

# US-VISIT EXIT: CLOSING GAPS IN OUR SECURITY

## HEARING

BEFORE THE

## SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

OF THE

## COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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## US-VISIT EXIT: CLOSING GAPS IN OUR SECURITY

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Thursday, June 28, 2007

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON BORDER, MARITIME,  
AND GLOBAL COUNTERTERRORISM,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 1:05 p.m., in Room 311, Cannon House Office Building, Hon. Loretta Sanchez [chairwoman of the subcommittee] presiding.

Present: Representatives Sanchez, Cuellar, Green, Souder and Bilirakis.

Ms. SANCHEZ. The subcommittee will come to order.

The subcommittee is meeting today to receive testimony on the US-VISIT Exit: Closing Gaps in Our Security.

In the interest of time, because I hear we are going to have votes called in about a half hour, what we will do is go quickly through our opening statements and give time for you all to give your opening statements. I think right about that time they will be calling the vote, and that is probably why we don't see too many members here right now. And then we will come back to take questions.

Thank you, first of all, to our witnesses for being here today for US-VISIT Exit: Closing Gaps in Our Security. The U.S. Visit and Immigrant Status Indicator Technology, or what we call US-VISIT program, was created in 2003 to meet multiple congressional mandates, actually, which date all the way back to 1996, that required an automated entry-exit data system to track foreign nationals entering the United States and to detect individuals who were overstaying their visas.

The 9/11 Commission stated that completing this biometric-based entry-exit system was an essential investment in our national security; and this point was illustrated by the fact that seven terrorists that committed crimes between 1993 and 2001, including four of the 9/11 terrorists, were actually illegal in the United States because they were overstaying their visas. Unfortunately, 4 years after the creation of US-VISIT, the exit component has not been implemented.

As I understand it, the Department of Homeland Security is starting to talk about implementing the US-VISIT Exit component for air travel. However, Congress has yet to see detailed plans for this rollout, and there are significant concerns about the degree or consultation between the Department and the airlines in designing this component of US-VISIT.

(1)

I would urge the Department to review the recent Committee on Homeland Security majority staff report entitled, America's Unfinished Welcome Mat, US-VISIT A Decade Later. The report highlights the legislative mandates and the ongoing challenges of US-VISIT and what it has faced in implementing a biometric exit-entry system.

In addition, many reports by the Government Accountability Office, or the GAO, make recommendations for improving the operation and the implementation of US-VISIT's biometric entry-exit system at air, sea and land ports.

We need to ensure that the exit component is implemented in an efficient manner that complies with the recommendations in these reports and that minimizes the negative impact on international travel and on our commerce. So I am looking forward to having this discussion. I think it is an incredibly important one, especially as America grapples with who is coming in and out of our country and how do we take care of this big issue in particular of people overstaying their visas.

So I thank you for being here. I am looking forward to your testimony. I want to thank our ranking member right now, Mr. Bilirakis, for being here; and I will give him time for his opening statement.

PREPARED STATEMENT OF THE HONORABLE LORETTA SANCHEZ, CHAIRWOMAN,  
SUBCOMMITTEE ON BORDER, MARITIME, GLOBAL COUNTERTERRORISM

Good Afternoon.

Thank you to our witnesses for being here today for this Subcommittee hearings on "US-VISIT Exit: Closing Gaps in our Security"

The United States Visitor and Immigrant Status Indicator Technology or US-VISIT program was created in 2003 to meet the multiple Congressional mandates dating back to 1996 that required an automated entry-exit data system to track foreign nationals entering the United States and to detect individuals that over stay their visas.

The 9/11 Commission stated that "completing a biometrics-based entry-exit system is an essential investment in our national security."

This point is illustrated by the fact that seven terrorists that committed crimes between 1993 and 2001, including four of the 9/11 terrorists, were illegally in the United States after overstaying their visas.

Unfortunately, four years after the creation of US-VISIT, the exit component has not been implemented.

I understand that the Department of Homeland Security is starting to talk about implementing the US-VISIT exit component for air travel.

However, Congress has yet to see detailed plans for this roll out, and there are significant concerns about the degree of consultation between the Department and the airlines in designing this critical exit component.

I would urge the Department to review the recent Committee on Homeland Security, Majority staff report, "America's Unfinished Welcome Mat: US-VISIT a Decade Later"

This report highlights the legislative mandates and ongoing challenges US-VISIT has faced in implementing a biometric entry-exit system.

In addition, this report and many reports by the Government Accountability Office make recommendations for improving the operation and implementation of US-VISIT's biometric entry-exit system at air, sea, and land ports.

We need to ensure that the exit components is implemented in an efficient manner that complies with the recommendations in these reports, and minimizes the negative impact on international travel and commerce.

I am looking forward to an interesting discussion about the future of US-VISIT's exit component.

I'd like to thank Ranking Member Souder for his interest in this critical security program, and I look forward to working with him on this important issue.

Mr. BILIRAKIS. Thank you, Madam Chair. I appreciate it very much.

I would like to read actually Ranking Member Souder's statement.

The ability to reliably screen, identify and track foreign nationals in the United States is essential for border security. I have been a supporter of the US-VISIT program from the beginning. I voted for six different laws that address the national entry-exit system because I think that it is critical for the integrity of our immigration and border management system to have this capability.

The primary focus of the hearing is the Department's inability to implement an exit system for the US-VISIT program. There are clear security vulnerabilities in not knowing who has overstayed their visa, and the consequences are stark. Terrorists have exploited this security vulnerability to remain in the United States to carry out and plan attacks, including two of the co-conspirators in the first World Trade Center attack, one of the figures from the New York subway bomb plot and four of the 9/11 terrorists. Without a land exit system in place, we are giving terrorists a 6,000-mile loophole.

I am extremely concerned that there is no exit system in place a year and a half after the legal mandate, and there doesn't appear to be any plan in place to get there.

I would like to commend the US-VISIT program office for the tremendous job of standing up the biometric entry system in accordance with the statutory guidelines and requirements. The previous administration ignored the program from 1996 to 2000. After 9/11, the speed at which the entry program was established shows the capability of the United States when resources and political will are dedicated to a problem. I want to see the same desire for an exit system.

The bottom line is that the Department's inability to implement US-VISIT Exit as well as other border security programs such as the Western Hemisphere Travel Initiative is prophetic of management and implementation problems that would befall any amnesty or guest worker program currently being debated in the Senate. I understand it did not get cloture. If the Federal Government cannot gain operational control over the border and implement a functional border management system, it is doubtful that a massive amnesty program could be developed that wouldn't overload the agencies and throw the system into chaos.

I look forward to the testimony today and hearing about the status and plans for US-VISIT. I would like to thank the witnesses for being here and express my appreciation to the Chair for holding this hearing.

I yield back; and I do have an opening statement a little later when we get to the questions, if that is okay, Madam Chair. Thank you.

Ms. SANCHEZ. Great. I thank the gentleman from—Florida?

Mr. BILIRAKIS. Florida, correct.

Ms. SANCHEZ. The gentleman from Florida.

Other members of the subcommittee are reminded that, under the committee rules, opening statements may be submitted for the record.

[The information follows:]

FOR THE RECORD

PREPARED OPENING STATEMENT OF THE HONORABLE MARK SOUDER, RANKING  
MEMBER, SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL TERRORISM

The ability to reliably screen, identify, and track foreign nationals in the United States is essential for border security. I have been a supporter of the US-VISIT program from the beginning. I voted for all of the six different laws that address the national entry/exit system because I think that it is critical for the integrity of our immigration and border management system to have this capability.

The primary focus of the hearing is the Department's inability to implement an exit system for the US-VISIT program. There are clear security vulnerabilities in not knowing who has overstayed their visa and the consequences are stark. Terrorists recognize have exploited this security vulnerability to remain in the U.S. to carry out and plan attacks, including 2 of the conspirators in the first World Trade Center attack, one of the figures from the New York subway bomb plot, and 4 of the 9/11 terrorists. Without a land exit system in place, we are giving terrorists a 6,000 mile loophole.

I am extremely concerned that there is no exit system in place 1 1/2 years after the legal mandate. And there doesn't appear to be any plan in place to get there.

I would like to commend the US-VISIT Program Office for the tremendous job of standing up the biometric entry system in accordance with the statutory requirements. The previous Administration ignored the program from 1996 to 2000. After 9/11, the speed at which the entry program was established shows the capability of the United States when resources and political will are dedicated to a problem. I want to see the same desire for an exit system.

The bottom line is that the Department's inability to implement US-VISIT exit, as well as other border security programs, such as the Western Hemisphere Travel Initiative, is prophetic of management and implementation problems that would befall any amnesty or guest worker program currently being debated in the Senate.

If the Federal government cannot gain operational control over the border and implement a functioning border management system, it is doubtful that a massive amnesty program could be developed that wouldn't overload the agencies and through the system into chaos.

I look forward to the testimony today and hearing about the status and plans for US VISIT. I would like to thank the witnesses for being here and express my appreciation to the Chair for holding this hearing.

I yield back.

PREPARED OF STATEMENT OF THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN  
COMMITTEE ON HOMELAND SECURITY

- Since 1996, Congress has called for a system to track the entry and exit of visitors to our country.

- After 9/11, we required this system, now known as US-VISIT, to collect biometric information because of the security enhancements biometrics offer.

- However, after 10 years, \$1.7 billion in taxpayer dollars, and a 9/11 Commission recommendation to complete the system "as quickly as possible," the Department has completed only the entry portion of the US-VISIT program.

- Some people are optimistic when they see a glass that is half full.

- I wish I could be one of those people today, but the track record for US-VISIT exit leaves me very skeptical.

- Regarding the admittedly difficult task of implementing an exit system at land ports of entry, it seems the Department has decided to punt to the next Administration.

- Regarding an exit system at airports, however, the Department has indicated that it plans to undertake a new initiative over the next year-and-a-half.

- This is a promising step, but I hope the Department has learned from previous failed efforts toward implementing exit programs.

- Unfortunately, we have seen very little detail about the Department' new biometric exit strategy for airports.

- All we have is a so-called "strategic plan" that tells us the new exit procedure will be incorporated into the airline "check-in process."

- But what does this mean? Is the Department really implementing a plan that it has not even tested?



- I am concerned about a plan that would delegate our federal security screening responsibilities to the air carriers or fail to adequately engage Congress and key stakeholders.
- The US-VISIT report released by the Committee today outlines some of our ongoing concerns.
- Hopefully today's hearing will speak to these concerns and offer insight into the proposed new plan for US-VISIT air exit.

FOR IMMEDIATE RELEASE

US-VISIT:

America's Unfinished Welcome Mat

June 28, 2007 (WASHINGTON)—Today, the Majority Staff of the Committee on Homeland Security, headed Rep. Bennie G. Thompson (D-MS), Chairman of the Committee on Homeland Security, and Rep. Loretta Sanchez (D-CA), Chairwoman of the Subcommittee on Border, Maritime and Global Counterterrorism, released a report on the state of the US-VISIT program. The report analyzes the current path of US-VISIT while giving recommendations to secure our borders.

Chairman Thompson issued the following statement regarding the report:

*While we understand tracking the entry and exit of foreign nationals is no small task, the Department must take concrete steps towards deploying US-VISIT's exit capabilities before making any drastic changes to the system. Each day the Department delays implementation of a biometric entry and exit system, the nation's vulnerability to terrorist attack grows.*

Chairwoman Sanchez added the following:

*Unfortunately four years after the creation of the US-VISIT, the exit component has not been implemented. Today's report signals the need for DHS to work with Congress to efficiently implement the exit component of US-VISIT to improve our nation's security, while minimizing the negative impact on international travel and commerce.*

Ms. SANCHEZ. I welcome our first panel of witnesses.

Our first witness is Robert Mocny, who is the Director of the US-VISIT program. In that capacity, he is responsible for the day-to-day operations of US-VISIT, including managing the development and the deployment of the program.

Our second witness is Mr. Robert Jacksta, Executive Director for Travel Security and Facilitation at the Customs and Border Protection's Office of Field Operations. Do you say that each and every time? In that capacity, he is responsible for implementing passenger programs that combat international terrorism and smuggling, specifically those related to processing passengers entering and exiting the United States.

And our third witness is Mr. Randy Hite, Director of Information Technology Architecture and Systems Issues at the Government Accountability Office, where he is responsible for GAO's work on information technology issues across the government concerning architecture and systems acquisition development, operations and maintenance.

Welcome to all of you; and, without objection, the witnesses' full statements will be inserted into the record.

I now ask each witness to summarize his statement for 5 minutes, beginning with Mr. Mocny.

**STATEMENT OF ROBERT A. MOCNY, DIRECTOR, US-VISIT PROGRAM, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. MOCNY. Thank you, Madam Chairman Sanchez and Ranking Member Bilirakis. I appreciate the invitation to be with you today

to talk to you about how US-VISIT is, in fact, improving our Nation's security.

Let me also say how pleased I am to be joined by my colleague, Bob Jacksta, Customs and Border Protection, or CBP, with whom we work on a daily basis to protect our Nation's borders.

I am also pleased to be here with Mr. Randy Hite of the Government Accountability Office. Randy has been focused on the US-VISIT program since 2001, actually before US-VISIT became the US-VISIT program; and he has offered his constructive recommendations to improve how we do our business.

Biometric control is a priority for securing our Nation's borders. You have said so. The 9/11 Commission has said so. The Secretary of Homeland security has said so. We at the Department of Homeland Security are working every day to meet this mandate and make our Nation more secure.

Today, biometrics provide DHS with an additional tool to match biographic records that might otherwise go unmatched. Merging biographic and biotechnology information holds the greatest promise to close the matching gap and ultimately close the door on those persons who seek to exploit holes in our immigration system.

Biometrics are a critical component to achieving broad success in an exit control system. During the last 3 years, DHS has conducted significant planning and testing, looking at possible solutions for integrating US-VISIT biometric exit requirements into the international air departure process.

US-VISIT conducted biotechnology exit pilots at 12 airports and 2 seaports, some starting as early as January, 2004, when US-VISIT was first launched. By the time we completed our testing of biotechnology exit technology and procedures in May of 2007, we had learned an important lesson, the technology works and works well, but the procedures did not.

Travel compliance with the pilots was low. Unlike entry, with no infrastructure in which to embed exit procedures, travellers had to change their behavior independently.

Our final evaluation of the pilot determined that, to achieve 100 percent compliance, biometric exit procedures need to be incorporated into what travellers are already doing, into the current processes for international travel.

Based on the pilots and other potential options, DHS had determined that US-VISIT air records should be incorporated into the airline check-in process. This option will minimize the impact on legitimate travellers and dramatically improve compliance.

We know that DHS's proposed solution requires significant outreach and partnership with the airline industry, and the Department has begun that outreach.

In order to minimize the carrier impacts, DHS proposes providing a single interface to air carriers for meeting U.S. Government passenger data requirements. This will ensure that airlines would not be sending multiple or duplicative data sets to DHS for the same person.

DHS is also considering technical and financial assistance for air carriers to assist with the initial implementation.

In deploying biometric exit procedures, US-VISIT will prioritize the departure airports based on volume and destinations of travel-

lers departing the United States. Since more than 91 percent of all travellers from countries of interest arrive in the United States by air, an effective biometric exit process is essential to assessing risk and enhancing the integrity of our immigration and border management system.

DHS plans to publish a notice of proposed rulemaking outlining the Department's approach to implementing biometric air exit procedures by the end of this calendar year, with the final rule published by June of 2008 and final execution by December of 2008.

The same basic protocols will apply to the cruise lines as well. As you know, the land border ports pose unique challenges of their own.

DHS continues to research options and cost estimates that will meet our goals without a negative impact on the economy and the environment or travellers' safety.

In the short term, exit procedures at land ports cannot be based on biometric solutions. The scope and complexity are simply too great. While we continue our search for solutions, DHS will instead seek to match records using biographic information in instances where no current collection exists today.

A comprehensive long-term traveller exit strategy for the United States is a exceedingly complex and costly challenge. It is a challenge subject to change due to fluctuating terrorist threat levels, evolving supporting policies and developing technologies. In order to meet this challenge, DHS must seek new technologies and modernize facilities, establish new levels of inter and intragovernmental cooperation and identify and commit significant investments.

DHS is relying on the dedicated women and men of US-VISIT and their proven track record of success to get the job done; and although the challenge of creating a biometric exit system is complex, we are prepared to meet this head on. I hope you will continue to support our efforts.

Thank you, and I will be glad to take your questions.

**STATEMENT OF ROBERT M. JACKSTA, EXECUTIVE DIRECTOR,  
TRAVEL SECURITY AND FACILITATION, OFFICE OF FIELD  
OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION**

Mr. JACKSTA. Good afternoon, Chairman Sanchez. Good afternoon, members. I am pleased to be here today to let you know what the Department of Homeland Security is doing as well as Customs and Border Protection is doing at our ports of entry to protect the United States.

I would like to begin by recognizing the very good close working relationship that we have had with US-VISIT over the years. We have been able to implement US-VISIT at our ports of entry, and it is a very valuable tool to our officers today.

As you know, CBP has an enormous challenge. We share more than 7,000 miles of border with Canada and Mexico and operate 325 ports of entry. Each day, CBP officers inspect more than 1.1 million travellers arriving at our ports of entry; and we examine the documents, their baggage and their vehicles. Last year alone, CBP welcomed over 422 million travellers through their official ports of entry. During fiscal year 2006, CBP processed a record 87

million passengers arriving from abroad by air. However, in this largely compliant group of travellers CBP denied entry to more than 209,000 inadmissible visitors and seized 646,000 pounds of illegal narcotics.

To address this challenge, CBP has implemented a Smart Border Strategy to provide security and enforce U.S. laws both at and between ports of entry as well as extending our security zones beyond our own borders. A key component of this strategy at our borders is to use advanced electronic information and an automated risk management system that identifies and targets high-risk travellers well before arrival in the United States.

Advance information regulations were initially implemented under the Aviation and Transportation Security Act of 2001 and the Enhanced Border Security and Visa Reform Act of 2002. On April 7, 2005, the IAFIS final rule was published in the Federal Register, requiring manifest information from all commercial air and sea carriers arriving into or departing from the United States. This manifest information includes a name, date of birth, document type, document number and gender of all arriving and departing passengers and crew. The Advance Passenger Information System has become a critical tool in securing our Nation's borders and increasing the facilitation of legitimate air and sea travellers.

CBP is continually evaluating the data and by working with the airlines and vessel industry has achieved improved advance information compliance. The current inbound and outbound IAFIS transmission compliance rate is over 99 percent. The arrival and departure information system within DHS is a system that can be used to match non-U.S. citizen arrival records with departure records. The current non-U.S. citizen match rate is 93-percent, and the current Visa Waiver Program match rate is close to 96-percent.

