canadian suppliers make their deliveries to the U.S. in predictable intervals. Delays in these cases can translate into disasters for these communities.

A June 1998 Senate Judiciary Committee report offers a compelling example of the challenges faced at our land border ports of entry. The report cites information from Dan Stamper, President of the Detroit International Bridge Co. Mr. Stamper noted that the Ambassador Bridge handles approximately 30,000 vehicle crossings per day. He calculated that, "assum[ing] the most efficient and remarkable entry and exit procedures in the world [that] will take only 30 seconds per vehicle, and making the equally optimistic assumption that only half of the vehicles have to go through procedures, that would amount to an extra 3,750 minutes of additional processing time each day." As he sagely pointed out, "There are only 1,440 minutes a day." Thus, the implementation of Section 110 would effectively close the border.

Unique infrastructure concerns also arise. The DMIA Task Force's Second Annual Report to Congress notes that in fiscal year 2002, there were 358 million land border entry inspections of people and 11 million inspections of commercial vehicles. There are over 300 ports of entry to the U.S. The report further states that as to current port infrastructure: 64 ports have less than 25% of the required space; 40 ports have between 25 and 50% of the required space; 13 ports have between 50 and 75% of the required space; and some existing ports lack "any land for expansion."

In addition, the high cost involved in developing an appropriate infrastructure also must be recognized. Along with the physical exits, these ports need adequate lanes, technologies, and trained officials, all of which costs, according to experts, more than \$10 billion dollars. Furthermore, in contrast to airport ports of entry, land ports must deal with pedestrians, passenger vehicle occupants, and commercial vehicle occupants. Our current admissions procedures at land

ports sheds some light on the complex environment in which US VISIT will supposedly be implemented.

Pedestrians: Currently, most pedestrian admissions are not recorded. When randomly checked, pedestrians are checked against IBIS (text-based) and the person and document are “eye-balled” for a match. The current minimum mandated IBIS check is 40%. The inspector may ask about the purpose of entry, where the person is from, or why he or she has been outside the U.S. This process often takes less than 5 seconds.

Occasionally, inspectors may check the person’s visa against the DOS Consular Consolidated Database (CCD), which houses a copy of the visa the U.S. Consulate issued to that person. This additional check helps to target those who use other’s documentation or fraudulent visas. Unfortunately, CCD access is not typically available in primary inspection. Currently, no review done at the primary inspection area verifies the identity of the person through a biometric check other than via the human eye.

In order for a biometric check to be done, the person is taken to a secondary inspection area where two fingerprints and a photograph are taken. The person’s biographical and biometric information is run through the IDENT database, which then determines if this individual has violated immigration status. If merited, some applicants for admission may also be checked against the Integrated Automated Fingerprint Identification System (IAFIS), which is maintained by the FBI. This database compares all ten fingerprints of the person against its records. The IDENT checks typically take 5 minutes or less, and the IAFIS checks can take 15 to 30 minutes or more depending on a variety of factors.

Most foreign nationals are required to apply for an I-94 admission document and pay a \$6 fee upon application for entry to the U.S. The procedures surrounding issuing the I-94 card often result in delays. For example, there are often wait times of 30 minutes or more to be interviewed to obtain the I-94. After the interview process, the foreign national must go a separate location to pay the \$6 fee and receive the I-94. Too often, the official taking the fees is unavailable and applicants must wait for more than 15 minutes for an I-94 admission document to be issued.

Currently, there is no exit inspection for pedestrians and usually no space or personnel to perform such an inspection.

Passenger Vehicle Occupants: Most passenger vehicle lane checks do not involve checking databases against the applicant’s visa. Often, passenger vehicle inspectors will have access to Treasury Enforcement Communications System (TECS), which is a database managed by legacy Customs. It is possible to access IBIS via a mobile TECS unit, but the system is not amenable to scanning documents, so data must be typed in manually. In addition, to access CLAIMS III for immigration status information, the person must be sent to secondary inspection for further review. Therefore, if vehicle inspectors want to conduct further checks on applicants, the applicants for entry must park their car and walk in front of oncoming lanes of vehicles to get to the secondary inspection area.

