



**WRITTEN TESTIMONY**

*of*

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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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

### **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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<sup>2</sup> Obtained from the IVIS Online Database, a source of international tourism market data maintained by the U.S. Travel Association.

<sup>3</sup> 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.