Questions from Senator Kennedy
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U.S. Senate Committee on the Judiciary
Subcommittee on Terrorism, Technology and Homeland Security

on

"US-VISIT: Challenges and Strategies for Securing the U.S. Border"

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1. During the 109th Congress, some proposals for comprehensive immigration reform included a mandatory departure requirement in order to qualify for earned adjustment. But for such a requirement to be effective there must be a system in place for ensuring that those individuals who leave the country will actually receive credit for doing so.

> Question: *In light of legislative proposals incorporating mandatory departure into comprehensive immigration reform, what steps has U.S. Visit taken to prepare for the possibility of a program involving mandatory departure of possibly millions of individuals? Does the agency have contingency plans for such an event? What steps should it be taking? Given the contours of past proposals, does U.S. Visit have a cost projection for rapid implementation of an exit control plan?*

As your question notes, some immigration legislative proposals include a mandatory departure requirement for those currently in the United States illegally to apply for a new earned adjustment status and/or guest worker program. However, it is my understanding that those proposals are premised on the concept that such individuals would enroll at an overseas location operated by the Department of State or perhaps by a private sector entity and provide documentation of their prior presence in the United States. Thus, I do not believe that these proposals are predicated on the idea that the country would need to build an "exit" system at the U.S. land borders in order to document that such individuals departed the country.

Accordingly, I am not aware of any plans that US-VISIT has made to enroll potentially millions of individuals at land ports of entry who might wish to apply for reentry to the United States. Nor do I believe that the land ports of entry are the correct location for such enrollments, which would be so numerous that they should not occur in crowded traffic-laden areas.

I have previously testified before this Committee in favor of the concept of a legal status for certain undocumented individuals living in the United States and would prefer that such status be applied for in the U.S. at a law enforcement location such as an U.S. Immigration and Customs Enforcement office. However, if legislation were enacted requiring an enrollment outside of the country, it should be structured as an enrollment in the US-VISUT database, but should not occur at the land ports of entry.

It is worth noting that many legislative proposals would create a new temporary status for guest workers for some defined period of months or years to work in the U.S. Such a limitation does imply that there will be a mechanism to "check out" guest workers when their duration of stay expires. Hopefully by the time such a requirement were to be triggered, US-VISIT will have built a solution at the land ports of entry to close the loop on a temporary guestworker program.

Lastly, I do support basing a guest worker program on the US-VISIT information system of systems. Only by utilizing biometrics in travel credentials, port of entry clearance, workplace verification and port of entry exit will the U.S. have a system that is credible.

2. You recommend in your testimony that the Visa Waiver Program should be altered to allow advanced countries to join the Visa Waiver Program, if they meet a series of tough security measures after the air exit portion of U.S. Visit is constructed.

> Question: *Shouldn't all visa waiver program countries comply with tough security measures? Why are you singling out possible new entrants for advanced security measures? Are they a greater security risk?*

The President and DHS have proposed reform of the Visa Waiver Program that would allow additional countries into the program if they meet a series of stringent security criteria and also require existing VWP countries to meet these security enhancements over the next several years. I support bringing all of the VWP countries, new and old, up to the proposed security levels. Among the important changes are new reporting requirements for lost and stolen passports, submission of advance passenger information for pre-flight vetting of air passengers, development of an electronic travel authorization submission to DHS, and cooperation on counter-terrorism programs. Having led the negotiations with the European Union on the PNR treaty in 2003-2004 while at DHS, I recognize the importance of building the most secure envelope of security programs for visa-less travel. For existing VWP countries, compliance with the new security programs should be made part of the next round of country reviews conducted by the interagency teams led by DHS.

I do support conditioning the admission of additional VWP countries on the deployment of an effective air exit program within US-VISIT. These additional countries do pose a slightly higher risk of visa overstayers than the current VWP countries, and the U.S. needs to accurate metrics about the VWP departure compliance rate to know whether newly-admitted countries are contributing to the illegal immigrant population in the U.S. As my testimony outlines, VWP countries should be held to a sterling record of compliance, but such documentation will require a sustained commitment to building an effective air exit system at our international airports.

3. In your testimony, you state that "the post-Ridge leadership at DHS has gone the extra mile to coordinate US-VISIT efforts with other credentialing and screening programs, resulting in unfortunate delays."

