

America's Unfinished Welcome Mat: US-VISIT a Decade Later



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AMERICA'S UNFINISHED WELCOME MAT: US-VISIT A DECADE LATER

Executive Summary

Since 1996, Congress has called on the Federal government to create a tracking system that could record the entry and exit of foreign nationals. With over 327 official land, air, or sea ports of entry and roughly 440 million total border crossings each year, tracking the entry and exit of foreign nationals is no small task. While several initiatives were started, in 2003, the Department of Homeland Security created the United States Visitor and Immigrant Status Indicator Technology or "US-VISIT," system to meet the original statutory mandate,¹ as well as many other laws, including requirements for a biometric system. US-VISIT is an important part of the Department's layered border security approach and fight against terrorist travel. In ten years, our nation's entry-exit system has gone from a mostly paper-based system to an automated program that now uses biometrics and draws on a number of databases. Since January 2004, US-VISIT has processed more than 76 million visitors and intercepted approximately 1,800 immigration violators and people with criminal records.² ICE apprehended 139 aliens based on overstay records identified by US-VISIT in FY 2006 and the numbers are anticipated to rise as biometrics become more prevalent.

US-VISIT uses biometric information – digital fingerprints and photographs – to verify identity and screen persons against watch lists. 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 air, sea, and land port of entries (POE). The US-VISIT Program Office was recently moved to the newly created National Protection and Programs Directorate (NPPD) within the Department. US-VISIT was moved to the NPPD, in part, because the system engages in the identification of threats and is used across multiple components of the Department and other Federal departments.

Congress has appropriated \$1.7 billion for US-VISIT over the last five years. The US-VISIT Program Office has delivered the system incrementally over the last several years. Biometric *entry* procedures are currently in place at 116 airports, 15 seaports and in the secondary inspection areas of 154 land ports of entry. Biometric exit, on the other hand, was only tested through pilot projects at 12 airports and two seaports. The Department has concluded the pilot projects but intends to begin full biometric exit deployment in the air environment in fiscal year 2007. With respect to land exit, the US-VISIT Program Office in February 2007, acknowledged that a biometric exit capability could not be implemented at land POEs without incurring costly impacts, and that a feasible solution compliant with the law may not be available for another 5- to 10-years. The Department also recently declared in May 2007 that it had not yet determined a timeframe or cost estimate for initiation of a land exit program component.

¹ P.L. 104-208, Div. C, Title I, §110.

² *US-VISIT: Challenges and Strategies for Securing the U.S. Border*, Hearing before the Senate Subcommittee on Terrorism, Technology and Homeland Security, of the Committee on the Judiciary, 110th Cong. (Jan. 31, 2007) (Statement of Robert Moczny, US-VISIT, Acting Director).

Instead of providing feasible solutions to complete the exit capabilities of US-VISIT, the Department has changed the course of the system to an “identity services” system with little involvement from Congress or key stakeholders and has placed the vast majority of its resources on entry. Moreover, the placement of US-VISIT within NPPD, instead of an organizational entity that has a true understanding of immigration, the border, or law enforcement, may undermine Congress’ border security vision by shifting fundamental priorities of the system to a Directorate that is not focused on border security and the screening of foreign persons. The Department must take concrete steps towards deploying US-VISIT’s biometric exit capabilities before changing the core functions of the system. The first step the Department must take is to execute and deliver to Congress an exit action plan that identifies implementation benchmarks, anticipated pilot projects, funding, and completion dates.

Each day the Department delays implementation of a biometric entry and exit system, the nation’s vulnerability to terrorist attack grows.

INTRODUCTION

The Department of Homeland Security created the United States Visitor and Immigrant Status Indicator Technology or “US-VISIT,” Program in 2003, but it has a statutory basis that dates back to 1996. US-VISIT is a government wide 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 uses biometric information – digital fingerprints and photographs – to verify identity and screen persons against watch lists. 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 our air, sea, and land port of entries (POE).