Exit lanes are usually not available to allow for exit inspection. This fact is confirmed in the DMIA Task Force’s First and Second Annual Report to Congress. Obviously, in the passenger vehicle context, even fewer IBIS checks are conducted than of pedestrians.

Commercial Vehicle Occupants: Commercial vehicle occupants basically go through the same process as passenger vehicle occupants. However, the commercial parking lot often is far away from the secondary inspection area and commercial vehicle occupants must be escorted to secondary by a port employee. Due to inadequate staffing, often no staff is available to perform this function and foreign nationals are often left waiting for long periods of time for further review.

The DHS has indicated that enrollment in US VISIT at land ports of entry would occur in secondary inspection. [What DHS terms “secondary inspection” in this context, is the point at which foreign nationals obtain the I-94 admission card.] In order to speed processing of automobile traffic at the land ports, DHS is investigating the use of a radio frequency (RF) technology, which would transmit biographical information to the inspections officer. This technology would be similar to the SENTRI or NEXUS commuter programs implemented along the southern and northern border, respectively. However, RF technology does not resolve identity- and security-related database issues without either pre-clearance review of the applicant or at least text-based checks, as in airports upon admission. As noted by Jeane J. Kirkpatrick, Director – Council on Foreign Relations Independent Task Force on Homeland Security Imperatives, in her March 12, 2003 testimony before the U.S. Senate Judiciary Subcommittee on Border Security, Citizenship, and Immigration, “*There will never be enough inspection resources and it would prove self-defeating to subject every person, conveyance, and cargo to the same inspection regime.*” She further notes that the, “*inspections processes at a port of entry must be an exercise in risk management.*”

DHS issued a request for proposal (RFP) on November 30, 2003 for US VISIT, and is now considering three primary bidders: Accenture, CSC and Lockheed-Martin. Award of a contract is expected by May 31, 2004.

US VISIT- A Tool to Enhance Our Security?

Will US VISIT help to enhance our security? While the jury is still out, serious questions need to be addressed as to the achievable mission of US VISIT. A June 1998 Senate Judiciary Committee Report (Senate Judiciary Report 105-197 on S. 1360, Border Improvement and Immigration Act of 1998, June 1, 1998) makes the following apt comment:

*The Committee is keenly aware that implementing an automated entry/exit control system **has absolutely nothing to do** with countering drug trafficking, and halting the entry of terrorists into the United States, or with any other illegal activity near the borders. An automated entry/exit control system will at best provide information only on those who have overstayed their visas. Even if a vast database of millions of visa overstayers could be developed, this database will in no way provide information as to which individuals might be engaging in other unlawful activity. It will accordingly provide **no assistance in identifying terrorists, drug traffickers, or other criminals.** (emphasis added)*

With regard to tracking visa overstayers, the report further states:

Even if a list of names and passport numbers of visa overstayers would be available, there would be no information as to where the individuals could be located. Even if there was information at the time of entry as to where an alien was expecting to go in the United States, it cannot be expected that 6 or more months later the alien would be at the same location. Particularly, if an alien were intending to overstay, it is likely that the alien would have provided only a temporary or false location as to where the alien was intending to go.

AILA has previously testified that immigration can best contribute to our national security by enhancing our intelligence capacities. To that end, AILA strongly supported the Enhanced Border Security Act. The goal of this law is to make our borders the last line of defense. To that end, it includes the following provisions: authorizes increased funding for the DOS and INS, requires federal agencies to coordinate and share information needed to identify and intercept terrorists; encourages the use of new technologies by authorizing funds to improve technology and infrastructure at INS, the Customs Service, and DOS, targeting much of this effort at strengthening

our nation's borders; mandates the transmittal of advance passenger lists; and implements a study to determine the feasibility of a North American Perimeter Safety Zone. (This study includes a review of the feasibility of expanding and developing pre-clearance and pre-inspections programs).