To further our security and after extensive consultation with the U.S. and international airline partners, DHS has also published a pre-departure notice of proposed rulemaking on July 14, 2006. This proposed rule offered two options for carriers to transport passenger data to DHS in a manner sufficient to allow DHS to screen all international travellers prior to their departure. Specifically, air carriers can transmit complete manifests prior to departure or they can transmit passenger data as individual realtime transactions as each traveller checks in.

When the rule is finalized and implemented, the United States government will take on the watchlist screening responsibilities for all travellers arriving into or departing from the United States aboard a commercial aircraft or vessel.

In addition to receiving advance passenger information, CBP also uses technology to screen travellers and goods at our ports of entry for weapons of mass destruction. CBP officers also screen travellers at selected foreign airport locations throughout our immigration advisory program.

Finally, CBP has developed a training program for air carrier personnel and their security screenings on fraudulent document detection and imposter recognition through our carrier liaison program.

Madam Chairman, members of the committee, I appreciate this opportunity to testify before you. I can assure you CBP will remain

vigilant in the war against terrorism both at our Nation's ports of entry and we will continue to add appropriate additional layers of security overseas.

At this time, I would be happy to answer any questions you may have today.

Ms. SANCHEZ. Thank you.

[The statement of Mr. Mocny and Mr. Jacksta follows:]

PREPARED JOINT STATEMENT FOR THE RECORD

ROBERT A. MOCNY AND ROBERT JACKSTA

Madam Chairman Sanchez, Ranking Member Souder, Members of the Subcommittee—Good Morning. Thank you for the opportunity to appear before you to discuss US-VISIT's role in addressing the border security needs of our Nation.

**Introduction**

The Department of Homeland Security (DHS) plans to modernize and improve our immigration and border management system through integration, collaboration, and cooperation among all parts of the immigration and border management community. This community includes important stakeholders in the private sector, such as air and sea carriers. As a component of that overall vision, the Secretary of Homeland Security, Congress, and the 9/11 Commission have all identified exit control as a priority in order to secure our Nation's borders. In this testimony we will provide an overview of how we plan to implement biometric exit strategies through a phased approach at our air, sea, and land ports. The data obtained through biometric exit will allow DHS and the Department of State (DOS), as well as other federal agencies, to determine whether a foreign traveler has left the country and, if so, when; and whether such an individual is deserving of future benefits, such as visa renewal or re-admittance to the United States.

Presently, DHS captures biometric information on entry through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program. This includes the verification of biometrics of travelers with visas, who are fingerprinted abroad by the Department of State as part of the BioVisa Program. The use of biometric identifiers—specifically digital fingerprints and photographs—has made travel safer and more secure. DHS and DOS can now identify persons attempting to enter the United States using fraudulent identities and screen individuals to determine whether they constitute a risk to national security. These biometrics are used to lock the identity of an individual during his or her first encounter with the U.S. Government, to verify the identity of the individual upon subsequent encounters, and to run appropriate watch list checks on the individual if he or she is seeking immigration benefits or admission to the United States.

There are considerable law enforcement and intelligence benefits from being able to accurately document the entry and exit of foreign nationals and to conduct trend analysis on arrivals and departures. In addition, accurately identifying individuals who stay in the United States beyond their authorized period of admission (“overstays”) will allow DHS to focus resources to address known (or confirmed) overstays and permit DHS and DOS to place greater emphasis on properly adjudicating travel and immigration benefits.

Development of biometric exit is under way. However, a significant challenge facing the deployment of biometric exit is that our air, sea, and land ports lack the infrastructure to conduct exit control. Unlike entry, there are currently no fixed inspection booths or other facilities to process international travelers as they leave the United States. Thus, DHS is left in the position of having to negotiate with air and sea port authorities for the space and/or for facilities needed to implement biometric exit. There are difficulties in creating the infrastructure, architecture, and operational processes for biometric exit screening. These difficulties not only impact space and equipment issues, but also impact the departure process of travelers.

Despite these challenges, DHS is committed to deploying biometric exit capabilities at our ports. To achieve the benefits noted and to better secure our border, DHS proposes an incremental deployment into the three departure environments—air, sea, and land—with an initial focus on air and the corresponding development of data analysis needed to produce highly reliable, actionable information.

**Current Exit Process**

DHS has come a long way in the exit process in a short period of time. Previously, the legacy Immigration and Naturalization Service (INS) relied solely on a paper-

based system of Form I-94 documents to record a non-immigrant's entry and exit. Travelers manually completed Form I-94 prior to entry inspection and received a stub from the form, which would then be returned to the traveler for collection by the air carriers upon departure from the U.S. This non-automated system was deficient in a number of areas, including lack of timeliness, lost documents, poor data integrity, and carrier non-participation. These issues precluded legacy INS from having an accurate picture of who was still in the United States, and who had departed (without having their exit recorded). Consequently, scarce interior enforcement resources were sometimes used to investigate individuals who had already departed.

To address these issues, U.S. Customs and Border Protection (CBP) implemented the Automated Passenger Information System (APIS) to collect manifest data on arrival and departure in an automated manner. APIS not only improved the timeliness of the information, but also increased the number of departure records collected. Additionally, recent work with the carriers has increased compliance rates, which in turn has led to a subsequent, positive impact on matching exit to entry records.

Over the next six to twelve months, DHS anticipates that APIS reporting will continue to improve. CBP will continue to work with carriers to improve performance. US-VISIT will look to make improvements to matching algorithms as well.

A number of factors exist that prevent DHS from making a 100 percent match of entry and exit records, regardless of the technology used. These include: (1) the individual legally entered the U.S. prior to the full implementation of the Arrival and Departure Information System (ADIS) (the system was initially implemented in October 2002, with additional classes of admission in January 2004); (2) the quality of the data collected at departure was not sufficient to match against the arrival record or vice versa; (3) a traveler exited using a different document (i.e., dual nationals); and (4) an arrival record was not captured at the time the person entered the United States (for example, illegal entry, or the traveler arrived by land and departed by air or vice-versa).

However, DHS believes that there is still substantial room to improve entry and exit matching. Biometrics is one key means to achieve this goal.

#### ***The Potential for Biometrics at Exit***

US-VISIT tracks and records entry and exit records to determine those who have overstayed their authorized period of admission. Individuals identified by entry/exit analysis who have overstayed the terms of their admission, or who are wanted or otherwise encountered by law enforcement, may be apprehended. This analysis of records has been conducted with both biographic information—such as name, date of birth, document numbers, etc.—and with biometric (fingerprint) information collected during visa applications or entry.

Based on US-VISIT analysis of biographic and biometric overstay information, U.S. Immigration and Customs Enforcement (ICE) has made 308 arrests between September 2004 and May 2007 (when biometric exit testing ended).

US-VISIT merges biographic and biometric data to achieve accurate matches of exit records to entry records. Information is drawn from APIS manifests, departure Form I-94 documents, and from the locations where biometric exit pilots were operated (from January 2004 to May 2007). This work is done through ADIS and validated by US-VISIT's Data Integrity Group (DIG). For the month of April, ADIS was able to achieve a match rate of 93.1 % of all non-U.S. Citizens, based upon APIS biographic information and biometric information from the 14 pilot locations.

Additionally, work done through IDENT, the Automated Biometric Identification System, improves the matching efforts of ADIS and includes conducting "recurrent checks" against all enrolled fingerprints. In other words, as new derogatory information is received (e.g., where a person for whom no information that would exclude eligibility for admission existed at the time he or she entered the United States later becomes the subject of a criminal arrest warrant), those prints are checked against the entire population of fingerprints on file. Files that are matched are then used by other DHS components and DOS to determine eligibility for subsequent immigration benefits, such as re-admittance into the U.S. or visa renewals.

Based upon the pilots, DHS plans to move forward with a full deployment of biometric exit to maximize the benefits biometrics can bring to entry-exit matching. In turn, this improved matching will bring many benefits to the immigration and border management enterprise. Under the initial phases of the implementation of our biometric exit program, data will be used for the following purposes:

- Overstay information will be analyzed by US-VISIT and forwarded to ICE for further follow-up and interior enforcement;

- Exit information will be used on an individual basis during subsequent applications for admission to the United States, visa issuance and renewal, or other immigration benefits; and
- Exit information will be analyzed in the aggregate to identify weak areas in our immigration and border management system where overstay is prevalent. This will require the development of new analytic capabilities within DHS and DOS.

While biographic information is being used to address these goals, it tends to be less accurate than biometric data and may not be automated, thus requiring more time and resources.

Biometric exit collection is key to assisting DHS and DOS in “closing the door” on those individuals that seek to exploit our immigration and border management enterprise. Comprehensive trend analysis will allow DHS and DOS to identify specific visa-issuing posts, visa categories, Visa Waiver Program (VWP) countries, or other criteria that may be common to an unacceptably high overstay rate. Subsequent visa applicants and travelers from those same posts, categories, and countries will then receive increased scrutiny.

#### ***Exit in the Air Environment***

DHS has done significant planning and testing over the past three years looking at possible solutions for integrating US-VISIT biometric exit requirements into the international air departure process, considering deployment at airline ticket counters, TSA checkpoints, airline boarding gates, and in airport terminals. For more than two years, US-VISIT has run biometric exit pilots at 14 air and sea locations, involving the use of automated kiosks, and sometimes mobile devices, in port terminals. While the pilots demonstrated that the technology works, they also revealed low compliance by travelers. Given the analysis of the pilots and other potential options, DHS has determined that US-VISIT air exit should be incorporated into the airline check-in process.

Such deployment integrates into the current international departure process and minimizes the impact on legitimate travelers. It facilitates a consistent procedure regardless of the traveler’s departure location and incorporates biometric exit requirements with existing data submission requirements from CBP and future requirements of TSA.

DHS’s proposed solution requires significant outreach and partnership with the airline industry and we have begun that outreach with U.S. air carriers. DHS proposes to minimize carrier impacts by providing a single interface to air carriers with respect to U.S. Government passenger data requirements. With strong support through the DHS Screening Coordination Office, DHS has taken significant steps to integrate CBP’s pre-departure APIS with TSA’s plans for Secure Flight. US-VISIT has been brought into these discussions to ensure alignment of policies, operations, and investments among all three programs. Once operational, APIS pre-departure, biometric exit, and Secure Flight will utilize the same network interface between DHS and air carriers, as well as the same messaging formats.

Over the next year, DHS will take a number of steps toward full implementation of biometric exit in the air environment. DHS will refine the project plan and deployment options, as well as ensure technical alignment with the pre-departure APIS and Secure Flight, as proposed. DHS will engage in a more detailed conversation with the airline industry and make a subsequent public announcement on the Department’s exit strategy.

DHS is considering acquisition strategies and how best to support air carriers in their role. This could include financial and technical assistance for the initial implementation, such as grants for equipment or the reuse of existing 1-print readers as US-VISIT and the Department of State deploy 10-Print readers to ports of entry and consular posts. US-VISIT will also consider issuing a Request for Information (RFI) for additional scanning devices that would combine the collection of biometrics with a full page passport scanner. These options will be refined as DHS works with air carriers in assessing the costs of both initial deployment and continued operations and maintenance, as well as deploying air exit at pilot locations.

In developing the deployment schedule, US-VISIT will prioritize the departure airports based on volume and destinations of travelers departing the United States. A critical focus of counterterrorism efforts is recording the arrival of travelers from Countries of Interest (COIs), which is conducted by the National Counter Terrorism Center (NCTC), DHS, FBI, and DOS. Over 91 percent of all COI travelers arrive in the United States via air. Knowing which travelers from COIs complied with the terms of their admission, including whether they have overstayed their authorized period of admission, is essential to assessing risk and to enhancing the integrity of our immigration and border management system.

Additionally, it is expected that deployment of US-VISIT air exit will cover the vast majority of VWP travelers. These are travelers from mostly western European countries that enter the United States for business or pleasure without a visa for a period of 90 days or less. DHS is currently working to publish in FY 2007 the regulatory framework needed to support the new exit strategy.

#### ***Exit in the Sea Environment***

The long-term exit solution will be deployed to commercial seaports to provide an integrated biometric exit capture for cruise line passengers. Biometrics will be captured and processed in a manner aligned with the protocol developed for air exit and allowing for optimal efficiency in traveler processing. However, the scope for biometric exit at sea will be considerably smaller than for air. US-VISIT biometric collection at entry is currently operational at 17 seaports. The biometric exit solution will be deployed to all seaport locations where cruise ships depart. Seaport deployment will occur after the air environment, so that lessons learned can be applied.

#### ***Exit in the Land Environment***

The land ports have their own unique set of challenges. Implementing biometric confirmation of the departure of travelers via land ports of entry will be significantly more complicated and costly than for air and sea. The main reason for this is that there are significant space, infrastructure, and connectivity deficiencies at the land ports for exit.

Because of the immense scope and complexity of the land border, biometric exit information cannot be practically based on biometric validation in the short term. Instead, DHS will initially seek to match records using biographic information in instances where no current collection exists today.

In an effort to address biographic exit data collection capability along the land borders, US-VISIT will work with the DHS Secure Border Initiative (SBI) effort to meet the challenge of border security. DHS has not yet determined a timeframe or cost estimates for initiation of land exit, but continues to research possible options. No matter the course of action, DHS will move in a deliberative manner on exit at the land ports to avoid negative repercussions on the economy, the environment, and traveler safety that could easily occur from precipitous action.

#### ***US-VISIT Program***

DHS will rely on the proven track record of the US-VISIT Program, and its history of working with multiple federal agencies and private sector stakeholders to implement the envisioned exit solution.

DHS created the US-VISIT Program in July 2003 to meet statutory requirements and, more broadly, to achieve the following program goals:

- To enhance the security of our citizens and visitors;
- To facilitate legitimate travel and trade;
- To ensure the integrity of our immigration system; and\* To protect the privacy of our visitors.

The addition of biometrics, coupled with the integration of databases, has contributed to improved decision-making and information sharing across the immigration and border management community. In each of the incremental improvements that have been successfully deployed to date, all of the four goals listed above have been met.

DHS met its first statutory requirement by integrating existing arrival and departure biographic information on December 31, 2003. Subsequently, DHS:

- deployed US-VISIT biometric entry procedures at airports and seaports on January 5, 2004, for those individuals applying for admission with non-immigrant visas;
- expanded biometric entry procedures to include those individuals applying for admission under the Visa Waiver Program (VWP) on September 30, 2004;
- supported the deployment of the DOS BioVisa Program, completed in October 2004;
- deployed biometric entry to the 50 busiest land ports before the legislative deadline of December 31, 2004;
- deployed biometric entry capabilities to the remaining 104 land border ports of entry before the Congressionally mandated deadline of December 31, 2005;
- deployed technology for biometrically enabled e-Passports to the 33 airports that cover 97 percent of all travel from VWP countries as of November 2006;
- tested radio frequency identification (RFID) at five test sites along the Northern and Southern land borders to capture entry/exit information, trigger updated watchlist checks, and provide the results of this information to the CBP officer at entry; and



- tested the collected biometrics during exit for travelers departing the U.S., from January 4, 2004 to May 5, 2007, at as many as 14 pilot locations.

One of the major initiatives that US-VISIT is presently implementing is the development of interoperability between the DHS biometric database—IDENT—and the FBI's fingerprint database, the Integrated Automated Fingerprint Identification System (IAFIS). This exchange of information allows DOS consular officers and DHS border and immigration officers to have access to an additional number of FBI wants and warrants when making visa-issuing and admissibility decisions and when taking law enforcement actions. Likewise, the FBI and State and local law enforcement officials have the ability to query Category One visa refusals (e.g., generally one involving a permanent ground of inadmissibility) and all expedited removals. DHS and DOJ are working to increase the amount of data they exchange, thus improving the accuracy and usefulness of information available to border security officials and to State and local law enforcement. One of the benefits of US-VISIT's transition to ten-print enrollment is that it facilitates more efficient IAFIS and IDENT interoperability through the use of a common biometric template.

#### **Conclusion**

A comprehensive long-term traveler exit strategy for the United States is an exceedingly complex and costly challenge and is subject to constant change due to factors such as fluctuating terrorist threat levels, evolving supporting policies, and developing technologies. DHS must meet this challenge by using new technologies and modernized facilities, establishing new levels of inter- and intra-governmental cooperation, and identifying and committing significant investment.

Thank you for this opportunity to testify. We look forward to answering any questions you may have.

Ms. SANCHEZ. Mr. Hite for 5 minutes.

#### **STATEMENT OF RANDOLPH C. HITE, DIRECTOR, ARCHITECTURE AND SYSTEMS ISSUES, INFORMATION TECHNOLOGY, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. HITE. Thank you very much.

Let me begin by commending the subcommittee for holding this hearing on that side of US-VISIT that can best be described as an enigma, namely US-VISIT Exit.

As your opening remarks indicated, US-VISIT is supposed to be two-sided, meaning it is to have both an entry and an exit capability. The good news is that entry is operating at almost 300 ports of entry as well as over 200 visa-issuing posts, and these capabilities have prevented illegal visitors from coming to our country and have arguably deterred others from trying. The bad news is that the other side of US-VISIT, namely exit, is not operating anywhere.

The question thus becomes, why is that the case with US-VISIT Exit? And what are the prospects for this changing anytime soon?

My written statement addresses this question, and I will summarize it by first quoting the Spanish philosopher who said, those who ignore the history are doomed to repeat it.

As our previous reports chronicled, the history of US-VISIT Exit shows a pattern of inadequate definition, planning and justification around the solution to be pursued and how it is to be pursued. As a result, 4 years of activity and \$250 million in allocated funding has yet to produce an operational exit capability.

As of today, I have not seen evidence that this has changed in any significant way; and, in fact, everything seems to be pointing to DHS ignoring and thus repeating its history on the US-VISIT Exit. In particular, the latest US-VISIT expenditure plan calls for investing \$27 million on an unspecified air and sea biometric exit solution and suggests that this is just the beginning.

However, similar to the past, it has yet to produce either the plans or the analyses that adequately define and justify exactly what it intends to do and deliver by when, much less how it intends to deliver it. Rather, DHS is repeating history by making generous statements about fully implementing undefined biometric exit capabilities at airports even in 2008 or 2009, depending on what planning document you look at, engaging with airlines in some yet-to-be-defined manner, but, nevertheless, saying it will issue a proposed Federal regulation requiring airline participation by the end of this year and replicating at seaports whatever this airport exit capability turns out to be.

To quote the Major League Baseball icon, Yogi Berra, this is like *deja vu* all over again.