Although Congress has called on the Executive branch to complete a system capable of tracking the entry and exit of foreign travelers for over ten years, the Department has failed to complete US-VISIT. The system still does not have in place a biometric exit capability and, at least for land POEs, there does not appear to be a plan in place to fulfill this statutory mandate.³ Instead of providing feasible solutions to complete the exit capabilities of US-VISIT, the Department changed the priority of the system to the integration of “identity services” with little involvement from Congress or key stakeholders and placed the vast majority of its resources on entry.⁴ Each day the

³ Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458, §7208.

⁴ *Hearing on Organizational and Policy Proposals for the FY 2008 Department of Homeland Security Authorization: Positioning US-VISIT for Success and Establishing a Quadrennial Homeland Security Review Process* Before the Committee on Homeland Security, 110th Cong. (Mar. 20, 2007) available at CQ Transcripts: [<http://www.cq.com/display.do?dockkey=/cqonline/prod/data/docs/html/transcripts/congressional/110/congressionaltranscripts110-000002474662.html@committees&metapub=CQ-CONGTRANSCRIPTS&searchIndex=0&seqNum=1>].

Department delays implementation of a biometric entry, and most particularly, exit system, the nation's vulnerability to terrorist attack grows.

With over 327 official land, air, or sea ports of entry and roughly 440 million total border crossings each year, tracking the entry and exit of foreign nationals is no small task. Nonetheless, as the 9/11 Commission stated, "completing a biometrics-based entry-exit system is an essential investment in our national security."⁵ Tracking the entry and exit of foreign travelers is one of the few ways the government can identify visa overstays. Roughly 30% to 50% of the estimated 12 million unauthorized aliens currently residing in the country are thought to be visa overstays.⁶ It should be noted that of the 12 terrorists who were illegally in the United States when they committed crimes between 1993 and 2001, seven were visa overstays, including four of the 9/11 terrorists.⁷ Given the homeland security dangers that overstays have posed in the past, it is imperative that the Department move forward, as expeditiously as possible, with a feasible exit solution for all ports of entry.

Prior to US-VISIT, aliens admitted temporarily who overstayed their authorized period of admission were generally identified only as a result of some other encounter with law enforcement. Now, with the use of biometric and biographic data, immigration and law enforcement personnel are able to authenticate travel documents, verify identity, and identify criminals, immigration violators, and others who may threaten our national security.⁸ Biometrics can identify a traveler and make it virtually impossible to cross borders using fraudulent documents or to assume another's identity.⁹ Indeed, the Department has stated that "US-VISIT owes a great deal of its success to the power of biometrics". Yet despite lauding the success of biometrics in the entry component of US-VISIT, the Department continues to delay implementation of the biometric exit component of US-VISIT.

THE BUILDING OF A BORDER MANAGEMENT TOOL

Legislative History

Congress first mandated the implementation of an automated entry and exit data system that would track the arrival and departure of every alien in §110 of the Illegal

⁵ The 9/11 Commission Report (Washington: GPO, 2004), p. 389.

⁶ CRS Report, RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*, by Ruth Wasem.

⁷ *Visa Overstays: Can We Bar the Terrorist Door?* Hearing Before the Subcommittee on Oversight and Investigations of the Committee on International Relations, House of Representatives, 109th Cong. (May 11, 2006) (Statement of Mark Krikorian, Executive Dir., Center for Immigration Studies) (naming Mohammed Salameh and Eyad Ismoil, conspirators in the first World Trade Center attack; Lafi Khalil, New York subway bomb plot; and Zacarias Moussaoui, Satam al Suqami, Nawaf al Hamzi, and Hani Hanjour, 9/11).

⁸ Department of Homeland Security, US-VISIT, Fiscal Year 2007 Expenditure Plan, (March 2007) at C-5 [hereinafter FY 2007 Expenditure Plan].