Given this law's ambitious provisions, Congress needs to step up to the plate and provide the federal agencies impacted with the staffing and funding levels they need to implement this measure's provisions, as well as perform adequate oversight. It is simply unacceptable for Congress to pass this bill and not give the federal agencies the funding they need to do a good job. It is also unacceptable for the agencies not to implement the mandates of this law.

Recommendations: Based on the above discussion and in order to implement feasible security objectives without seriously harming the international and cross border flow of trade and people, we submit the following recommendations:

Realistic Assessment of the US VISIT Program's Capabilities

1. Determine the limits of US VISIT: Congress and the DHS must step-back and determine the program's true capabilities and assess the feasibility of every aspect of the program while US VISIT is still in its infancy. The 1998 Senate report on the entry/exit program challenges the notion that an entry/exit system can be used as a tool to prevent terrorism. If that is true, Congress must determine it now rather than after billions of US tax dollars have been spent. If the mission of US VISIT is instead to catch visa overstayers and those with a criminal record, the mission should be clarified. On the issue of national security, a false sense of security is a failure.

2. Develop a comprehensive plan for US VISIT: The Administration and Congress should use the above assessments to develop a comprehensive plan for US VISIT that takes into account the achievable goals of the program, necessary funding levels, infrastructure needs, and appropriate deadlines.

3. Do not use US VISIT as a substitute for increasing our intelligence capacity: Security experts agree that our national security is best enhanced by increasing intelligence and database security checks performed outside the country. DHS should examine ways to expand the use of pre-inspection stations and authorize pre-clearances for low-risk travelers. By clearing travelers before their voyage to the United States, inspectors will have more face time with applicants and could better scrutinize each applicant for entry. Such practices would reduce delays at the border and allow inspectors more time to do their job. Pre-clearances also would provide international travelers with a sense of certainty that they will be admitted into the U.S.

4. Ensure US VISIT receives the billions of dollars necessary for adequate implementation: Congress must be prepared to spend the money necessary to properly implement US VISIT to achieve its mission. In addition, Congress must conduct continual oversight to determine if US VISIT objectives are being met due to the alleged security importance of the project. According to the DMIA Task Force's first report to Congress, the U.S. government needs to appropriate billions of dollars to purchase real estate, upgrade facilities, develop infrastructure and technological capabilities, and hire inspectors to manage the entry/exit program. With a preliminary estimated price tag of billions of dollars, the \$380 million appropriated in FY 2003 was grossly insufficient to fund even the beginnings of this system. Without sufficient funding, US VISIT will not operate properly and will impede the flow of the people and trade essential to our economic well being.

Database Recommendations

1. Make enforcement databases accurate: The concept of a watch list database is dependent on accurate information. There must be accountability to ensure accuracy. In addition, all public inquiries concerning enforcement-related database entries should be consolidated. The general

public should be able to contact a central office to timely remove inaccurate information so as to avoid the continuation of injustices tied to the dissemination and provision of any inaccurate information.

2. Increase the interoperability of database systems: DHS should prioritize its efforts to increase the interoperability of the database systems to give inspectors a more thorough and streamlined review of each applicant requesting entry into the U.S. Currently, the separate databases from the three immigration bureaus have not been fully integrated into US VISIT. Due to this lack of information transfer, visitors who have applied for visa extensions might be detained for overstaying their visas, when in reality; they had maintained proper visa status. Having complete and correct information will make the difference between having a workable secure system or a discredited inefficient one.

3. Increase funding and oversight for IDENT to ensure that it is efficient, reliable and accurate: Currently IDENT checks are being run at the time of US VISIT enrollment at the U.S. Consulates (thereby delaying visa processing for each applicant by roughly three days in some cases) and are run at the ports of entry after the foreign national has entered the U.S. With the current IDENT processing times and infrastructure capacities at the ports of entry, it would be impossible to conduct IDENT checks upon admission without shutting down the borders. Congress and DHS must determine if IDENT can be modified so that checks can be done at the time of admission and then commit funding to making that happen. If it is not possible, Congress must understand that US VISIT does not enhance our security checks through the use of a biometric security database check upon admission. Instead, US VISIT runs a text-based security database check at the time of admission and creates a catalog of established identities for foreign nationals who have enrolled in the program.