As we have stated many times, successfully delivering a cost-effective US-VISIT Exit capability depends in large part on having adequate plans and justifications governing the solution to be required and deployed. Without it, the chances of success are not good.

In closing, I believe it was Ben Franklin who said, the definition of insanity is doing the same thing over and over again and expecting different results.

In my view, it is not reasonable for the Department to continue taking the same undefined and unjustified approach to US-VISIT Exit and expect that the outcome will be any different than it is today, namely no operational exit capability despite 4 years and \$250 million. Accordingly, I would urge the Department to approach its latest attempt in delivering long-overdue exit capabilities in the kind of rigorous and disciplined fashion that our prior recommendations embody. Until it does, the prospects of a cost-effective operational of biometrically enabled exit capability would be diminished, which in turn holds consequences for DHS's ability to perform its border security and immigration enforcement missions effectively and efficiently.

For example, the absence of an exit capability means that important data are not available to DHS's immigration and customs enforcement organization in targeting its limited resources to identify and remove foreign nationals who have overstayed their visas.

With that concluding thought, I would be happy to answer any questions you have.

Ms. SANCHEZ. Thank you, Mr. Hite.

[The statement of Mr. Hite follows:]

PREPARED JOINT STATEMENT

OF

RANDOLPH C. HITE, DIRECTOR, INFORMATION TECHNOLOGY ARCHITECTURE AND  
SYSTEMS ISSUES

WITH

RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES

Madam Chairwoman and Members of the Subcommittee,

We appreciate the opportunity to participate in the subcommittee's hearing focusing on the exit side of the United States Visitor and Immigrant Status Indicator Technology (US-VISIT). As you know, US-VISIT is a multibillion dollar program of the Department of Homeland Security (DHS) that is to, among other things, en-

hance the security of our citizens and visitors and ensure the integrity of the U.S. immigration system. To achieve these goals, US-VISIT is to record certain travelers'<sup>1</sup> entry and exit to and from the United States at over 300 ports of entry (POEs), verify their identity, and determine their compliance with the terms of their admission and stay.

Since fiscal year 2002, we have produced eight reports that have identified fundamental challenges that DHS continues to face in defining and justifying the program's future direction and delivering program capabilities and benefits on time and within cost.<sup>2</sup> Our testimony today draws on the above cited reports as well as our ongoing work for the House Committee on Homeland Security on the definition and completion of US-VISIT's strategic solution. All the work on which this testimony is based was performed in accordance with generally accepted government auditing standards.

In summary, DHS has invested about \$1.3 billion over 4 years and delivered basically one-half of US-VISIT, meaning that biometrically enabled entry capabilities are operating at almost 300 air, sea, and land POEs, but comparable exit capabilities are not. Moreover, the prospects for this changing are essentially as uncertain today as they were 4 years ago, despite the fact that the department's funding plans have provided about one-quarter of a billion dollars to exit-related efforts. During this time, we have continued to cite weaknesses in how DHS was managing US-VISIT in general, and the program's exit capability in particular, and have made numerous recommendations aimed at better ensuring that the program delivered clearly defined and adequately justified capabilities and benefits on time and within budget. Today, as DHS embarks on yet another attempt to deliver long-overdue exit capabilities, these recommendations still apply. Unless the department implements them, it runs the serious risk of repeating the mistakes it made on prior exit efforts and producing similar results. Accordingly, we urge the department to approach its latest attempt at deploying mission critical exit capabilities in the kind of rigorous and disciplined fashion that we have recommended. If it does not, the prospects for having an operational exit capability will be diminished, which in turn will limit the department's ability to effectively and efficiently perform its border security and immigration enforcement missions.

### **Background**

US-VISIT is a governmentwide program intended to enhance the security of U.S. citizens and visitors, facilitate legitimate travel and trade, ensure the integrity of the U.S. immigration system, and protect the privacy of our visitors. To achieve its goals, US-VISIT is to collect, maintain, and share information on certain foreign nationals who enter and exit the United States; detect fraudulent travel documents, verify traveler identity, and determine traveler admissibility through the use of biometrics; facilitate information sharing and coordination within the immigration and border management community; and identify foreign nationals who (1) have overstayed or violated the terms of their admission; (2) may be eligible to receive, extend, or adjust their immigration status; or (3) should be apprehended or detained by law enforcement officials. The scope of the program includes the pre-entry, entry, status, and exit of hundreds of millions of foreign national travelers who enter and leave the United States at over 300 air, sea, and land POEs.

The US-VISIT program office is responsible for managing the acquisition, deployment, operation, and sustainment of US-VISIT systems in support of such DHS agencies as Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). As of March 31, 2007, the program director reports to the Under Secretary for the National Protection and Programs Directorate.

In 2003, DHS planned to deliver US-VISIT capability in 4 increments: Increment 1 (air and sea entry and exit), Increment 2 (land entry and exit), Increment 3 (land entry and exit), and Increment 4, which was to define, design, build, and implement a more strategic program capability. Since then the scope of the first three increments has changed. The current scope is Increment 1 (air and sea entry), Increment

<sup>1</sup> US-VISIT applies to foreign travelers that enter the United States under a nonimmigrant visa or are traveling from a country that has a visa waiver agreement with the United States under the Visa Waiver Program. The Visa Waiver Program enables foreign nationals of certain countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa.

<sup>2</sup> See, for example, GAO, *Homeland Security: Risks Facing Key Border and Transportation Security Program Need to Be Addressed*, GAO-03-1083 (Washington, D.C.: Sept. 19, 2003); GAO, *Border Security: US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry*, GAO-07-248 (Washington, D.C.: December 6, 2006); and GAO, *Homeland Security: Planned Expenditures for U.S. Visitor and Immigrant Status Program Need to Be Adequately Defined and Justified*, GAO-07278 (Washington, D.C.: Feb. 14, 2007).

2 (air, sea, and land entry), and Increment 3 (land entry). Increment 4 is still intended to define, design, build, and implement a more strategic program capability, which program officials stated will consist of a series of incremental releases or mission capability enhancements that will support business outcomes. In Increments 1 through 3, the program has built interfaces among existing ("legacy") systems, enhanced the capabilities of these systems, and deployed these capabilities to air, sea, and land POEs. These first three increments have been largely pursued through existing system contracts and task orders. Increment 4 strategic system enhancements are being pursued through a systems integration contract awarded to Accenture and its partners in May 2004.

Through fiscal year 2007, about \$1.7 billion has been appropriated for US-VISIT. According to the Department of Homeland Security Appropriations Act, 2007,<sup>3</sup> DHS may not obligate \$200 million of the \$362.494 million appropriated for US-VISIT in fiscal year 2007 until DHS provides the Senate and House Committees with a plan for expenditure that meets several criteria. The department has requested \$462 million in fiscal year 2008 for the program. As of January 31, 2007, program officials stated that about \$1.3 billion has been obligated for US-VISIT activities.

#### **US-VISIT Entry Is Operating at Most POEs**

A biometrically enabled US-VISIT entry capability is operating at most POEs. On January 5, 2004, the program office deployed and began operating most aspects of its planned biometric entry capability at 115 airports and 14 seaports for certain foreign nationals, including those from visa waiver countries.<sup>4</sup> As of December 2006, the program office also deployed and began operating this entry capability in the secondary inspection areas of 154 of 170 land POEs. According to program officials, 14 of the remaining 16 POEs have no operational need to deploy US-VISIT because visitors subject to US-VISIT are, by regulation, not authorized to enter into the United States at these locations. The other two POEs do not have the necessary transmission lines to operate US-VISIT, and thus they process visitors manually.

According to DHS, these entry capabilities have produced results. For example, as of June 15, 2007, it had more than 7,600 biometric hits in primary entry resulting in more than 1,500 people having adverse actions, such as denial of entry, taken against them. Further, about 14,000 leads were referred to ICE's immigration enforcement unit, resulting in 315 arrests.<sup>5</sup> Another potential consequence is the deterrent effect of having an operational entry capability. Although deterrence is difficult to demonstrate, officials have cited it as a byproduct of having a publicized capability at the border to screen entry on the basis of identity verification and matching against watch lists of known and suspected terrorists.

#### **Despite Expending Considerable Time and Resources, US-VISIT Exit Is Not Operational**

Over the last few years, DHS has devoted considerable time and resources towards establishing an operational exit capability at air, sea, and land POEs. For example, between 2003 and 2006, DHS reports allocating about \$250 million<sup>6</sup> for exit-related efforts. Notwithstanding this considerable investment of time and resources, DHS still does not have an operational exit capability. Our prior reports have raised a number of concerns about DHS's management of US-VISIT's exit efforts.

As we and others have reported,<sup>7</sup> the absence of a biometric exit capability raises questions about what meaningful US-VISIT data are available to DHS components, such as ICE. Without this exit capability, DHS cannot ensure the integrity of the immigration system by identifying and removing those people who have overstayed their original period of admission—a stated goal of US-VISIT. Further, ICE's efforts to ensure the integrity of the immigration system could be degraded if it continues to spend its limited resources on investigating potential visa violators who have already left the country.

#### **Air and Sea Exit Efforts Have Not Been Managed Well**

Between January 2004 and May 2007, the program office conducted various exit pilots at one air and one sea POE without fully deploying a biometric exit capability.

<sup>3</sup> Pub. L. No. 109-295, 120 Stat. 1355, 1357-58 (Oct. 4, 2006).

<sup>4</sup> On September 30, 2004, US-VISIT expanded biometric entry procedures to include individuals from visa waiver countries applying for admission.

<sup>5</sup> We did not verify this information.

<sup>6</sup> As reported in the fiscal year 2005, revised 2006, and 2007 expenditure plans. The fiscal year 2007 plan reported that of this amount, \$53.1 million is still available as prior year carryover.

<sup>7</sup> GAO-07-248 and Department of Homeland Security, Inspector General, *Review of the Immigration and Customs Enforcement's Compliance Enforcement Unit*, OIG-05-50 (September 2005).

Throughout this period, we have reported on the limitations in how these pilot activities were planned, defined, and justified. For example, we reported in September 2003,<sup>8</sup> prior to the pilots being deployed, that DHS had not economically justified the initial US-VISIT increment (which was to include an exit capability at air and sea POEs) on the basis of benefits, costs, and risks. As a result, we recommended that DHS determine whether proposed incremental capabilities would produce value commensurate with program costs and risks. We later reported in May 2004<sup>9</sup> that DHS had not deployed a biometric exit capability to the 80 air and 14 sea POEs as part of Increment 1 deployment in December 2003, as it had originally intended. Instead, as we mention above, the pilot exit capability was deployed to only one air and one sea POE on January 5, 2004.

In February 2005, we reported<sup>10</sup> that the program office had not adequately planned for evaluating its exit pilot at air and sea POEs because the pilot's evaluation scope and time line were compressed, and thus would not provide the program office with sufficient information to adequately assess the pilots and permit the selection of the best exit solution for deployment. Accordingly, we recommended that the program office reassess its plans for deploying an exit capability to ensure that the scope of the pilot provided an adequate evaluation of alternatives.

A year later in February 2006, we reported<sup>11</sup> that the program office had extended the pilot from 5 to 11 POEs (nine airports and two seaports) and the time frame by an additional 7 months. Notwithstanding the expanded scope and time frame, the exit pilots were not sufficiently evaluated. In particular, on average only about 24 percent of those travelers subject to US-VISIT actually complied with the exit processing steps. The evaluation report attributed this, in part, to the fact that compliance during the pilot was voluntary, and that to achieve the desired compliance rate, the exit solution would need an enforcement mechanism, such as not allowing persons to reenter the United States if they do not comply with the exit process. Despite this limitation, as of February 2006, program officials had not conducted any formal evaluation of enforcement mechanisms or their possible effect on compliance or cost, and according to the then Acting Program Director, no such evaluation would be done. Nonetheless, DHS continued to operate the exit pilots.

In February 2006, we also reported that while DHS had analyzed the cost, benefits, and risks for its air and sea exit capability, the analyses did not demonstrate that the program was producing or would produce mission value commensurate with expected costs and benefits, and the costs upon which the analyses were based were not reliable. A year later, we reported<sup>12</sup> that DHS had not adequately defined and justified its past investment in its air and sea exit pilots and its land exit demonstration projects, and still did not have either an operational exit capability or a viable exit solution to deploy. We further noted that exit-related program documentation did not adequately define what work was to be done or what these efforts would accomplish, did not describe measurable outcomes from the pilot or demonstration efforts, and did not indicate the related cost, schedule, and capability commitments that would be met. We recommended that planned expenditures be limited for exit pilots and demonstration projects until such investments were economically justified and until each investment had a well-defined evaluation plan. In its comments on our report, DHS agreed with our recommendation.

#### **Land Exit Efforts Have Not Produced a Viable Solution**

In January 2004, DHS committed to delivering a biometric exit capability by December 2005; however, we reported<sup>13</sup> that program officials concluded in January 2005 that a biometric land exit capability could not be implemented without having a major impact on land POE facilities. According to these officials, the only proven technology available to biometrically verify individuals upon exit at land POEs would necessitate mirroring the entry processes, which the program reported was "an infeasible alternative for numerous reasons, including but not limited to, the ad-

<sup>8</sup> GAO-03-1083.

<sup>9</sup> GAO, *Homeland Security, First Phase of Visitor and Immigration Status Program Operating, but Improvements Needed*, GAO-04-586 (Washington, D.C.: May 11, 2004).

<sup>10</sup> GAO, *Homeland Security, Some Progress Made, but Many Challenges Remain on U.S. Visitor and Immigrant Status Indicator Technology Program*, GAO-05-202 (Washington, D.C.: Feb. 23, 2005).

<sup>11</sup> GAO, *Homeland Security, Recommendations to Improve Management of Key Border Security Program Need to Be Implemented*, GAO-06-296 (Washington, D.C.: Feb. 14, 2006).

<sup>12</sup> GAO-07-278.

<sup>13</sup> GAO-07-248.

ditional staffing demands, new infrastructure requirements, and potential trade and commerce impacts.”<sup>14</sup>

In light of these constraints, the program office tested radio frequency identification (RFID) technology<sup>15</sup> as a means of recording visitors as they exit at land POEs. However, this technology was not biometrics-based. Moreover, testing and analysis at five land POEs at the northern and southern borders identified numerous performance and reliability problems, such as the failure of RFID readers to detect a majority of travelers’ tags during testing.

According to program officials, no technology or device currently exists to biometrically verify persons exiting the country that would not have a major impact on land POE facilities. They added that technological advances over the next 5 to 10 years will make it possible to biometrically verify persons exiting the country without major changes to facility infrastructure and without requiring those exiting to stop and/or exit their vehicles.

In November 2006, during the course of our work on, among other things, the justification for ongoing land exit demonstration projects, DHS terminated these projects. In our view, the decision was warranted because DHS had not adequately defined and justified its investment in its pilots and demonstration projects. As noted earlier, we recommended in February 2007, that planned expenditures be limited for exit pilots and demonstration projects until such investments are economically justified and until each investment has a well-defined evaluation plan. DHS agreed with our recommendation.

#### **Lack of Definition and Justification of Future US-VISIT Exit Capabilities Risks Repeating Past Mistakes**

According to relevant federal guidance,<sup>16</sup> the decision to invest in a system or system component should be based on a clear definition of what capabilities, involving what stakeholders, will be delivered according to what schedule and at what cost. Moreover, such investment decisions should be based on reasonable assurance that a proposed program will produce mission value commensurate with expected costs and risks. As noted earlier, DHS funding plans have collectively allocated about \$250 million to a number of exit efforts through 2006, but without having adequately defined or economically justified them. Now, in 2007, it risks repeating these same mistakes as it embarks on yet another attempt to implement a means by which to biometrically track certain foreign nationals exiting the United States, first at airports, and then at seaports, with land exit capabilities being deferred to an unspecified future time.

Based on the department’s latest available documentation, it intends to spend \$27.3 million (\$7.3 million in fiscal year 2007 funding and \$20 million in fiscal year 2006 carryover funding) on air and sea exit capabilities. However, it has not produced either the plans or the analyses that adequately define and justify how it intends to invest these funds. Rather, it has only generally described near-term deployment plans for biometric exit capabilities at air and sea POEs, and acknowledged that a near-term biometric solution for land POEs is not possible.

Moreover, specifically, the US-VISIT fiscal year 2007 expenditure plan states that DHS will begin the process of planning and designing an air and sea exit solution during fiscal year 2007, focusing initially on air exit and then emulating these technology and operational experiences in completing the sea exit solution. According to this plan, air exit efforts will begin during the third quarter of fiscal year 2007, which ends in 2 days. However, US-VISIT program officials told us as recently as three weeks ago that this deadline will not be met.

Moreover, no exit program plans are available that define what will be done, by what entities, and at what cost to define, acquire, deliver, deploy, and operate this capability, including plans describing expected system capabilities, defining measurable outcomes (benefits and results), identifying key stakeholder (e.g., airlines) roles/responsibilities and buy-in, and coordinating and aligning with related programs. Further, there is no analysis available comparing the life cycle costs of the air exit solution to its expected benefits and risks. The only additional information available to date is what the department characterized as a high-level schedule for air exit that we obtained on June 11, 2007. This schedule shows that business requirements and a concept of operations are to be completed by September 3, 2007; a cost-benefit

<sup>14</sup> US-VISIT, *Increment 2C Operational Alternatives Assessment—FINAL* (Rosslyn, Va.: Jan. 31, 2005).

<sup>15</sup> RFID technology can be used to electronically identify and gather information contained on a tag—in this case, a unique identifying number embedded in a tag on a visitor’s arrival/departure form—which an electronic reader at the POE is to detect.

<sup>16</sup> See, for example, OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget* (June 2006).

analysis is to be completed by October 1, 2007; testing is to be completed by October 1, 2008; and the exit solution is to be fully deployed in 2 years (June 2009). However, the schedule does not include the underlying details supporting the timelines for such areas of activity as system design, system development, and system testing. According to program officials, more detailed schedules exist but were not provided to us because the schedules had not yet been approved by DHS.

Further, while the expenditure plan states that DHS plans to integrate the air exit solution with the commercial airlines' existing check-in processes and to integrate US-VISIT's efforts with CBP's pre-departure Advance Passenger Information System and the Transportation Security Administration's (TSA's) Secure Flight,<sup>17</sup> the program office did not provide any documentation that describes what has been done with regard to these plans or what is planned relative to engaging with and obtaining buy-in from the airlines. Nevertheless, DHS plans to issue a proposed regulation requiring airlines to participate in this effort by December 17, 2007.