> Question: *Please elaborate on this statement. Which credentialing and screening programs has DHS attempted to coordinate with US-VISIT? What challenges have been encountered? What is the main reason for delay?*

The proliferation of credentialing and screening programs after 9/11 has led to an unfortunate duplication of effort and expense as agencies have built systems designed to implement a specific legislative or executive branch priority. The result has been systems that do not "talk" to each other, identification cards that are not acceptable for multiple purposes, and confusion among affected people and constituencies. This problem is fostered by the fact that appropriations are largely granted to operational agencies whose responsibilities may be stovepiped but impact programs being handled by other agencies.

During my tenure at DHS from 2003-2005, we attempted to find synergies across programs and systems. The most notable of these efforts came after President Bush issued Homeland Security Presidential Directive 11, which directed that DHS conduct a comprehensive review of screening programs. The review occurred but did not result in any sweeping changes in policy or procurement.

When Secretary Chertoff and Deputy Secretary Jackson assumed the leadership of DHS in early 2005, they essentially froze new programmatic announcements for six months while conducting a "Second Stage Review" of DHS organization and policies. Just after "2SR" had concluded, Hurricane Katrina hit the United States, understandably occupying the attention of DHS leadership for some time. During this time, programs such as Registered Traveler at TSA, International Registered Traveler at CBP, Secure Flight at TSA, the Western Hemisphere Travel Initiative, the Transportation Worker Identification Card, REAL-ID, and development of the administration's positions related to immigration reform meandered without significant policy decisions or operational deployment. Each program or mandate had significant impacts on other programs and tough decisions on how to implement a specific initiative were delayed while synergies were explored.

In 2006, however, we saw significant progress in moving programs to operational capability. First, the new leadership finally embraced the HSPD-11 creation of an Office of Screening Coordination and brought in a well-respected director, Kathy Kraninger. Second, the policy and procurement environment for WHTI moved forward with an eye towards federally-produced land-border-only passport cards ready for delivery in 2007 or 2008. Third, programs such as REAL-ID and TWIC moved forward through rule-making and/or procurement announcements.

US-VISIT, however, has not received the budgetary commitment from the Congress and Administration to move beyond the areas it had successfully deployed in 2003-2005. The US-VISIT program office, led by former Director Jim Williams and Acting Director Robert Mocny, has moved as aggressively as possible in the international environment to develop information-sharing agreements and to assist other governments build systems similar to US-VISIT. It has met all program deliverables that were reasonably funded by the Congress. Hopefully, the six areas for action outlined in my written testimony will be ripe for action in 2007.

4. You advocate an "air exit" system to be developed and deployed as part of the TSA checkpoint. You note that for the system to work effectively, air carriers will need to code boarding passes to indicate to TSA personnel which travelers require "exit." You also note that air carriers' departure passenger records provided to CBP will need to be matched against biometric exit records to ensure that individuals did indeed depart the country.

> Question: *How expensive will these procedures be to implement? Can DHS fund them from its exciting budget?*

The air exit system presents a series of difficult trade-offs related to the cost, effectiveness, and operational impact of a biometric check-out system. My written testimony describes my view that an exit system at the TSA checkpoint is the most viable solution for an implementable exit system, while recognizing that over the long-term, a system that records an 'exit" at the airline check-in counter which is confirmed at the gate is the most preferred solution.

Should DHS seek to implement an "exit" system at the checkpoint, I recommend that this information be coupled with a match against passenger manifest information collected by airlines and provided to U.S. Customs and Border Protection. Without this check, there is no definitive way to know that any particular individual actually boarded a departing aircraft, as opposed to just leaving the airport after having "exited" the country. I understand the CBP and US-VISIT believe that airline manifest records are not normally of sufficient quality to do a robust one-to-one passenger match, but such inadequacies should be corrected during a Secure Flight passenger name record rule-making or via CBP's own authority.

In terms of budget, the main costs of a biometric exit program as outlined in my testimony will not fall upon US-VISIT but upon TSA, whose screeners would man the exit kiosks and assist travelers with the exit procedures, and upon airlines who would need to improve their manifest systems to confirm an exit with US-VISIT databases. In terms of TSA's budget, it appears likely that an incremental increase in overall screener numbers would be needed to implement an air exit system. US-VISIT would face increased connectivity costs as well, necessitating a small increase above projected budgets, unless such costs were also borne by TSA.

These costs are not insignificant but they are well worth the cost to building a coherent, credible immigration system.