4. Develop a biometric US VISIT database: Currently, the biometrics and biographical data of foreign nationals enrolled into US VISIT is warehoused within the IDENT biometric database. By lumping US VISIT enrollees in with criminals, we are sending the message that immigrants are criminals. Furthermore, commingling these two groups makes it more likely that errors will occur within the database and innocent travelers will be denied entry into the U.S.

Infrastructure & Staffing Needs

1. Don't implement US VISIT until an adequate infrastructure assessment is done and put into place: The procedures for port enrollment in VISIT versus consular post enrollment do not mirror one another from a security review perspective. The reason for this dichotomy is based on logistical limitations. Reassess the use of IDENT checks and consider applying them only to higher risk segments of the population. Currently, the only "low-risk" populations identified are those under 14 or over 79. This method of exemption appears overbroad. Exemption from the IDENT check and US VISIT enrollment should be based on intelligence, not stereotypes.

2. Realistically assess the staffing and infrastructure necessary to implement US VISIT: Such an assessment would involve answering many questions including: How many ports have scanners, which read passports, laser visas, etc. at commercial, passenger vehicle and pedestrian lanes? What is the current level of overtime at the ports? What are the processing times for I-94, immigrant visa processing, and other adjudications before deciding the impact on our tourism and trade of US VISIT requirements?

3. Delay implementation at land border until an adequate infrastructure is in place: The Border Security Act requires that DHS not impede the flow of goods and people across our nation's borders. Considering that the U.S. has over 300 ports of entry and, in 2001, over 510 million people entered the U.S. (63% of whom were foreign nationals) and over \$1.35 trillion in imports entered the U.S., the potential devastating effect of delay at the land ports of entry becomes clear.

Furthermore, such delays would undermine the entire effort to maintain an efficient border, and efficiency is a vital component in increasing security.

4. Clearly define what constitutes an exit and allow for flexibility in compliance with the exit requirements in the early stages of US VISIT: At this time, the airport and seaport exit functions of US VISIT are being piloted. DHS is testing an exit kiosk, but it has also indicated that it will test handheld exit devices. DHS must clearly define what constitutes an exit and ensure that the exit function is clearly marked and cannot be ignored by an oblivious foreign national. In addition, the government should clarify that the negative consequences of those failing to properly exit during the first few years of US VISIT will only be applied to willful violators. At land ports the lack of infrastructure makes it necessary to think creatively about exit control (such as allowing frequent travelers to skip the exit requirements since their multiple entries will verify that they previously departed the U.S. in a timely fashion) or possibly abandon exit controls there all together unless funding is allocated to the infrastructure and personnel investment required.

Operational Assistance

1. DHS must increase its outreach to the public concerning US VISIT: DHS must inform US VISIT enrollees of the program's requirements, and information must be widely disseminated and presented in a timely manner. Without adequate public notice on how to comply with these new US VISIT requirements, the program will not operate properly and will impede the flow of people who are essential to our economic well being.

2. Give US VISIT enrollees a receipt and issue regulations allowing leeway during the program's infancy: Without giving US VISIT enrollees physical proof of their entry and exit into US VISIT, enrollees will have no way to rebut system errors or to identify informational mistakes inputted into the system. Additionally, during US VISIT's infancy, enrollees are facing much uncertainty regarding their responsibilities under this program. A grace period for exit control compliance and alternative methods by which visa holders may comply with exit control without penalty are necessary to ensure that innocent travelers are not unfairly penalized by US VISIT.

3. Limit the US VISIT process for our Mexican neighbors who hold laser visas: Only require US VISIT compliance for laser visa holders when they would need an I-94 for admission. Do not require these frequent travelers to enroll or be tracked by US VISIT when they do not go beyond 25 miles from the border (75 miles in Arizona) or remain in the U.S. over 72 hours. The laser visa biometric database maintained by State should be integrated into the US VISIT biometric database. This merger would update the US VISIT database for all laser visa holders without subjecting each laser visa holder to an initial US VISIT enrollment. Still apply random IBIS checks for security updates.