With regard to land exit, the future is even more unclear. According to the fiscal year 2007 expenditure plan, the department has concluded that a biometric land exit capability is not practical in the short term because of the costly expansion of existing exit capacity, including physical infrastructure, land acquisition, and staffing. As a result, DHS states an intention to begin matching entry and exit records using biographic information in instances where no current collection exists today, such as in the case of individuals who do not submit their Form I-94 upon departure. According to DHS, it has also initiated discussions with its Canadian counterparts about the potential for them to collect biographical exit data at entry into Canada. Such a solution could include data sharing between the two countries and would require significant discussions on specific data elements and the means of collection and sharing, including technical, policy, and legal issues associated with this approach. However, DHS has yet to provide us with any documentation that specifies what data elements would be collected or what technical, policy, and legal issues would need to be addressed. Further, according to DHS, it has not yet determined a time frame or any cost estimates for the initiation of such a non-biometric land exit solution.

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In closing, we would like to emphasize the mission importance of a cost effective, biometrically enabled exit capability, and that delivering such a capability requires effective planning and justification, and rigorous and disciplined system acquisition management. To date, these activities have not occurred for DHS's exit efforts. If this does not change, there is no reason to expect that DHS's newly launched efforts to deliver an air and sea exit solution will produce results different from its past efforts—namely, no operational exit solution despite many years and hundreds of millions of dollars of investment. More importantly, the continued absence of an exit capability will hinder DHS's ability to effectively and efficiently perform its border security and immigration enforcement mission. Hence, it is important that DHS approach its latest attempt to deploy its exit capabilities in the kind of rigorous and disciplined fashion that we have previously recommended.

Madam Chairwoman, this concludes our statement. We would be happy to answer any questions that you or members of the subcommittee may have at this time.

Ms. SANCHEZ. I actually am going to give myself a couple of minutes to ask a little series of questions and then turn it over to Mr. Bilirakis for his 5 minutes.

You just mentioned \$27 million on an unspecified plan. Can you go into more detail on what that is about?

Mr. HITE. The \$27 million that I was referring to was cited in the fiscal year 2007 US-VISIT expenditure plan. \$20 million of that is a carryover from prior years; \$7.3 of it is fiscal year 2007 money. The expenditure plan allocates the \$7.3 to broad categories of activity like project management and contractor services. The \$20 million is not allocated to anything specifically in that plan.

<sup>17</sup> The Advanced Passenger Information System captures arrival and departure manifest information provided by air and sea carriers. Secure Flight is a program being developed by TSA for domestic flights to prescreen passengers or match passenger information against terrorist watch lists to identify individuals who should undergo additional security scrutiny.

Ms. SANCHEZ. And what you are saying is, this is money that has sort of been put in a pile that they are going to use on the exit part of US-VISIT but you were not able to figure out any detailed plan of what that plan for exit was?

Mr. HITE. Exactly. Based on the documentation that has been made available to us, either the expenditure plan or other documentation that we have been provided.

Ms. SANCHEZ. Okay. Thank you.

Mr. MOCNY. do you have a plan?

Mr. MOCNY. We do have a plan. At the time that we put that document together, the plans were still in formulation, but we do now have a very detailed set of actions that have to occur between now and December, 2008, in order for us to successfully implement that. So when that information is just making its way up this year to Congress, at the time we put that together, it was not as defined as it is now.

Ms. SANCHEZ. Is it a written plan?

Mr. MOCNY. We have a written plan, various iterations of the written plan. The way we work over at US-VISIT, we are very project focused, so we put together a business plan of what we think needs to happen. We put those down in a document. We ended up with a Gant chart of activities that have to be clicked off as we do that.

I think what was recognized earlier was the implementation of entry was done successfully on time and on budget, and we would make that same approach to exit as well. The same people and the same processes would be in place to do that. It is deciding what that is that we want to implement. Now we have decided what we want to implement for exit. Now we would follow our established plans.

Ms. SANCHEZ. And you are sending this packet, I am assuming, because what you have just told me is sort of in different pieces. It is not really in a binder all together. This is the plan, et cetera. You are sending those pieces over to Congress when? When do I get my hands on these little documents?

Mr. MOCNY. We have submitted to you I believe this morning.

In response to Chairman Thompson's request in his letter, he asked some very specific questions about what we are going to do. And whereas it won't be a great deal of detail within the response to those letters, it is indicating that we do have a plan and that we have activities that we know what we have to do in order for us to be successful by—

Ms. SANCHEZ. You just said it is not in great detail, what you are going to submit because of Mr. Thompson's letter. Do you have a plan? Or don't you have a plan?

Mr. MOCNY. We have a plan. We do.

Ms. SANCHEZ. You have a plan. And it is a written plan?

Mr. MOCNY. It is a written plan.

Ms. SANCHEZ. It is a plan that, if I picked it up, it would be 38 pages or 458 pages, and it would have objectives, a timeline, money, and what you are trying to do. What if you fall behind schedule? A real plan?

Mr. MOCNY. Yes, it does. But I want you to understand that we also have to do an NPRM. We have to work with the airlines. And



so where we have a plan to—and, as we said, make this part of the check-in process, we now have to have the conversation with the airlines to work out—

Ms. SANCHEZ. Have you had that conversation with the airlines?

Mr. MOCNY. We have begun the conversation.

Ms. SANCHEZ. When did you begin the conversation?

Mr. MOCNY. We have had actual conversations over the course of the last couple of months. But we have to do that formally through the NPRM process.

Ms. SANCHEZ. You have had informal conversations with the airlines?

Mr. MOCNY. The airline community, specific airlines but also with ATA, the Air Transport Association, but also the International Air Transport Association as well.

Ms. SANCHEZ. Over the last 2 months is when you began these?

Mr. MOCNY. Approximately.

Ms. SANCHEZ. When did you put the plan together?

Mr. MOCNY. The plan has been evolving over the course of the last several months.

Ms. SANCHEZ. But it relies on—at least the piece at the airports relies on—the airlines.

Mr. MOCNY. That is correct.

Ms. SANCHEZ. So you started talking to the airlines within the last 2 months, but you started making this plan without the airlines several months before?

Mr. MOCNY. We put parts of the plan together based on the pilots that we ran. We understood that it had to be part of the travelers' experience, that we looked at several options, and we understand that the check—in process can offer us the most optimum set of locations where the airlines can take the biometric and give it to us. So we base a lot of our plan on our own experience that we have been writing for the last 3 years and, in that course, working with the airlines as well.

The airlines had to participate as far as the pilots were concerned. They had to direct individuals to find these kiosks. The airports had to provide signage. So whereas in some cases that worked very well, other cases it did not. We took those 3 years' worth of experience and then put that together in a plan and outlined a plan that will evolve, and—as plans do. It will get more detailed as we move further along the way, as we work with the airlines, as we engage them and listen to them, as to what their business model is for the check-in process. So that plan becomes more and more detailed.

Again, the formal process is with the NPRM process. We get their comments. We kind of ratchet that into the whole project plan. That changes some of the elements that we have to do. At the end of the day, though, we have to implement something with the airlines.

Ms. SANCHEZ. Thank you.

Mr. Souder for 5 minutes or whatever you want to say, questions you want to ask.

Mr. SOUDER. Thank you.

I apologize for missing the opening statements. I had a few questions regarding the land border, and I am not sure who best answers this.

If I say—which we encourage millions of people to do and millions of people do do it and I am not criticizing this. If I say I am from Juarez and I am going to El Paso for dinner, do we have any plans to see whether you went to El Paso for dinner and stayed for 20 years somewhere in Indiana? Have you looked at that question?

What exactly are you doing with—this is not a visa overstay. These are short-term passes that happens every day along the border, what seems to be, as we do our fencing, as we do different types of things along the border, an increasing occurrence.

Mr. JACKSTA. Sir, when people arrive at our ports of entry, first of all, they go through one of our primary officer booths. We do normally a name query of that individual. We also check the vehicle to see if there is anything in it. During that process, the officer will ask the individual questions about what their intentions are for coming into the United States, how long they expect to stay.

On the southern border, there is the border crossing card that allows those individuals from Mexico to arrive, to come across to stay up to 30 days and to basically stay within a 25-mile zone, except for Arizona, which is 75. But the officer has a responsibility to ask the individual questions. Based on that discussion between the officer and the individuals, the decision, the determination is made on whether further question is needed or whether there is an acceptance at face value that the person is telling the truth and they are going to a legitimate restaurant, that they are going to be going—returning back to Mexico when they complete their dinner.

So it is a process that is in place. However, once that individual does go through our process and gets into the city of El Paso, there is no mechanism to validate whether that person has actually left the United States.

Mr. SOUDER. And there is no mechanism to see if they have gone to another part of the United States?

Mr. JACKSTA. That is correct.

Mr. SOUDER. And are you looking at a mechanism?

Mr. JACKSTA. Well, there is obviously—what we do along the various land border, southern border area, we do have specific stops where we have our border patrol agents who will stop vehicles and ask individuals for identification and determine if someone has basically misused their—the use of the card. We have the capabilities to work to make sure that individuals that receive an I-94 card do return. If they don't return, they show up on our list as individuals who have not reported for returning; and we determine what type of action to take based on risk management.

Mr. SOUDER. Do you check this with law enforcement around the United States?

Mr. JACKSTA. The ICE, the Immigration Customs Enforcement officers are responsible—

Mr. SOUDER. I take back the question. I really want to focus on the border. Do you see this as becoming part of the US-VISIT program, that you have an exit for this type of—I am going to dinner and I stayed for 20 years?

Mr. JACKSTA. I think that that is exactly what we were looking for to do down the road, recognizing that there are a lot of technology issues.

Mr. SOUDER. Down the road like a year, 3 years?

Mr. JACKSTA. I would say a couple of years.

Mr. MOCNY. If I can, again, we have looked at and we have tested various technology that might assist us in preventing and uncovering what you have talked about; and, frankly, the technology says that we are not ready yet. But I think within a couple of years, as Bob suggests, we would have the ability probably for biographic checks. It is the challenge of biometrics. It is the challenge of taking a physical piece.

Mr. SOUDER. It is biometrics. Without biometrics, you are going to have all kinds of profiling and potential discrimination. Biometrics are real and nondiscriminatory.

Let me ask this question. We have just gone through a debate—I am sure it is not going to end with the vote in the Senate today—about potentially giving millions of work permits. I presume that somebody from the administration has asked you to draw up a plan to implement how you would handle the exit part of the work permits and the entrance part of the work permits. Do you have any documents? Do you have any question that anybody has asked you to develop that plan? Or was this just a pie-in-the-sky thing that a few people developed but haven't even talked to the people who would have to implement it?

Because, clearly, that falls directly on your shoulders, that it could not possibly work for the employers in my district to have work permits without a biometric indicator. Because the whole problem here is, if you don't have a biometric indicator, you are going to discriminate against the many refugees and legitimate Hispanic citizens in the United States because you don't know who really it is. And if you don't have a plan, we are setting up tremendous problems of identification.

Mr. JACKSTA. I can tell you that I know that the Department is looking at exactly what would be the enforcement plan, what would be the protocols, what type of cards would be utilized to try to address those concerns.

I am not a participant of that actual work group, but I know that is important to us to make sure if we move forward with any kind of trusted work program that there is the capabilities to make sure it is enforceable at our ports of entry.

Mr. SOUDER. So the answer is, is those who are running the program really haven't been included in this yet?

Mr. MOCNY. Our initial focus is on the air and the sea, notwithstanding the challenges and the need—

Mr. SOUDER. Notwithstanding the fact that we are debating in Congress a millions-of-people program. You are focused on a few, while we supposedly were having a realistic debate about millions. I mean, that is the frustration some of us have. And you have to do air and sea. It is just that incrementally Congress needs to be matched up with what you are actually capable of delivering.

I thank the gentlelady for the extra minute.

Ms. SANCHEZ. You are quite welcome, Mr. Souder.

I now recognize Mr. Green from Texas for 5 minutes.

Mr. GREEN. Thank you, Madam Chair; and I thank the ranking member as well.

This is indeed a necessary hearing, and I thank the witnesses for making themselves available. I know that you have tough jobs. This is an enormous task that you have undertaken. So let us move quickly and talk about some of these very serious issues.

Mr. Hite is with a reputable agency. I assume GAO is a reputable agency, as you view agencies here on the Hill. He has made some statements that might be considered indictments by some. While I would not call them indictments, Mr. Hite, out of respect for you and the agency, I will say that there are some very serious charges; and the question to each of you, Mr. Jacksta and Mr. Mocny, is do you agree with all that he has said? Mr. Mocny.

Mr. MOCNY. Mr. Hite has been with the program for—

Mr. GREEN. If you would, let me just ask this of you. Because I have little time; and many times when a person has finished, I don't know if they have said yes or no. Do you agree—I think that is something you can say yes to—or disagree with what he said?

Mr. MOCNY. I agree with the recommendations he has provided to us.

Mr. GREEN. Do you agree with his assessment?

Mr. MOCNY. I may not have used those same quotations that he used.

Mr. GREEN. Would you agree with his assessment: 4 years, \$250 million, no plan. Do you agree with his assessment?

Mr. MOCNY. Yes. From the information we have provided to GAO, I would agree that he would be able to make those statements because we have not provided the detail to him for him to evaluate the plan that we do have.

Mr. GREEN. Mr. Jacksta, do you agree with his assessment?

Mr. JACKSTA. Yes.

Mr. GREEN. Now if you agree with his assessment, then the question becomes, how can we be assured that—because he talked in some detail about this being *deja vu* all over again. How can we be assured that this next generation of plans will be something that will give us much more than the previous generations? Meaning that we will have something that we can perfect and have a system that works.

Mr. MOCNY. I will use a quote: Your past is prologue. I think when we apply ourselves here and we have a plan and we have the backing of the Department in order to execute that plan, then we will execute that plan.

So when you look at what we did for entry, we have to have that same—we will have that same backing of the Department in going forward. So, therefore, I can commit to you that we will have a plan. There is a lot ahead to do. We have to work with the airlines. We have to be funded.

Mr. GREEN. Given you are saying you have the plan, you just don't have it with you today, the question becomes what timeline do you have within the plan that you have that you don't have with you? What is the timeline within that plan for implementation?

Mr. MOCNY. Working with the airlines, we will have a biometric exit solution in place by December of 2008. That is the plan. In order to get to that plan, we have to do a series of things like pub-

lish interim reg—interim rules, we have to get some comments from the airlines industry, we have to publish final rules. But December, 2008, is when we are committing to having biometric exit stood up.

Mr. GREEN. Now does this mean that you will have the genesis of the program or that you will have all of your regulations in place such that the program will function properly?

Mr. MOCNY. Again, the plan calls for a final rule to be issued in June of 2008.

Mr. GREEN. The final rule?

Mr. MOCNY. Final proposed rule which would lay out what the airlines have to do, what DHS has to do. So after we go through an interim proposed rule, which is a comment period, we then take those comments from the airlines and from anybody who wants to comment on those proposed rules—

Mr. GREEN. So in 2008 we won't have a final plan. We will have the beginning of the final plan?

Mr. MOCNY. In June of 2008, we will have the final plan; and then we have execution from June until December, 2008, with the—so you have complete exit control on biometrics. You have the air and the seaports of entry.

Mr. GREEN. In December of 2008 we will have the final plan in place?

Mr. MOCNY. No, June of 2008.

Mr. GREEN. June of 2008, and then we take—

Mr. MOCNY. Six months.

Mr. GREEN. —six months to examine the final plan?

Mr. MOCNY. Correct, and have it executed. So deploy after starting—in June, we will then begin deploying the solutions so that by December of 2008 we should have the exit, the biometric exit, in place at the airports and the seaports where we would have them put in place. And some of the ones I mentioned within my opening testimony.

Mr. GREEN. Thank you for the time, Madam Chair. I see that I have exceeded my time. Thank you very much.

Ms. SANCHEZ. You are quite welcome, Mr. Green.

Mr. BILIRAKIS, thank you for having been here from the start and for taking your turn. Five minutes.

Mr. BILIRAKIS. Thank you. Thanks so much, and I would like to submit my opening statement for the record, Madam Chair to save time. It is in our best interest of time.

Ms. SANCHEZ. So ordered.

Mr. BILIRAKIS. Mr. Mocny, do you believe that establishing a fully functional exit and entry system, especially at land borders, is a prerequisite to amnesty or a temporary guest worker program?

Mr. MOCNY. I couldn't comment on whether or not we should have it in place. I think it is going to be important for us to be able to tell whether people leave or not, but whether we can commit to an exit process in place of land borders, ports of entry as part of the temporary worker program, that is currently not something I could comment on.

Mr. BILIRAKIS. Okay. Anybody else want to take a shot at that?

Okay, can we enforce time limitations—again referring to this—on such guest workers or other visa holders in the absence of such a system? For the panel again.

Mr. MOCNY. You can't enforce what you don't know. So if we don't have an exit process in place, whether that be biographic or biometric, you wouldn't know if in fact the person left other than the I-94 that we might collect.

But I do want you to understand that we are not abandoning that whole process. It is just a matter of what we can do in the time frame of what we are talking about. So we could have a biometric biographic system in place potentially by working with Canada as if we are working with Mexico. It is not that we are abandoning the land border. It is simply something we can't sit here and testify today that this is the absolute solution for, whether it be biographic or biometric at this point.

Mr. BILIRAKIS. Anyone else?

Mr. JACKSTA. I just wanted to point out the challenges that we place at the land border. I mean, I think it has to be recognized that the land border is an extremely difficult place for us to implement outbound compliance.

Clearly, as we move forward with any type of program, we need to develop and look at the technologies that would be available. There might be opportunities for RFID, radio frequency cards. There might be the capabilities for biometrics. There might be capabilities for other methods working with the foreign governments, as Bob mentioned, Canadians and Mexicans.

So there are opportunities to build on. But, clearly, biometrics would be the most secure mechanism to ensure that people who came into the United States leave the United States.

Mr. BILIRAKIS. Okay. Next question. I mentioned in my opening remarks which were submitted for the record about the Mona Pass initiative in which the Coast Guard is using mobile technology to collect biometric information on apprehended migrants and comparing that information to the US-VISIT identification database to determine their identity. Would you briefly explain, Mr. Mocny, this effort, and the results to date and the potential for expanding the use of mobile biometrics collection as part of an exit solution?

Mr. MOCNY. Thank you. The Mona Pass, the project that you referred to with the Coast Guard, I think represents where we have applied new technologies that have come to a maturity stage where we can use those.

Simply put, what we are doing with the biometric devices is providing to the Coast Guard who operate within the Mona Pass, which is in the location in between Puerto Rico and the Dominican Republic where people taking these yolas, which are basically very rickety boats to try to get into America, to try to get into Puerto Rico—in the past, the Coast Guard would intercept a boatload of these individuals, knowing that they had seen these people before, maybe the week before, the month before, but they had no basis because these people carried no identification or false identification. Working with the Coast Guard and using biometric mobile devices that they procured and working with our database, we now in fact in realtime, using satellite communications, can identify people from these boats to the point where they had one prosecution last

year and they are up to 60-some prosecutions so far this year where the Coast Guard has indicated that the normal flow of traffic in between the Mona Pass is down 50 percent.

It is a clear indication of when you apply technology that is matured that you could have a significant appositional effect on illegal migration and where this is not only the turn effect but a huge prosecution effect working with the U.S. attorney in the area.

But this is something that we think has a lot of merit and a lot of application to other areas. Mobile technology will afford us the ability to capture biometrics and process and identify individuals in areas where we just can't do it today. Whether that actually applies into a car and land border is to be determined. But the idea of using mobile technology and applying that to the various locations we believe will have a very positive effect, and it has in the Mona Pass.

Mr. BILIRAKIS. Okay. Thank you very much. Appreciate it very much.

I yield back, Madam Chair.

Ms. SANCHEZ. Thank you to the gentleman from Florida.

Gentlemen, the report on the House Homeland Security appropriations bill provides \$45 million in funding for TSA to implement the new document checker program to ensure that government employees and not airline employees are comparing passenger ID to passenger boarding. In other words, when you are at the airport and you are getting to security, you have someone checking to see whether your boarding pass matches whatever ID you are handing them, that traditionally has been an airline employee. Now they have decided they would prefer to have TSA employees do that.

So at a time when we are actually doing something that simple, look at the person, see if the photo looks like them, check that name against this name, we are taking that away from the airline. Why would you be putting the VISIT Exit program in the laps of the airlines at the checkout or at the check-in process?

Mr. MOCNY. For two reasons, and this is part of the thinking that went into coming up with the check-in process, which the airlines in effect do that today. The airlines collect the I-94 departure card, the card that the foreign national gets when they arrive in the U.S. So they hand the I-94 which says this is Bob Mocny and now I am leaving the country. They are collected by the airline employees, and then they are turned over to Bob's people at the end of the day where they are then matched and sent to a location to be matched against the entry documents. The departure card is matched against the arrival card.

That occurs today, and one of the things that we are asking the airlines to do is to take another data point which is a finger scan of that individual. And the reason why we have set the check-in process, we have to make it known to travellers.

Again, one of the things we learned within the pilots is if there wasn't kind of uniformity to where one checks out then one can often get confused; and where the TSA sounds attractive, it is a choke point, it is a DHS point.

Not all TSA locations fit well into that particular airport. There are locations where they fit quite well, and there is a lot of extra space. There is airports where TSA is shoehorned into a particular

area there. So if it can't be at all TSA points, it kind of can't be at any TSA points. Because if they are at this airport, it is at TSA; if it is at another point, it is behind TSA; and a third airport it is before TSA. Where do I go to check out?

Ms. SANCHEZ. I am not saying for TSA to do it. I am saying, if TSA doesn't think the airlines can do a good job at doing that little piece, then why would you think they would be able to do all this other stuff? Why would an employee behind the counter not look at the documents, for example?

Mr. MOCNY. I don't work with TSA. But understanding these were contractor people that the airports would hire, perhaps it was the airports who would hire, it wasn't the check-in people that would do it themselves—I think one of the reasons that we again believe that this is a rather simple thing to do is what we are asking the airlines to do is what we have been doing for the last 4 years. It is tried and true. It is simply as part of the process where they validate the passport with which they have to do by regulations, they have to touch a passport for anybody going, you know, to a foreign location.

So by touching the passport and validating that that is the person who that is, they can simply take the finger scan of the individual as well. It is tried and true. We have been doing it at 3,000 points of inspection for the past 4 years. It is relatively easy. It is very quick. It is very fast and efficient.

So we are trying to find the best fit, not—you know, not just for DHS and for the airlines but also for keeping in mind the traveller has to be able to have some certainty as to where I check out. So it is a simple process for the airlines to do. It is simply asking for a finger scan of the individual.

Ms. SANCHEZ. Mr. Souder, do you have any questions?

Mr. SOUDER. I would like to ask Mr. Hite a question.

Ms. SANCHEZ. Go ahead.

Mr. SOUDER. I am sorry I missed your testimony, but I take it that you have some skepticism, given the subtleties here, which in and of themselves are interesting, despite spending considerable time and resources, US-VISIT is not operational. Air and sea exit efforts have not been managed well, land exit efforts have not produced a viable solution, lack of definition, justification, risk of repeating past mistakes. So I think those are pretty strong statements.

Now, in the discussion, first on air, just briefly, it seems to me that when a person checks in at the airport that we would immediately have some kind of a computer system. We have had this question about the land border and the TB person. Isn't there a central check-in place where you just put your finger down and it would immediately trigger whether the person—not just at the airlines—the question of the backup, why isn't there a U.S. Government backup system that catches when somebody moves in or out? Is that technologically not possible, what I am asking? Or is it just—what kind of investment are we looking at?

It seemed to me that, for example, our national targeting center should have known immediately the person who had TB was crossing the border crossing. The technology moves immediately through the air. It is not like it takes 3 days to float your check anymore.



Mr. HITE. Yes, sir I appreciate the question. I submit it is probably a better question to pose to the Department, as opposed to GAO.

Mr. SOUDER. What I am wondering is, do you think that they feasibly could do something like that? Or have you seen anything like that?

Mr. HITE. I have not seen anything like that. Based on my knowledge and experience, I don't think it would be technologically challenging. It may be operationally challenging. I am not an expert on airport and airline operations.

Mr. SOUDER. You have suggested some doubt, and you heard today that they are hoping to have this airport procedure operational in December, 2008. Do you think that is realistic?

Mr. HITE. I haven't seen anything to give me any confidence to show that that is realistic. Throwing out dates like that are nice to have as goals. Having meaningful dates that you intend to meet are generated by virtue of the fact that you thought through them systematically, what is it going to take to get us there? And you build those kind of schedules on a bottom-up basis. And therefore you have some confidence that you can in fact meet that.

There are too many unknowns that haven't been answered yet, in my view, to even have any confidence as to an end date on this thing, the least of which is gaining the airlines' cooperation on this proposed solution. So I don't think they are at the point yet where they could give you a good hard date that they would actually—I think if I was in their situation—would want to be held accountable to.

Mr. SOUDER. Wouldn't you say, similar, that for the DHS or the Senate or anybody in the House to say that a land border entry/exit strategy would be in place in 3 to 5 years is a tad optimistic goal as opposed to a realistic implementation strategy?

Mr. HITE. All I can say is based on everything that I have seen, I haven't seen anything that would give me the basis for that. It certainly can be a stated goal, but there is a difference between a goal and a schedule that has been defined in a rigorous and disciplined fashion.

Mr. SOUDER. Thank you. I appreciate that. And in all fairness to US-VISIT and to DHS, part of the problem is one of the variables here is the United States Congress. And they state their goals, but they may not have adequate money with which to implement their goals. And if we are going to be realistic about what is the difference between a goal and an implementation strategy, we have to make sure there is adequate money for the technology. And we have to make sure there is adequate money for the development of these procedures, for the hiring of people to implement it. And we have been a tad inconsistent on our side, and then saying why isn't it being done? But to do that the administration has to actually come forward with realistic numbers and say, look, this isn't a couple of billion dollars. We are looking at systems that are incredible amounts of money. And probably that can't be done in a very short period. It is going to take a little bit.

I yield back.

Mr. CUELLAR. [Presiding.] Thank you, Mr. Souder.

At this time I will recognize the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And I would thank the Ranking Member for his last comments. I do think that we need a greater degree of cooperation from the administration in terms of what is realistic and with the numbers. And I compliment you and I thank you.

Just quickly, if we use biometric detection at the counter with the airline employee—is that what we were talking about, at check in?

Mr. MOCNY. We are looking at the check-in process. And so unless that happens at the counter—they are moving to kiosks as well. And so we want to look at how we might implement a finger scanner at the kiosk.

Mr. GREEN. At the point you are using the biometric detection, I assume that the visitor will receive some sort of document at this point if this proves to be the person, the correct person.

Mr. MOCNY. That is what we used for the pilot. There was a receipt that was printed out. But what we would like to be able to do is work with the airlines to incorporate that into the boarding pass process. So the boarding pass would in fact be a receipt that says this person now has had their document checked as appropriate and has a finger scan.

Mr. GREEN. What if that person does not immediately, if we were at an airport, board a plane? The person then has the freedom to move about through the airport before boarding the plane?

Mr. MOCNY. That is correct.

Mr. GREEN. What then prevents the person—and I am sure you have the answer, I just don't see it—what prevents a person from giving this document to another person, who has some fraudulent ID, and then boarding the plane, if you have already now had your biometric detection and you have given the person freedom of mobility?

Mr. MOCNY. We have asked ourselves that question. In fact, during the pilots, we actually tested the ability to validate someone who had already gone through the finger-scan process. So there is technology that would allow a secondary scan to take place at the boarding gate. There is other technology that would allow us to vet the name of the people. When they close out the final record, the Departure Control System, there is a list of people who actually boarded the plane. We can vet that name with the fingerprints and the names taken at the time that they were finger-scanned at the counter, at the kiosk. But even those are the details that we want to work with the airlines to find the best that fits into—the best model that fits into their business model as well.

Mr. GREEN. Your paradigm creates a certain amount of dubiety, it creates a certain amount of consternation, because the question becomes why perform what is the best check at the check-in, and then some secondary or tertiary that is not the best? Why not perform the best check at the point where the person is about to board the plane, as opposed to at the point of checking in?

Mr. MOCNY. Again, you raise all very good and valid points. We have got these three basic areas where we see people: at the check-in, at the TSA, and at the boarding gate. The airlines have been

very successful in getting DHS away from the boarding gate when TSA was doing secondary checks and messing up their boarding process, and delaying planes and stuff.

Mr. GREEN. I understand, but we have a country to protect. And I respect the opinions of the airlines, but the best place to check the person for boarding a plane is at the point where the person is about to board the plane. That premise is almost undeniable. Would you agree?

Mr. MOCNY. I wouldn't disagree, other than when you say "the best"; it is an issue of there are—we have to factor in, in anything that we do, the economic effect that we have on what the industry does. And in fact, yes, we have to protect America, but we also have to respect the fact that we have an airline industry that moves millions and millions—

Mr. GREEN. Won't you have the same problem at the check-in that you will have at the boarding point? How does it differ at the boarding point as opposed to the point of checking in? How does it differ in terms of time?

Mr. MOCNY. We ask people to show up for check-in at least 2 hours, 2-1/2 hours before they go international. Generally at the boarding gate you have a half an hour, as few as—

Mr. GREEN. But the biometric read is something that takes less than 5μseconds. You do the biometric read, you have your boarding pass, you enter.

Mr. MOCNY. Right.

Mr. GREEN. Okay. I have been to Singapore, where they use these biometrics. In fact, I believe the Chairlady was—were you on that codel to Singapore? Okay. They do this. And they have people who walk through and they scan and it happens almost instantaneously. And it is a very, very expedited process. Very much so. I am really appealing to you to consider the best point of detection at the port of entry to the plane or to the ship or to wherever it is the person is going to—whatever vehicle the person will traverse. It just seems to me that giving the person a license to roam freely, after having gone through detection, gives a person also the license to fraudulently board, or give someone else the opportunity to fraudulently board an aircraft.

Mr. MOCNY. And I appreciate that. And we will take all those issues into consideration. I think, as we say, the check-in process, we want to hear from the airlines what is the check-in process of the future? How do you take the individual from outside the airport to getting on board the plane? And so we want to understand all those different steps along the way. And whatever is the best for the security of the U.S. and works with the airlines and works for the travelers so they are not confused, we want to implement those programs.

Mr. GREEN. Thank you, Madam Chair.

Ms. SANCHEZ. [Presiding.] Thank you, Mr. Green. And I will recognize Mr. Cuellar for 5 minutes.

Mr. CUELLAR. Thank you, Madam Chair. Three sets of questions.

First question has to do with the deadlines. I think, Mr. Hite, you mentioned about having realistic—and this applies to all three of you. But you have the agency that has a particular idea of what certain timetables should be. Then you have Congress that has a

certain idea of what the timetables should be, a date line as to when we ought to implement a particular project, or in this case talk about US-VISIT Exit. How should we try to work closer together to try to come up with something more realistic? Because I mean anybody could say do it by January 5th of 2008 no matter what. Whether that is realistic or not, you know, that might be questionable. But how do we work out something where we could try to get more realistic dates, taking everything into consideration? But then at the same time—I mean I know you got to look at, well, how do we implement this—but at the same time we get the outside pressures saying we got to provide something for the security of the Nation.

What is your thought process on how we ought to come up with a more realistic timetable when we are working on legislation? Whoever wants to go first.

Mr. MOCNY. I think by having the back and forth that we have been having, and by asking for reports that basically say understand the complexity of what you have to do, Congress says you have to do X by—and sometimes not by a certain date. We have never been given a date certain to do exit. When we were given a date certain to do entry, December 31st, 2003, 2004, 2005, we met or beat every one of those dates. Those were often seen as perhaps not realistic, but we applied ourselves, and we applied resources, and we were able to get those dates met. So I think, then, now having—and with entry I want to say it was easy. That is using the term a little bit loosely. Exit, we don't have the infrastructure. That is part of the issue. You don't have booths, manned, staffed booths that Bob has. So with exit we have to create that infrastructure or utilize the infrastructure that is out there.

So by having us look across the board and saying here is the challenge, and here is what we don't have, here is what we think we need to do, coming back to the Congress and submitting a realistic plan. I think we suggested that with the land border. I think we are here basically committing, saying it is not possible in our minds to come up with a biometric solution for the land border at this point. But should we study that and look at what is possible and when is that possible?

So I think we have enough information and enough experience in our history to say this is possible, this is not possible. And that is why we are pretty confident saying biometric exit at the land border is not possible within 2 years. Biometric exit within the airports within 2 years we believe is possible, and the cruise lines. We have that history.

So by having a dialogue, or whether it is reports sent up, or having your able staff up here working with us, then we are able to craft the appropriate legislation and the appropriate appropriations to be able to fund this. Because that is the key to any of this, as Congressman Souder mentioned, is the funding behind what we have to do. And so I would simply say continue the dialogue. And sometimes if it is in the form of a formal report, which we are happy to do, that we kind of outline what our plans are.

Mr. CUELLAR. So this type of oversight hearing, or informal meetings with staff, or whatever, those type of communications would be very helpful?

Mr. MOCNY. They have been very helpful to us for the past 4 years, absolutely.

Mr. CUELLAR. Good. Because I can give you examples of passport issues. As you know, we saw what happened. And then of course there is US-VISIT Exit also. And then not even getting into the land portion. I don't want to go into that. You know how I feel about that. But yeah, we just need to continue having this type of dialogue. Because I mean, I am not the type to say just set up a timetable, so once we get to it, it wasn't realistic, and then we have to delay it again for another period of time. So we appreciate it if you could just continue working with the committee to help us on this type of a timetable.

Mr. MOCNY. Absolutely.

Mr. CUELLAR. I got about 50 seconds. Mr. Jacksta or Mr. Hite, any thoughts on that? How do we establish that communication to make sure we get realistic timetables?

Mr. HITE. Yes, sir. What I would offer is on any program, what you are trying to do is to introduce a certain capability. And that capability is functions, and it is how well you execute functions by a certain time at a certain cost to produce a certain benefit. All four of those legs on that table need to be balanced against one another. Because if you give me less time, I can give you less capability and less benefit. And maybe I will get it done cheaper. But it all depends upon what you want. And that is why there needs to be agreement around what is the outcome we are trying to achieve. If the outcome is the important thing, which I think it is, it drives capability, it drives timelines, it drives cost. And then you can make an informed judgment as to whether or not that outcome is worth the cost. I would approach it that way.

Mr. CUELLAR. You are right. The result is what we are interested in. You know, what sort of inputs we put in, and we determine that. But my time is up.

Mr. JACKSTA. Can I just answer? You asked—

Mr. CUELLAR. Yes.

Mr. JACKSTA. —a question. I just want to say we are working on this. One of the things that is extremely important for us is to have this dialogue and to be here. Although at times it can be painful, it is good to have a discussion about what some of the issues may be. And we have had a number of discussions with your staffs about what we are trying to do on this. We have had a number of discussions with the carriers. We have had a number of discussions with the stakeholders on the land border.

This is a complex issue that we make every effort to hear about what we can do to make it work for both of us, because it is a mutual concern. We all want to have security. We want to all have facilitation. How we get there is built on those discussions that take place. And so I know why we were so successful with the entry part of it was we did those discussions, we did have the outreach efforts. And we will continue to do that.

Mr. CUELLAR. Thank you. Thank you, Madam Chair.

Ms. SANCHEZ. I thank the gentleman.

Mr. Hite, before we let you go, your report is pretty sad, actually. And throughout the report you continue to state pretty much that there doesn't seem to be a cost-benefit analysis really going on,

that there is no justification for the money spent, that the end product never gets there, or, you know, going back to your whole idea of what are you spending your money on and the whole accountability issue.

Is that because the Department wasn't forthcoming with enough information for you to determine whether they had made plans, hit milestones, or is it because they don't seem to have plans to be able to hit milestones? That they are sort of just groping in the dark?

Mr. HITE. The short answer is yes, I think it is a combination of both of those. We have seen an absence of definition, frankly, with entry as well, but primarily with exit as to what are you going to deliver. What capability? What kind of functionality? How well is it to perform? By when? At what cost? And to achieve what outcomes? And how are you going to measure whether or not you are achieving those outcomes? And before you proceed, is it worth it? Is the solution that you are proposing to give these capabilities, is it worth the investment? Or is there another solution that is more cost beneficial?

These are all principles that are applied to any new program that you are developing. Frankly, it is a principle you apply to any investment an individual is going to make in their home, or any individual who is a business owner is going to make. You invest in something to provide value, so you need to know what that value is going to be. And you need to be able to know how much it is going to cost you over the intended life cycle and when it is going to get done. And so what we found—and the testimony that you described was sad—has been a pattern of that over the course of US-VISIT. We have said it is difficult to hold the Department accountable for US-VISIT because it has never really been clear what US-VISIT is or what US-VISIT will be when it grows up.

So, again, the answer is it has been a combination of the two, the lack of definition, and then what we—in sharing with us what definition does in fact exist, and what we have seen, limitations in that.

Ms. SANCHEZ. Thank you, Mr. Hite.

Going back to Mr. Mocny just for the last question, we talked earlier about how you have a plan, you have a plan, the Chairman sent you a letter and he sent, you know, various questions. And now you say you have a plan that is in writing. It is certainly not in a binder all together. It seems to be pieces from what I could get out of your testimony earlier to me. I have your response back to the Chairman here. It is sad also, by the way, this response.