General Recommendations

Our nation's ports of entry are complex environments into which US VISIT has been thrust. The following recommendations will help provide order and accountability to that complex environment, thereby creating a more stable foundation upon which US VISIT can be built.

1. Establish an immigration specialist position at the ports of entry: It is important that immigration specialists be designated and accessible to apply our immigration laws. For consistency and accurate applications of our complex immigration laws, the decisions of these specialists should be directed and coordinated by immigration counsel within the office of the DHS General Counsel. Such legal counsel must be coordinated with benefit-related adjudications housed in United States Citizenship and Immigration Services (USCIS) and enforcement policy and procedures applied by United States Immigration and Customs Enforcement (ICE).

2. Don't conduct redundant security checks: Many border residents cross the international border several times per day. It is critical to integrate existing voluntary frequent traveler programs so that enrollment in one provides a uniform access process at all our ports of entry. There should be one consistent enrollment process for air, land, and sea admissions. The Application Support Centers in the U.S. could help facilitate the process for those already here to enroll in such programs by providing biometrics. The former U.S. Customs Service created the C-TPAT program, which is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security. Why not allow and encourage employees of qualifying employers to enroll in frequent traveler programs as well? In addition, the NEXUS and SENTRI programs should merge and become the same uniform process. Why not allow such enrollment eventually at consular posts overseas as well? These actions require major funding and staffing, and yet they improve security and reduce congestion at our ports.

3. Access to counsel: Title 8 to the Code of Federal Regulations was modified to restrict access to counsel at ports of entry based on the law in existence at the time, which did not provide for expedited removal at ports of entry with no right to any administrative review. One of the bases cited for the ability to restrict such access was administrative remedy. When the law was changed to allow expedited removal from the U.S., no correction was made to the regulations. Legacy Customs has long allowed access to legal representation at ports of entry to deal with issues arising concerning the admission of goods. For example, the ability to contact a fines, penalties, and forfeitures officer to work on the release of goods held for some reason from import to the U.S. Such a practice should be extended to foreign nationals visiting our country. Just put yourself in their place applying for admission to a foreign country. Would a U.S. citizen want to be denied access to counsel or even an embassy representative due to some misunderstanding or error at a foreign port of entry? If the Golden Rule was ever needed, it is at our ports.

4. Place cameras at the ports of entry: Cameras have been used successfully at many ports to record the behavior and statements of the applicant and the officer. Inspections supervisors have praised the tool from a personnel perspective and embassies and applicants for admission have benefited from the recordings of this silent and objective witness. In addition, in some cases, these cameras could also implement cutting edge facial recognition technology to assist inspectors. These cameras should be installed at least in all secondary inspection areas.

5. Equal benefits and treatment and the development of a DHS culture: In order to ensure that CBP functions properly, it must develop its own unique culture in which immigration, agriculture, and customs functions are treated with equal respect. In addition, a continuing education component focusing on security and legal issues must be linked to pay increases and advancement to improve the quality of those guarding and applying the laws at our ports.

6. Rethink the I-94 card: I-94 cards and I-94W cards for visa waiver applicants have never been secure documents, and there are a myriad of ways to make these documents both more secure and more efficiently distributed: issue I-94 cards with the approval notices for initial grants of nonimmigrant work related visas; for business visitor or tourists (B-1/B-2), tie the admission date stamped in the passport to a default admission period (such precedent already exists in the 90-day admission period under the Visa Waiver Program, and the prior typical default admission period of six months for tourist admissions); allow business visitors and tourists to apply for their admission document via the internet before their travel and confirm identity upon admission. In addition to these possibilities for issuing the I-94 card, fees for the card should never have to be collected by personnel. Instead, metro/subway type toll collection machines could be utilized, which would also result in decreased need for personnel oversight on collection issues.