So my question to you—I assume you read the GAO report that Mr. Hite and the GAO put out?

Mr. MOCNY. Is this the GAO report on the US-VISIT spend plan? I am not sure I have.

Mr. HITE. I believe you are referring to our testimony?

Ms. SANCHEZ. Prospects for Biometric US-VISIT Exit Capability Remain Unclear.

Mr. HITE. Today's testimony.

Mr. MOCNY. I have not seen the report, no.

Ms. SANCHEZ. You have not seen the report. I would ask you to take a look at page 10 when you go back. You don't need to now. But one of the things that Mr. Hite and his group says is that no

exit program plans are available that define what will be done, by what entities, and at what cost to define, acquire, deliver, deploy, and operate this capability, including plans describing the expected system capabilities, defining measurable outcomes, identifying key stakeholders, roles, responsibilities. The list goes on and on, life-cycle costs, et cetera, et cetera.

I think I agree with Mr. Hite. I think this is the kind of plan that we want to see on this committee. So his description of what he thinks would be a good plan sits squarely on page 10. I hope you will go back and read the report, and that when we get your plan that it answers to that. Thank you, gentlemen, for testifying before us today.

And I welcome the second panel of witnesses. Our first is Mr. James May, President and Chief Executive Officer of the Air Transport Association. Prior to joining ATA, Mr. May served as Executive Vice President of the National Association of Broadcasters. He has held a variety of other senior positions in public affairs and government relations. Welcome, Mr. May.

And our second witness will be Ms. Ana Sotorrio, Associate Director for Governmental Affairs for the Miami-Dade Aviation Department, operator of the Miami International Airport and four general aviation airports. And she directs the department's legislative and regulatory affairs at the local, State, and Federal levels. She also serves as the chair of the Airports Council International-North America Facilitation Group.

So, without objection, the witnesses' full statements will be inserted into the record. And I will now ask each witness to summarize his or her statement for 5 minutes. Tell us what you think is most important.

Ms. SANCHEZ. We will begin with Mr. May, please.

**STATEMENT OF JAMES C. MAY, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION**

Mr. MAY. Thank you, Madam Chairwoman, and thank you, Ranking Member Souder. We appreciate the opportunity to be here today. As you know, Congress' mandate for the Federal Government to collect information on visitors departing from the United States isn't new. In 1996, Congress first directed the government, I would point out, to develop an automated entry and exit control system to collect biographical information on visitors arriving in and departing from the United States.

As you might not know, today is not ATA's first appearance on this subject. In January of 2004, following yet another congressional mandate for the Federal Government to collect the information, including at that point biometrics on arriving and departing visitors, I complimented DHS and the US-VISIT program on the US-VISIT Entry program. Those compliments I think are well deserved. As they have in many other contexts, DHS and the airlines, worked together to implement that entry program in a collaborative, systemic process. And without a doubt, the government's successful operation of entry at 115 different airports is due to that collaboration.

Now, in 2004, after having had limited involvement with the exit pilot programs, I urged the continuation of this partnership. Air-

lines were looking forward to working with DHS on exit. DHS, however, chose not to consult further with ATA or the airlines, and not to even share the results of the exit pilot programs. Now, despite their assurances, there was no government-industry partnership from the conclusion of those pilot programs in December of 05 through December of 06. Then in January of this year there was sort of a rapprochement, if you will, and we were told again, sure, we are going to work with you. Unfortunately, we learned in March that DHS had made a unilateral decision, and that was that airlines, not the government, would collect biometrics at check-in counters. They explained the decision fit the DHS business plan.

I think it is unfortunate for a couple of reasons. Number one, in addition to noting their sort of unexplained failure to continue consulting with us, there are two principal issues. First, you and the Congress have made it abundantly clear six times since 1996 that you want the Federal Government to implement this program. They do it with the entry program. They do it with all sorts of border control activities. It is a law enforcement function, and it ought to be the government that executes this plan. After all, DHS and its counterparts are the relevant agency. Further, I think the exit process should mirror the entry process. Now, our second objection relates to our business plan.

Years ago the airline industry adopted a business model that focuses on moving passengers away from the ticket counter and in unnecessary procedures. The goal was and is today to facilitate passengers processing, making check-in processes as efficient and seamless as possible. Today, due to considerable investment by airlines and obvious time savings, over 30 percent of all of our passengers check in electronically. And that number is growing every day.

Kiosks are just an interim step in the process. Kiosks are an interim step in the process, and are going to disappear from airports, as passengers check in via cell phones, PDAs and home computers.

Now I am showing you what amounts to—it is hard to see from this distance—a bar code on my Treo. I can receive that electronically. I can let it get scanned at the check-in point, the security checkpoint, I can let it get scanned again at the gate. And, boom, I am taken care of. That is the kind of technology that we are working on. We are exploring ways that allow passengers like each of you and all of your colleagues, as you are crossing the 14th Street Bridge and you are racing to catch that plane because you want to get back to the district for the weekend, to check in via cell phone or your Treo.

And if, as DHS proposes, passengers are required to forget all this wonderful new technology, go to the ticket counter, and at that point the airlines themselves are required to collect biometrics during the check-in process, then this whole efficient, seamless off-airport passenger check-in is going to disappear. And I promise you, for any of you who have been to the check-in counters, Dulles Airport, National Airport, I am sure Miami-Dade, the lines can be long and very, very cumbersome.

In closing, let me make one final salient point. We have invested millions of dollars reconfiguring our systems to comply with the program you heard about earlier, Advanced Passenger Information,



APIS, and on passport reconciliation requirements to collect biographical data on passengers. We are committed, in working with DHS, to spending millions more on implementing what is called AQQ and Secure Flight, two more programs.

Finally, we are preparing to invest even more on wireless technologies, as I have just demonstrated to you, to collect—to supplement all of the biographical information that we are currently collecting and sharing with DHS and its many agencies. So we don't oppose the US-VISIT program. We want to collaborate and continue to collaborate with DHS as possible. But we want it to be done in a way that makes sense for all of us. And quite frankly, the easiest, simplest place to have it be the government that does it and have a one-stop shopping center is to do it at the checkpoint. Thank you.

Ms. SANCHEZ. Thank you, Mr. May.  
[The statement of Mr. May follows:]

PREPARED STATEMENT OF JAMES C. MAY

Madam Chairwoman and members of the subcommittee, thank you for providing me the opportunity to appear before you today to discuss the US-VISIT/Exit Program.

This is the second decade of the congressional mandate to the executive branch to develop a system to record the entry and exit of foreign visitors. Congress has repeatedly signified in half-a-dozen laws since 1996 that this system was to be a governmental responsibility. Indeed, until only a few months ago, the Department of Homeland Security (DHS) had acted accordingly. The indications of that have been unmistakable. US-VISIT/Entry, which was implemented in early 2004, is an entirely governmental program. Moreover, the recently concluded US-VISIT/Exit Pilot Program was also exclusively governmental.

DHS and the airlines closely collaborated in developing both the US-VISIT/Entry Program and the US-VISIT/Exit Pilot Program. We repeatedly offered to work with DHS to develop a permanent US-VISIT/Exit Program and were assured that we would have the opportunity to continue our collaboration with DHS. We looked forward to that. Those pledges, however, have not been fulfilled. DHS recently informed us that it had decided, regrettably without prior consultation, to require airlines to collect the biometric information for US-VISIT/Exit.

This is very bad news for airline customers and it will get worse for them in the future. Airlines are increasingly offering their customers the opportunity to check in before they get to the airport, through online and other communications technology. Customers appreciate the ease of pre-airport check in and, consequently, airlines are working to minimize airport-based transactions. This is 21st century customer service—more precisely, customer-demanded service. DHS, in contrast, envisions a system of continued airline physical interaction with every customer at the airport. This is not where the airline industry is headed, and the gulf between the capabilities of emerging technology and the retarding effect of DHS policy will only widen over time. The industry should not be forced to abandon its broadening efforts to harness technology that promises to ease the air traveler's experience.

In January 2004, I testified before the then-Subcommittee on Infrastructure and Border Security just as US-VISIT/Exit was beginning to be tested at 12 airports-of-entry around the United States. I said at that time, and reiterate today, that the Air Transport Association (ATA) members support the Department of Homeland Security in its efforts to create and implement US-VISIT.

I also said then, and reiterate today, that airlines should not be involved in the collection of biometric data for the exit element of the program. That position is faithful to a decade-long congressional design that the government be responsible for both exit and entry information collection, and it will assure airlines the freedom to develop even more innovative ways to improve passenger check in.

***Legislative History of the Entry/Exit Information Collection System***

The entry/exit information collection system has always been a federal responsibility, dating back to when Congress first assigned the task to the Attorney General in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law No. 104-208) ("IIRIRA"). Section 110 of IIRIRA directed the Attorney General to develop an automated entry and exit control system to collect the records of ar-

rival and departure from every non-U.S. citizen entering and leaving the United States. This automated system would match the arrival records with the departure records, enabling the Attorney General to identify visa overstays. In addition, the automated system was expected to report on the number of departure records collected by country of nationality, the number of departure records matched to arrival records by country of nationality and classification as an immigrant or non-immigrant, and the number of travelers who arrived as nonimmigrants, or under the Visa Waiver Program, who failed to depart the country at the end of the authorized period of stay.

In June 2000, Congress amended Section 110 of IIRIRA in the Immigration and Naturalization Service Data Management Improvement Act (Public Law No. 106-215) ("DMIA"), which set forth specific dates and other requirements for the Attorney General to follow in introducing an automated entry/exit system. In addition, DMIA mandated the establishment of a task force comprised of both government and private-sector groups to evaluate how the Attorney General could effectively carry out Section 110 of IIRIRA and how the United States could improve the flow of traffic at its ports of entry through enhancing or modifying information technology systems. ATA was appointed to this task force by the Attorney General.

In October 2000, the Visa Waiver Permanent Program Act (Public Law No. 106-396) was enacted. It directed the Attorney General to develop and implement an entry/exit control system for Visa Waiver Program travelers.

Following the events of 9/11, Congress enacted the USA PATRIOT Act (Public Law No. 107-56) in October 2001. Sections 414 and 415 of the Act specifically addressed visa integrity and security, and the participation by the Office of Homeland Security in the entry/exit development and implementation process. In addition, the PATRIOT Act added two considerations: the "utilization of biometric technology" and "the development of tamper-resistant documents readable at ports of entry" to the entry/exit process.

Finally, in 2002, Congress enacted the Enhanced Border Security and Visa Reform Act (Public Law No. 107-173), which reiterated the requirements of the PATRIOT Act for an entry/exit process and directed the Attorney General to fund the development and implementation of the program.

Each of these acts unmistakably contemplated that the executive branch would be responsible for exit duties. None specified that the airline industry was to be brought into that process. Given the urgency with which Congress has approached the issue of entry and exit information collection, most recently expressed in section 7208 of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law No. 108-458), that is a very telling omission. DHS—quite simply—does not have a congressional mandate to force airlines to assume a function that Congress for over a decade has intended federal border control authorities to perform.

#### **US-VISIT**

Following the creation of the Department of Homeland Security, the responsibilities of the Attorney General to develop and implement an entry/exit program transferred to DHS and the Undersecretary for the Office of Border and Transportation Security, Asa Hutchinson. Under his leadership, the US-VISIT Program Office began development and deployment of Entry.

*US-VISIT Entry:* In my January 2004 testimony, I complimented DHS, the US-VISIT Program Office and the Bureau of Customs and Border Protection (CBP) for working together and cooperatively with the airline industry to implement Entry. Their attention to careful planning, in full consultation with all interested parties was first rate.

My January 2004 testimony also emphasized the need for DHS to adhere to the planned schedule for deploying US-VISIT at the northern and southern land borders. Though DHS has implemented Entry for those border crossers who are sent to secondary, deploying an Exit strategy has been postponed for the foreseeable future. While we are pleased to work with DHS and our national security leaders to participate in these programs, until US-VISIT—both Entry and Exit—is deployed nationwide at all border crossings, the system will not be optimally effective in enhancing our national security.

The inability of DHS to fully deploy US-VISIT at our land borders raises an important overall question. Why insist on the collection of biometrics at all, if DHS will never truly be able to cross reference who is entering and leaving the United States through this program? Airlines are already required by law to transmit biographical passport information to DHS for every arriving and departing international passenger. If these records are accurately matched—which I believe DHS is doing today—doesn't this satisfy the need to know who is overstaying their visas?

*US-VISIT Exit:* As with the entry process, we appreciated the open communications we had with DHS in the development and deployment of the Exit Pilot. Unfortunately, the Exit Pilot was never developed with the same rigor as was used to develop and deploy Entry. Rather than rely on a mandatory process analogous to Entry, DHS designed the Exit Pilot as a voluntary program, assuming departing foreign visitors would know that they were expected to either locate on their own randomly placed airport kiosks and “checkout” or have US-VISIT employees collect the biometrics using a handheld device at departure gates as passengers were trying to board a departing flight.

After almost two years of testing at twelve airports, DHS was supposed to share its Exit Pilot Report with the airline industry. We understand that such a report was sent to the Secretary of DHS in December of 2005.

We are still waiting to see that report.

After almost a year of silence, ATA was contacted in December 2006 and told that DHS was ready to begin discussions with the industry to jump-start the US-VISIT/Exit process. In January of this year, ATA was invited to participate in an industry wide meeting hosted by US-VISIT, CBP and the Transportation Security Administration (TSA) to discuss how DHS could work in partnership to develop an Exit solution that would meet the legislative mandates but fit within the industry’s evolving business processes. The assurances of cooperation we received at the January meeting were emphasized several more times in subsequent meetings.

After specifically being told that DHS/US-VISIT would be seeking our input, we learned that DHS had made a unilateral decision to force the airlines to collect a biometric within our check-in process. In addition, DHS advised the industry that it planned to issue a Notice of Proposed Rulemaking (NPRM) to offload its responsibility for this program to the airline industry. In choosing that course, DHS has disregarded the two-year-long Exit Pilot Program by selecting an option that it has never tested.

DHS says that this unilateral decision was made because it best fits into a “business plan.” Who’s business plan? What criteria were used to make this decision? Was Congress consulted prior to the decision being made? Why wasn’t the industry consulted?

Moreover, DHS claims that it has been consulting with the airline industry and that they are working with us to develop an Exit strategy. Regrettably, this is not the case. Perhaps had that occurred, we would not be here today.

#### ***Airline Industry Passenger Service Concerns***

In addition to its unexplained departure from clear, unbroken legislative policy, DHS’ decision will impose new burdens on airlines and their customers at airports, at a time when carriers are working hard to simplify, and thereby ease, passenger check-in processes. The check-in process of today is *not* static; it is evolving and increasingly migrating away from the airport setting.

Today, approximately 30 percent of passengers check in online and that proportion is growing. Because of its popularity and efficiency, airlines are implementing procedures and spending significant revenue to expand their off-airport check-in capabilities to include the use of PDAs and cell phones.

Injecting an at-airport physical process, which the DHS decision will do, into this customer-driven, electronic environment will be a costly step backward for both passengers and airlines. This will create lengthier lines at airline check-in counters and kiosks, which will mean delays for customers, irrespective of their citizenship.

DHS says that collection of the biometrics at check in will only add one or two seconds to the check-in process. This calculation does not track the experience of collecting biometrics during the Entry process, which takes between 10 to 15 seconds when it is being preformed by a trained CBP officer. Outbound air travelers, of course, will not possess that expertise.

Finally, and perhaps more importantly, the U.S. government will be abdicating its role in the immigration/security process and, thereby, jeopardizing the integrity of that process.

#### ***Possible Alternative***

DHS’ decision to forgo employing either of the methods that it tested in the Exit Pilot Program complicates the situation. Nevertheless, a solution is readily available to DHS. Some point in the security screening at the airport of a departing foreign visitor offers the most logical location for collection of biometric information. The Transportation Security Administration has been responsible for screening for over five years; the agency has complete control over it. TSA has presumably examined the most efficient ways to adjust that process. Adding biometric information collection to that process can be accomplished seamlessly. Indeed, TSA’s plan to assume control of identification document and ticket verification at airport security check

points would facilitate the speedy processing of passengers subject to the US-VISIT/Exit Program.

ATA's support for an Exit solution designed in conjunction with TSA security screening dates back to our appointment on the Data Management Improvement Task Force. In the December 2002 DMIA Task Force Annual Report to Congress, the Airport Subcommittee Report specifically states that "the passenger exit process, which will be a new component of U.S. international travel, must be given consideration specific to its operational impact on aviation and existing facilities." That observation is as pertinent today as it was four and a half years ago.

**Conclusion**

ATA and its member airlines support a US-VISIT exit strategy that will enhance the U.S. immigration process, while at the same time not jeopardizing airline business developments intended to improve the travel experience for passengers.

Ms. SANCHEZ. And now Ms. Sotorrio.

**STATEMENT OF ANA SOTORRIO, ASSOCIATE DIRECTOR,  
GOVERNMENT AFFAIRS, MIAMI-DADE AVIATION DEPARTMENT**

Ms. SOTORRIO. Thank you, Chairwoman Sanchez, and Ranking Member Souder, for the opportunity to testify today on this important subject. I am appearing today not only in my capacity as Associate Director of Government Affairs for Miami-Dade Aviation Department, operator of Miami International Airport, but also as Chair of the Airports Council International-North America Facilitation Working Group.

ACI-NA represents the local, regional, and State governing bodies that own and operate commercial service airports. The association's member airports enplane more than 95 percent of the domestic, and virtually all the international airline passenger and cargo traffic in North America.

The ACI-NA Facilitation Working Group addresses issues related to international passenger inspection and facilitation programs and regulations, interfacing with various Homeland Security agencies. ACI-NA recognizes the need for an accurate biometric exit system, and fully supports its implementation at air, sea, and land points of departure.

In order to be effective, the system must be integrated into the traveler's normal departure process and implemented in full consultation with industry stakeholders. The system must also take into account existing infrastructure and passenger flows at each airport. For about 2 years, the US-VISIT conducted a pilot program, which mainly focused on kiosks to collect biometric information of departing international visitors at 12 airports and two seaports, including the port of Miami. In the pilot airports, kiosks were placed in a secure area after the screening checkpoint. The expectation was that the passenger would use the kiosk and then proceed to their departure gate and board their flight. There was good communication between US-VISIT and the industry during the phase of the pilot.

While officials from the US-VISIT program did provide some notice of the termination of the pilots to the airports involved, little information on the program has been shared. US-VISIT has stated that the technology for collecting the biometrics was successful, but that the compliance rates were lower than expected. ACI-NA is disappointed that there was no formal debriefing or sharing of information during the pilot or on the final report prepared by the US-VISIT Office in December 2005 on the effectiveness of the pilot

program. With such limited data, we are unable to fully evaluate the pilot program or make recommendations for improvement.

ACI-NA has heard from numerous airport officials that they were not surprised at the reported low compliance rate, as travelers had to seek out the kiosks because they were not integrated into the existing passenger flow. It is clear that any successful future program must be incorporated at a location through which passengers must proceed.

Again, there has been little collaboration with the airport community on the DHS current plan to place the exit process at airline check-in counters. This proposal is strongly opposed by the airlines. Most importantly, ACI-NA is concerned the inherently governmental function of Immigration and Border Patrol is to be abdicated to private industry.

The collection of entry or exit information from passengers has always been a Federal responsibility, and no compelling reason has been provided for change. US-VISIT must engage in thorough and meaningful consultations with airports and airlines to determine the most efficient method and location for collection of a traveler's biometric as they exit the country. Such a collaborative process is necessary, as the exit program presents potential problems in accommodating both equipment and staff into airports, where unfunded Federal mandates have already claimed premium space.

Unfortunately, unlike airports in most other parts of the world, U.S. airports were not designed or built to accommodate passenger departure controls.

We would also stress that customer service must be considered in designing an effective US-VISIT Exit program. Numerous organizations have recently documented the important economic contribution of international travel for both the aviation industry and the U.S. economy as a whole. International airline passengers, like domestic travelers, are already experiencing record delays and inconveniences, and we should ensure that any new system does not further complicate the travel process.

ACI-NA and our member airports look forward to working with DHS and its agencies, including the US-VISIT program office, as well as industry partners, to ensure that the exit elements of US-VISIT actually enhance both U.S. security and travel.

We appreciate the subcommittee's interests in this important issue, and look forward to working with you to accomplish our mutual goals. Thank you.

Ms. SANCHEZ. Thank you so much for your testimony.

[The statement of Ms. Sotorrio follows:]

#### PREPARED STATEMENT OF ANA SOTORRIO

Chairwoman Sanchez, Ranking Member Souder, thank you for the opportunity to testify today on this important subject. I am appearing today not only in my capacity as Associate Director, Government Affairs for Miami-Dade Aviation Department, operator of Miami International Airport, but also as Chair of the Airports Council International—North America (ACI-NA) Facilitation Working Group. ACI-NA represents the local, regional, and state governing bodies that own and operate commercial service airports. The association's member airports enplane more than 95 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America. Nearly 400 aviation-related businesses are also members of ACI-NA. The ACI-NA Facilitation Working Group addresses issues related to international passenger inspection and facilitation programs and regula-

tions, interfacing with various agencies at the Department of Homeland Security (DHS) including U.S. Customs and Border Protection (CBP), the US-VISIT Program Office and the TSA's Office of Screening Coordination.

ACI-NA recognizes the need for an accurate biometric exit system and fully supports its implementation at air, sea and land points of departure. In order to be effective the system must be integrated into the traveler's normal departure process and implemented in full consultation with industry stakeholders. The system must also take into account existing infrastructure and passenger flows at each airport. Additionally, this is an important governmental function and it should be appropriately funded to ensure its success.

For about two years, US-VISIT conducted a pilot program which mainly focused on kiosks to collect biometric information of departing international visitors at twelve airports and two seaports. Kiosks were placed in the pilot airports in the secure area after the TSA passenger security checkpoint. The expectation was that the passenger would use the kiosk and then proceed to their departure gate and board their flight.

There was good communication between US-VISIT and the industry during the roll-out phase of the pilot. While officials from the US-VISIT Program did provide some notice of the termination of the pilots to the airports involved, little information on the success or failure of the program has been shared with the industry. US-VISIT has stated that the technology for collecting the biometrics was successful, but that the compliance rates were lower than expected. ACI-NA is disappointed that there was no formal debriefing or sharing of information during the pilot or on the final report prepared by the USVISIT office in December 2005 on the effectiveness of the pilot program. With such limited data, the airport community is unable to fully evaluate the pilot program or make recommendations for improvement.

In preparation for this hearing, ACI-NA contacted member airports to obtain information in response to the effectiveness of the pilot program. Numerous airport officials stated they were not surprised at the reported low compliance rate as departing travelers had to seek out the kiosks because they were not integrated into the existing passenger process. It is clear that any successful future program must ensure that the process is incorporated at a location through which passengers must proceed.

ACI-NA has learned that DHS currently plans on implementing the full exit system in 2008 and that the collection of biometric information is to take place at airline check-in counters at airports. Again, there has been little collaboration with the airport community regarding this decision. Further, we understand that such a system is strongly opposed by the airline industry. Most importantly, ACI-NA is concerned the inherently governmental function of immigration and border control is to be abdicated to private industry. There are significant legal and liability issues that would arise if individuals employed by private entities were required to respond if a traveler that submits their biometric information is found to be in violation of their visa or is wanted for other offenses. Private companies have no law enforcement authority and this critical homeland security function should not be imposed on them.

The collection of entry or exit information from passengers has always been a federal responsibility and DHS has not provided any compelling reason or direction from Congress for change. We urge Congress to direct DHS and the US-VISIT office to engage in thorough and meaningful consultations with airports and airlines to ensure that the exit process is not outsourced to private industry, which does not have the resources or the law enforcement powers to effectively implement the program. Further, US-VISIT must work closely with industry partners to determine the most efficient method and location for collection of a traveler's biometrics as they exit the country. Such a collaborative process is necessary as the exit program presents potential problems in accommodating both equipment and staff into airports where previously there may not have been governmental requirements or personnel. Space to accommodate a full exit program is already at a premium at many airports. Additionally, unlike airports in most other parts of the world, U.S. airports were not designed or built to accommodate passenger departure controls.

While our primary concern is for the security of airline passengers and others at the airport, it is important to stress that customer service should also be considered in designing an effective US-Visit Exit program. Numerous organizations have recently documented the important economic contribution of international travel for both the aviation industry and the U.S. economy as a whole. International airline passengers, like domestic travelers, are already experiencing record delays and inconvenience and we should ensure that any new system does not further complicate the travel process.

ACI-NA and our member airports look forward to working with DHS and its agencies, including the US-VISIT Program Office as well as industry partners to ensure that the exit elements of US-VISIT actually enhance both U.S. security and travel. We appreciate the Subcommittee's interest in this important issue and look forward to working with you to accomplish our mutual goals.

Ms. SANCHEZ. And I now recognize myself for some questions.

Can you both describe the difference between what the airlines experienced in terms of partnership and coordination with the Department on the US-VISIT Exit component and what you think should have happened?

Ms. SOTORRIO. Sure, I will take a crack at it. What we would have liked to have seen is a true partnership, where we could have worked collaboratively with not just US-VISIT, but also with the airlines in identifying and developing the optimal solution. There was that type of communication, I think, early on, but somehow that was not followed through after the conclusion of the pilots. And so, you know, therefore at this point we find ourselves with very little data upon which to base any recommendations.

Mr. MAY. Ditto. And beyond that, look, we ran a couple of—DHS ran some pilot projects. As my colleague here has said, they then didn't share with us the results of those pilot projects. They sort of came to the conclusion, because it, quote-unquote, fit their business plan, that they wanted to unilaterally establish that this should be done by carriers at our check-in counters. Well, that, as I have testified, runs very counter to our business plan.

There was never a pilot done to see what the dynamics of that process would be like. And it was almost a unilateral sort of fait accompli that that was going to be the way it worked.

We have worked with DHS and TSA on countless programs. We are working with them on APIS. We are working with them on AQQ and Secure Flight. The reality is, and I think the committee already understands this, if the goal is to collect information on who is in and who is out of the country, a lot of that information is already being collected via the APIS program. The biometric is going to refine that process a little bit.

And the other thing you need to know is this isn't a "go/no-go" program. This is just a collection effort. It doesn't say, and it sort of reflects back on the Congressman's questions on the other side, is how do you know it is the right person? We really don't know the answer to that. We know that we are collecting biometric information. And the comparisons are not being done prior to these individuals departing on whatever flight they are going to depart on. So I think there are lots and lots of issues that need to be discussed, resolved, costs.

But at the end of the day it is a law enforcement function. That is what this Congress has told DHS on six different occasions. The 9/11 Commission agrees.

And, secondly, it can't interfere with the business plans. We have got great plans to facilitate people through the process far more efficiently. This runs directly counter to that. And if somebody had come to us and said, "Gee, what do you think about doing it at the counter?" that is exactly what we would have said at that point as well.

So we think doing it at the checkpoint is the best place to do it. The reason they are changing out those people who are checking

documents has a basis in security concern. And we think that if you have got qualified, trained people there, that is the best place to have the process.

Ms. SANCHEZ. Mr. May, I have a letter. Mr. Thompson, the Chairman, sent a letter asking various questions about, in particular, the exit—

Mr. MAY. I saw his letter.

Ms. SANCHEZ. —piece of US-VISIT, and the Department's answer back to how have you all been talking basically, how did you—actually, how did you inform the stakeholders? Their answer back was that they had been in contact with industry stakeholders regarding the development of a new process for collecting biometric exit data. And in addition to informal conversations, DHS officials formally discussed the vision of a biometric exit system with groups of airline industry representatives at four detailed level meetings this year. Are you aware of those?

Mr. MAY. I am not personally aware of all of them. I wouldn't have personally attended. I am sure my staff have. I can verify for you that we have had, you know, very formal meetings with DHS on this subject, as we have on a lot of other subjects. But the one that counts most is when we had a meeting with them and were informed that they had made a business decision, and this was going to be the plan.

Ms. SANCHEZ. When did they inform you or inform the stakeholders of that?

Mr. MAY. If memory serves, sometime in February or March of this year, where they made a unilateral decision. And we have had such a wonderful cooperating relationship with them over the years, it just sort of was out of character a little bit more than anything else. And I want to maintain that relationship. From a security standpoint, we think US-VISIT Exit is very important. We have got to find a way to help get that done, as we have with all the other programs.

Ms. SANCHEZ. The Department is considering different ways to support air carriers in the implementation of the US-VISIT Exit program. Some of the things they mentioned are financial or technical assistance. What type of support could you use from the Department? What is most needed and useful to airlines?

Mr. MAY. What airlines most need is for the DHS to accept and understand, as Congress has directed, that this is a governmental function, it is a law enforcement function, it is an immigration function, and ought to be conducted by qualified officers of the Department, not by counter personnel or personnel employed by the airlines.

Ms. SANCHEZ. Ms. Sotorrio, would it affect your airport?

Ms. SOTORRIO. What? I am sorry?

Ms. SANCHEZ. Would—how they plan on collecting it, how is it going to affect your functions?

Ms. SOTORRIO. Well, for example, Mr. May suggested that the process should occur at the checkpoints. You know, we are not closed to that idea. I mean we would be open to exploring that idea. But we would certainly have concern, because many airports, including mine, already have very tight footprints for those check-



points. They are very congested places. And quite frankly, I am not sure where you would put that process in a checkpoint.

So you know, perhaps there is a way to make it work. I am not saying it can't work. But there certainly hasn't been enough analysis done to say that that—you know, with any kind of definiteness—that that really can work.

Ms. SANCHEZ. Thank you. Mr. Souder for 5 minutes.

Mr. SOUDER. Thank you. I am wrestling with a couple of questions on this. I fundamentally don't see the bright line distinction on law enforcement and the other. But I think you have also made a compelling case about why there needs to be consultation. Because the question is to me the law enforcement function, is if you have somebody you need to detain or hold, that clearly becomes law enforcement function. But for clearance, I don't see that. It partly becomes an efficiency question in the airport where that is going to occur, because some airports have tremendously jammed Homeland Security areas, others have it at the gate, and some others have it at some of the ticket entry points.

I thought your point, Mr. May, was tremendous about watching how I behaved. I still tend to like more of the hard tickets, versus my son, who I think if he ever uses another hard ticket will feel he has failed technologically. And the kiosks took a little while to check in, but now you do it on your home computer. And this cell phone change is huge. Clearly, I doubt if that really hit anybody.

What I am wondering is how much of this is over cost? Because even if the law enforcement function does go, to the degree it is called a law enforcement function, to the airline desk, either the gate—I thought Mr. Green made a tremendous point whether it is at the gate or whether at the check-in desk—to some of this is just a technological question. Because the little reader that goes through and scans, clearly where we are headed is to have a biometric indicator on that. And so if you have your systems networked like computers should be networked, where it is scanned, or even multiple times, it can happen when you check in, it can happen at the Homeland Security place, and at the gate for that matter, to make sure that you aren't having changes.

I have a heavy manufacturing area that does a lot of defense electronics. And I have looked at the models that are being developed, some under DHS. I happen to have the three largest companies that make driver's licenses, for example. The biggest does 37 States plus Singapore. And Eye Scan International. But a total of 46 or 47 out of the 50 States licenses are done in my home area. And they have all kind of flexibility. It is just a question of what we are willing to pay for and put in them.

There is a company that is working with Homeland Security, but right now with CIA, DIA and certain key installations, where you just take your badge. I mean it is like a movie. You take your badge and you go through and you might have to put your finger on it. But we are not there yet.

Mr. MAY. Right.

Mr. SOUDER. And the question is how do we get there and who is going to pay for it? But I don't necessarily accept the assumption that this can't be done at the check-in or any given place. It really

is a question of how easy the technology is and how fast the technology is. Do you disagree with that, either of you, or in common?

Mr. MAY. Listen, we are always interested in the bottom line, so I could never with a straight face tell you that money doesn't enter into the issue. I would also quickly point out to you, we are investing millions of dollars right now on TSA, DHS-compliant programs that many of which are tied very closely to this.

My driver's license, as I am sure your driver's license does, has a magnetic swipe on the back. That contains biometric information, fingerprint, photo. It is on there. If we are using that same kind of technology that gets scanned at the TSA checkpoint—and, again, for the sake of argument at the gate, as you board the plane, in lieu of that paper or even electronically printed out boarding pass—we have accomplished a lot to get people to do that. I think many of these technologies and tasks are going to be merged in the future.

But it seems to make sense to me—and I understand my colleague from ACI's perspective, because I travel through a lot of those airports—it seems to me that if we have got a reasonably well-trained person who is going to stop you in line, take a look at your identification and your ticket or your boarding pass, compare those, that at the same time, if you are a foreign national and are so required, you put two fingers in a reader, which is right there that is collecting that information, and it is a seamless process. And we know, and I think the GAO witness talked about the fact that what needs to happen is to have it be a collection point, if you will, where you can run those folks through.

Gates have been one alternative. But as you know, you could have literally hundreds of gates in an airport, some of the larger airports. And that would require reading equipment at many, many, many locations beyond that which it can be done at the TSA checkpoint. I would like to have that all be centralized and coordinated.

But, again, I think it points out the importance of working with ACI and ATA and others to establish the real business imperatives from our side as well.

Mr. SOUDER. If I can make this last comment. I mean RFID technology, for example Wal-Mart is now—one of the things working in the narcotics area, they are splitting up—they are able to tell whether, when they have these loads of pseudophedrine or things moving in their trucks, whether it has been broken into and whether certain pills are missing.

Mr. MAY. We are using that same technology to check security for cargo and RFID to track baggage.

Mr. SOUDER. We are near breakthroughs and quantity breakthroughs that will change this whole field. Because we cannot have work permits, we cannot deal with visa overstays. I know a number of States have used—started to use fingerprints, but they don't have any scanners that are affordable. You have to have scanners, like they are starting to do for stolen Visa cards and everything else at different places. We are going to see this technology just mushroom.

I believe we are on the edge of getting a scanner that can do biometric at 7—to \$10. When it is 7—to \$10 it doesn't matter how

many—I mean it matters a little, but it is peanuts when you are talking the gates where you are at. Because you need to have it in the police car when they pick up somebody. You need to have it—one new challenge I had on work permits, and I never thought of, were the direct marketing people are very concerned that in employment, how is this going to affect Mary Kay, how is this going to affect Discovery Toys, Amway? Every time you have a party and there are some people there who want to be a salesperson, you are going to have to scan them to see that they are legal. Well, you are not going to have big machines that cost thousands of dollars. You are going to have to have something at 7-to-10 that can check into a system.

We are getting near that. We don't have it. And then it is going to take us a while to implement and get all the IDs. And the question is how do we get through this interim period without totally disrupting air traffic, and yet keeping America safe?

I believe we have an interim challenge and then we have a longer term; and you certainly should be at the table on this to figure out these variations.

Mr. MAY. We agree. I would simply note for you that having the hardware to accomplish those tasks at a very low price doesn't always cover the fact that the impact on software for our system is critically important. Because these are our systems that you are talking about. And then we have to find ways to connect and transmit that information back to DHS, TSA, whoever the agency may be.

Mr. SOUDER. And that is where we may get into what is law enforcement and what is not law enforcement.

Mr. MAY. Right.

Mr. SOUDER. Thank you.

Ms. SANCHEZ. Were you both in here when we had the three gentlemen beforehand? What is your understanding of what would happen in the proposed system that they were talking about? What is your understanding of what would be the responsibility of an air carrier?

Mr. MAY. If I interpreted correctly of what they intend for their plan, I have no reason at this stage of the game, although I would like to have reason, that it is any different than the announcement they made earlier to us earlier this year that it would be a plan executed at the check-in counters of airlines and run by airline personnel.

I would like to think that that is not a final plan. I have seen some documentation from DHS that leaves open that question. And I think we ought to have, you know, more discussions on that point.

You know, this may be heretic, but I think the Congress ought to ask, given the huge advances in technology that we are on the cusp of, given the fact we are collecting huge amounts of biometric data right now, given the fact you are going to have even more demands from an immigration perspective on land borders, et cetera, you know, it may be that instituting a modest delay on some of these collection efforts for biometric and, instead, relying more heavily on biographic might not be a bad practical solution to some of the issues that have been raised here.

Ms. SANCHEZ. Ms. Sotorrio, do you have any comment on that? And more importantly, if you—just give us an indication of every time we make a change, I am assuming—I mean I go through a lot of airports. I haven't been through yours in a bit. But every time we make a change everything has to be redone at the airport; different lines, different corridors. Who pays for all that?

Ms. SOTORRIO. Well, thank you. Yes. Unfortunately, many of these costs fall on the airport operator. And of course, ultimately our bills are mostly paid by the airlines. And the airlines, I think, are in the business to make a buck. So if you, you know, take that all the way down, it is the ultimate consumer, so the passenger is really paying for these improvements.

We in Miami are in the midst of a 6.2 billion, with a B, capital development program. So there is an awful lot of construction taking place. And we are constantly having to shift airlines, relocate ticket counters, you know, do a whole series of moves in order to accommodate the construction. So that is something also to keep in mind. It is not just when you, you know, start a new process, but also initiating these new processes in the middle of an environment that is very dynamic and constantly in flux as well.

Ms. SANCHEZ. I can certainly appreciate that. In the last 7 years I think they have been constructing Dulles, or reconstructing it, and that is only a \$3 billion capital project, so I can imagine you are going to have twice as many headaches.

Anyway, thank you both for being before us and for your valuable testimony, and also the members for their questions. And the members of the subcommittee may have additional questions, some of them. It has been a very busy week. So I apologize for not having the entire membership here. But we will ask you, if they have questions, to respond in writing. We hope that will be quick so we can continue our oversight.

And, hearing no further business, the subcommittee stands adjourned.

[Whereupon, at 2:52 p.m., the subcommittee was adjourned.]

## APPENDIX: Additional Questions and Responses

QUESTIONS FROM HON. LORETTA SANCHEZ

RESPONSES FROM ROBERT A. MOCNY

**Question 1.: With respect to the newly proposed biometric air exit procedures please describe the Department's consultations with the Air Transport Association both before and after the announcement was made in May 2007 to incorporate US-VISIT exit into the check-in process.**

**Response:** As stated in our written testimony, ATA and its member carriers worked very closely with US-VISIT during the development and deployment of the entry process in 2003 and 2004. In addition, there was excellent communication during the development and implementation of the exit pilot in 2004 and 2005. US-VISIT worked very closely with ATA and its members to determine which airports should participate in the pilot, holding regular conference calls with the industry. All of our major international carriers were interested in having the pilot at one of their hub airports and US-VISIT agreed to this plan. As a result, among the final twelve airports chosen, 7 of those were hub airports for our major carriers: Alaska Airlines/ Seattle-Tacoma International Airport; American Airlines/ Dallas/Fort Worth International Airport; Continental Airlines/ Newark Liberty International Airport; Delta Air Lines/ Hartsfield-Jackson Atlanta International Airport; Northwest Airlines/ Detroit Metropolitan Wayne County Airport; United Airlines/ Chicago O'Hare International Airport and Denver International Airport; and US Airways/ Philadelphia International Airport.

In 2005 we were told by US-VISIT that it would be sharing the results of the exit pilot with us once it had been shared with the Department of Homeland Security. We understand that this report was sent to the Secretary of DHS in December of 2005. We are still waiting to see it.

We did not formally hear from US-VISIT again on exit until December of 2006 when we were told that DHS was ready to enter into discussions with the industry on an exit strategy. In January 2007, ATA was invited to participate in an industry-wide meeting hosted by US-VISIT, Customs and Border Protection (CBP), and the Transportation Security Administration (TSA) to discuss how DHS could work in partnership to develop an exit solution that would meet the legislative mandates but fit within the industry's evolving business processes. The assurance that we "won't do anything without stakeholder input" that ATA received at the January meeting was reiterated in subsequent meetings.

On May 22, 2007, at the request of DHS, ATA hosted a meeting of the ATA carriers. DHS was represented by personnel from the Secretary's office, US-VISIT staff, CBP and TSA. At that meeting, DHS formally announced to us its unilateral decision to force the airlines to collect a biometric during our check-in process. In addition, DHS advised the industry that it planned to issue a Notice of Proposed Rulemaking (NPRM) directing the airlines to collect the biometric. Needless to say, we were dismayed to learn that this decision had been made despite being specifically told that DHS/US-VISIT would be seeking our input.

DHS asserts that it has been consulting with the industry. Unilaterally making a decision to offload its responsibility for this program on the airline industry is not "consultation"—especially after repeated promises and discussions about including the industry in its decision-making process.

Since the May 22nd meeting, ATA has had several meetings with various DHS officials who continue to officially reiterate that the decision has been made and that it is not negotiable.

**Question 2.: Assuming the Department moves forward with its proposed biometric air exit plan, what would be the best way to engage and use the resources of the Air Transport Association in the implementation of the new biometric collection?**

**Response:** ATA and its member airlines are adamantly opposed to collecting a biometric on behalf of the United States Government to satisfy the legislative requirements of the exit program. The entry/exit information collection system has always been, and remains a responsibility of the federal government.

As we committed in our initial meeting on exit in January 2007, ATA would be happy to engage in a discussion of where and how the government could develop and deploy an exit solution. We are willing to work with US-VISIT representatives to ensure better compliance should it choose to mandate an approach using the kiosks that were previously tested. In addition, we would be happy to work with them to develop better and more efficient procedures for collection of the biometric at the TSA checkpoints—as we have recommended previously.

**Question 3.: What type of technical and financial burdens would the collection of biometrics at the check-in counter place on the air carriers?**

**Response:** Since we only just learned of this proposal in May, ATA and our member carriers have not conducted a detailed analysis of the technical and financial burdens resulting from the collection of a biometric during the check-in process. As we indicated during the hearing, carriers are working hard to simplify the passenger check-in process. Today, approximately 30 percent of passengers check in online and that percentage is growing. Airlines are implementing other procedures and spending significant revenue to expand their off-airport check-in capabilities to include the use of PDAs and cell phones. The current DHS proposal to have the air carriers collect a biometric assumes a static check-in process that is not a reality now and will be less and less so in the future. Introducing a manual, airport-centric process into the evolving electronic check-in environment will decrease efficiency and result in a costly step backward for both passengers and air carriers.

In order for us to properly calculate the technical and financial burdens that this proposal would place on air carriers, there are hundreds of variables that must be considered including:

- The number of domestic kiosks that would have to be retrofitted to accommodate fingerprint scanners—one US carrier alone estimates that they have over 1,100 units
- The cost of breakage and repair spares
- The cost of replacement contracts with vendor
- The cost and length of time to retrofit all the kiosks—carriers would have to dedicate programming time and staff to a project this large
- The cost of reprogramming legacy check-in systems to accommodate fingerprint scanning capability
- The cost of data transmission pipelines to the USG.

**Question 4.: What process or combination of processes would you recommend the Department deploy to meet the statutory requirement of collecting biometrics upon a traveler's exit from the United States?**

**Response:** ATA and its members believe that there is a readily available solution that DHS should consider. Since US airports do not have outbound immigration control procedures similar to most foreign countries, we believe that the most realistic solution is for DHS representatives to collect the biometric information of departing foreign visitors at some point during screening at the TSA security checkpoint. The TSA has been responsible for screening airline passengers for over five years. Adding a biometric information collection to that process can be accomplished seamlessly. The TSA security checkpoint is common to all airports in the United States and offers the most logical solution.

**Question 5.: At the hearing, you stated that you have seen some documentation from the Department of Homeland Security indicated that the proposed plan announced in May 2007 is not final. Please describe the documentation you reviewed that would lead you to believe that the proposed air exit process is still open to negotiation.**

**Response:** Despite the declaration by DHS that it has made a unilateral decision to force the airlines to collect the biometric at check-in, ATA continues to be told by various DHS/US-VISIT staff that they want to “work with the airlines” to develop the most viable and sensible exit solution. This has led us to believe that the door is still open—albeit, very slightly, for some negotiation. ATA sincerely hopes this is the case. As stated before, we would be more than willing to work collaboratively with the government to determine where it can deploy an exit solution.

## QUESTIONS FROM HON. BENNIE G. THOMPSON

## RESPONSES FROM ROBERT A. MOCNY

**Question 1.: To what extent were the results from the Department's initial biometric air exit pilot kiosks shared with the air industry, including the Air Transport Association and Airports Council International? If the results were not shared, why not?**

**Response:** The Department did not provide formal documentation of the results of the Exit Evaluation to our airline industry partners because the final evaluation report was being reviewed by the Department in order to best determine next steps for the Exit program. After analysis was completed, the Department announced its plans to move forward with full deployment of biometric exit on March 20, 2007.

**Question 2.: With respect to the newly proposed biometric air exit procedures, please describe the Department's consultations with the air industry both before and after the announcement was made in May 2007 to incorporate US-VISIT exit into the check-in process.**

**What type of recourse or fall-back procedures does the Department intend to provide a traveler that is having difficulty providing his or her biometrics to the air carriers?**

**Response:** US-VISIT and the Department of Homeland Security have been in contact with industry stakeholders on developing a new process for collecting biometrics during exit. Department officials discussed the progress of a biometric exit system with representatives from the airline industry at four separate meetings in 2007.

The first two meetings occurred on January 25 and 29, 2007, at the Transportation Security Administration and included airline and airport representatives. Another meeting occurred on February 21, 2007, followed by a meeting between Deputy Secretary Michael Jackson and airline industry representatives. At each meeting, Department officials discussed the challenges of implementing an effective biometric exit system for air travelers and possible solutions.

Concerning recourse procedures, the determination as to how a traveler having difficulty providing his or her biometric information will be made during the course of further development of the system and in consultation with the carriers. In addition, all of the aspects of the US-VISIT'S biometric exit system will be determined only after consultation with stake holders and the general public through notice and comment making.

**Question: How much and what type of training does the Department plan on providing the air carriers to assist them in their collection of a traveler's biometrics?**

**Response:** The determination as to the type and duration of training to be provided to carriers will be made during the course of further development of the system and in consultation with the carriers through the federal rule-making process. US-VISIT intends to employ an easy-to-use biometric collection system that will require minimal assistance from the carriers' agents.

**Question 3.: The Department's plan for implementing US-VISIT exit for air travel through the check-in process is quite different from the pilot projects that were conducted. Are you planning to conduct pilot projects based on the new model? If not, how can you ensure that the implementation of this new plan at the top ten airports will not create major problems?**

**Response:** We do not intend to conduct additional pilots. However, at this stage all plans for the exit system are tentative. The policies and procedures implementing the system will be determined through notice-and-comment rulemaking, giving the public ample opportunity to comment. Additionally, we intend to conduct operational testing of the collection system with at least one stakeholder partner.

**Question 4.: I am concerned about the security implications of shifting the US-VISIT component to private companies and about the impact of this new responsibility on the welfare of the airlines. How do you justify tasking private companies with a critically important border security function?**

**Response:** Airline companies are our security partners and are already tasked with critically important security functions. Today, airlines are required to submit electronic manifest records to U.S. Customs and Border Protection (CBP), both for arriving and departing international flights. If the biometric exit solution requires direct carrier participation to submit biometric exit data, then carriers could build upon existing sharing arrangements with the Department of Homeland Security.

However, it should be noted the Department of Homeland Security has not determined that any such requirements will be placed on airlines. This determination will only be made with the input of the public, through notice-and-comment rule-making.

**Question 5: What statutory authority authorizes the Department to require the air carriers to collect a foreign national's**

**Response:** Any changes that the Department is going to make to the US-VISIT program will be proposed in a Notice of Proposed Rulemaking (NPRM). In publishing the NPRM DHS will clearly outline all of the authorities authorizing the new policies in the NPRM.

**Question 6: According to your US-VISIT implementation strategy, when do you expect the biometric air exit component to be fully implemented and able to verify the departure of at least 97% of foreign nationals who exit through United States airports? Would additional funding help expedite this timeline?**

**Response:** The Department of Homeland Security has set a goal of using biographic information to achieve an entry-exit match rate of 97 percent within 12 months.

In the meantime, US-VISIT will publish a Notice of Proposed Rulemaking to provide the public with an opportunity to comment on the new exit requirements that the Department is proposing. Biometric exit will further enhance the Department's ability to match alien entry and exit records. The Department expects to complete deployment of biometric exit to air and sea ports by the end of December 2008. At this time, we do not believe that the for deployment could be expedited with additional funding.

**Question 7: During the hearing, you mentioned the existence of a "written plan" that more thoroughly describes the new biometric air exit process. What is contained in this more detailed plan and when will it be available for the Subcommittee to review?**

**Response:** The Department is currently drafting a proposed rule on biometric exit. US-VISIT is willing to provide in-person briefings to Committee members and staff to fully explain our planning phases. US-VISIT is in the process of developing the Biometric Exit project and has created several documents at various stages of the project lifecycle that are often collectively referred to as "the project plan." Many of the project plan documents are updated or modified as the project progresses through its lifecycle. These documents are by their nature, temporary and indicate only anticipated steps in the program development. They should not be interpreted as representing final decisions on implementation. The proposed rule will serve as the formal explanation of the overall exit program, including air exit, and we look forward to discussing it with you once it is published. An updated Exit High Level Schedule will be submitted to the Committee under separate correspondence in response to a letter from Chairwoman Sanchez.

**Question 8: I was concerned when US-VISIT was moved to the National Protection and Programs Directorate. How are you maintaining close collaboration and communication with the operational and technical needs of Customs and Border Protection and Immigration and Customs Enforcement?**

**Response:** Coordination between U.S. Customs and Border Protection (CBP) and US-VISIT has existed since the latter's creation in 2003, and the Department expects the current level of management controls and communication to continue. For example, CBP is a member of the Integrated Project Team, which helps govern US-VISIT.

U.S. Immigration and Enforcement has assigned a special agent from its Office of Investigations to coordinate with US-VISIT on improving interior enforcement.

**Question 9: On June 5, 2007, Congressional Quarterly reported that "DHS says it is authorized to store US VISIT-related fingerprints for 70-75 years after collection." What is the purported legal authority mentioned in the article and what are the justifications for maintaining this type of information for so long?**

**Response:** The System of Records Notice for the Automated Biometric Identification System (IDENT) states:

"Records that are stored in an individual's file will be purged according to the retention and disposition guidelines that relate to the individual's file

"Testing and training data will be purged when the data is no longer required. Electronic records for which the statute of limitations has expired for all criminal



violations or that are older than 75 years will be purged. Fingerprint cards, created for the purpose of entering records in the database, will be destroyed after data entry. Work Measurement Reports and Statistical Reports will be maintained within the guidelines set forth in and NCI-85-78-112 respectively."

IDENT is a Department of Homeland Security (DHS)-wide system for storing and processing biometric and limited biographic information for DHS national security, law enforcement, immigration, intelligence, and other DHS mission-related functions, and for providing associated testing, training, management reporting, planning and analysis, and other administrative uses. IDENT was originally developed in 1994 as a collection and processing system for the Immigration and Naturalization Service (INS). Today, IDENT is the primary DHS-wide system for the biometric identification and verification of individuals encountered in DHS mission-related processes. The retention period for IDENT is consistent with the needs of the immigration and border management enterprise, particularly ICE, and CBP.

Records will be retained until the statute of limitations has expired for all criminal violations or when the records are older than 75 years. The retention period has been approved by the National Archives and Records Administration.

QUESTIONS FROM HON. LORETTA SANCHEZ

RESPONSES SUBMITTED BY ANA SOTORRIO

**Question 1: With respect to the newly proposed biometric exit procedures, please describe the Department's consultations with Airports Council International both before and after the announcement was made in May 2007 to incorporate US-VISIT exit into the check-in process.**

**ACI-NA Response:** There was no consultation with ACI-NA about how the Department of Homeland Security or Program Office should proceed following the implementation of the US-VISIT Exit pilots which were effective May 6, 2007. ACI-NA learned earlier this year in various industry meetings that DHS/US-VISIT had decided to implement the exit process by having airlines capture the biometric data when departing international visitors check-in at the airport. Additionally, there was no consultation with ACI-NA about whether collecting from passengers while they are checking in is the most effective, efficient or appropriate approach.

US-VISIT staff has recently contacted ACI-NA to discuss the future of the passenger check-in process with a view to implementing US-VISIT Exit in the airport check-in area. We expect to hold this meeting in the near future.

**Question 2: Assuming the Department moves forward with its proposed biometric air exit plan, what would be the best way to engage and use the resources of Airports Council International in the implementation of the new biometric collection?**

**ACI-NA Response:** ACI-NA can continue to provide DHS/US-VISIT with background about U.S. airport concerns and views about airport customer service, facility, financial, technical and operational conditions and issues. ACI-NA also can continue to provide its U.S. airport members with information and the proposed schedule from DHS/US-VISIT for implementing US-VISIT Exit. As it has done in the past, ACI-NA can facilitate communication and collaboration between DHS/US-VISIT and U.S. airports in a timely manner. However, it is also necessary for DHS/US-VISIT to consult with individual airports, given their different facilities and passenger characteristics and the proprietary rights of airports to manage their facilities.

**Question 3: What type of technical and financial burdens would the collection of biometrics at the in counter place on the airports?**

Most of the technical and financial burdens of including US-VISIT Exit into the check-in process would fall on U.S. and foreign airlines since they have their own check-in systems at most U.S. airports.

However, U.S. airports which have CUTE (Common Use Terminal Equipment) systems used by all the airlines serving those airports will confront similar issues. Collecting biometrics will require equipment to be added to check-in counters kiosks and to be integrated into the CUTE system and will require modifications to computer programs so that the data can be forwarded to the U.S. Government. Each of these requirements will present technical challenges and financial issues. Capturing biometrics will increase the amount of time it takes for departing international visitors to check in and thus could lead to longer waits for all air passengers. The resulting congestion from the check-in process might result in the need for an expanded check-in area which would require additional financial resources.

**Question 4: What process or combination of processes would you recommend the Department employ to meet the statutory requirement of collecting biometrics upon a traveler's exit from the United States?**

ACI-NA does not have recommendations regarding the specific process or combination of processes for US-VISIT Exit. However, it does urge that US-VISIT Exit be integrated into the passenger's normal departure process, be implemented in full consultation with industry stakeholders including airports and be funded and performed by the US Government. ACI-NA also recommends that DHS and/or GAO conduct a comprehensive study to analyze all the options, costs and benefits available for implementing US-VISIT Exit.

While ACI-NA supports the goals of biometric entry-exit system, we question the value of imposing US-VISIT Exit on departing air passengers, while there is no similar requirement on travelers departing by sea or land. DHS has suggested that implementing US-VISIT at the land borders without serious economic impacts probably will not be feasible for 5—10 years. Therefore, we believe that it is important for the U.S. Government to evaluate whether its security and immigration objectives can be effectively met through the more easily collected biographic information included in the U.S. Customs and Border Protection's Advanced Passenger Information System (APIS).

**Question 5: In your testimony, you indicate that the new US-VISIT air exit process could create liability issues for the private sector employees that are required to collect a traveler's biometrics. Please describe these potential liability issues.**

It is likely that some passengers will challenge in court the authority of airline personnel to capture their biometrics, particularly fingerprints, to deny them access to flights based on that data and to summon law enforcement officials to handle the situation. ACI-NA is also concerned about potential liability issues related to ensuring the accuracy of the biometrics collected, as well as maintaining, transmitting, and protecting the data.