⁹ Department of Homeland Security, Fact Sheet, *Combating Fraudulent Documents*, available at: [http://www.dhs.gov/xnews/releases/pr_1158347347660.shtm].

Immigration Reform and Immigrant Responsibility Act of 1996.¹⁰ The provision was passed in response to the first World Trade Center bombing and the realization that visa overstays represented a large portion of the illegal alien population and a significant threat. After several delays in implementation, Congress passed the Immigration and Naturalization Service Data Management Improvement Act (DMIA) of 2000,¹¹ which replaced the 1996 statute in its entirety. The DMIA required the development of an entry-exit system at all air and seaports by the end of 2003, at the fifty most highly trafficked land POEs by the end of 2004, and at all POEs by the end of 2005. It also required an electronic system that would integrate existing alien arrival and departure data.

In response to the attacks of September 11, 2001 and the exploitation of the entry-exit system's weaknesses by the terrorists, provisions were passed in the USA PATRIOT Act of 2001¹² and the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act)¹³ that required increased enhancements in the development of the entry-exit system and immediate implementation of an enhanced system. The USA PATRIOT Act, mandated that the entry-exit system should utilize biometric technology and tamper-resistant, machine readable documents, and that the system should be able to interface with other law enforcement databases. The Border Security Act strengthened the biometrics provisions of the USA PATRIOT Act, requiring the establishment of standards for biometrics for visas and other travel documents, the installation of equipment at all points of entry to enable collection, comparison, and authentication of biometric data, and the development of a database for arrival and departure data from machine-readable travel documents.

In 2004, the 9/11 Commission reviewed the entry-exit program and concluded in its report that the program should improve its biometric capabilities, serve as the foundation under which all border screening programs should be consolidated, and be quickly completed. To implement the 9/11 Commission's recommendations, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act).¹⁴ This law called for an acceleration in the full implementation of the biometric entry-exit system; the collection of biometric exit data from all those required to provide biometrics upon entry; and the integration of all databases that contain information of aliens and interoperability with the entry-exit data. The Department was required to submit a comprehensive plan on the accelerated implementation of the biometric entry-exit system by June 2005.

Administration

¹⁰ P.L. 104-208, Div. C, Title I.

¹¹ P.L. 106-215, codified as amended at 8 U.S.C. §1365a. The Visa Waiver Permanent Program Act of 2000 also required a system that contained a record of the arrival and departure of every alien admitted under the Visa Waiver Program who arrives by air or sea. P.L. 106-396, codified as amended at 8 U.S.C. §1187(h).

¹² P.L. 107-56.

¹³ P.L. 107-173.

¹⁴ P.L. 108-458.

In 2003, the Department of Homeland Security revamped the entry-exit system and renamed it US-VISIT. The US-VISIT Program Office has responsibility for managing the acquisition, deployment, operation, and maintenance of US-VISIT. Initially, the US-VISIT Program Office was housed within the Border and Transportation Security (BTS) Directorate and the Director of US-VISIT reported to its Undersecretary. When the BTS Directorate was dismantled pursuant to Secretary Chertoff's reorganization of the Department called "Second Stage Review," the Program Office was left as an independent entity and the Director reported directly to the Deputy Secretary for Homeland Security.

Even as a direct report to the Deputy Secretary, US-VISIT apparently did not receive an appropriate level of interaction with the Department's leadership.¹⁵ Nonetheless, US-VISIT continued to pursue its biometric capabilities and started providing identity services to the entire Department. Because of its cross-cutting features and need for more interaction, the Department moved, pursuant to another reorganization, the US-VISIT Program Office to the newly established National Protection and Programs Directorate (NPPD) on March 31, 2007.¹⁶ The Director of US-VISIT now reports to the Under Secretary of NPPD. According to the Department, the main responsibility of the NPPD is to advance the Department's risk-reduction mission through the identification of threats and vulnerabilities to infrastructure and people.

Implementation

The US-VISIT Program Office has delivered the system incrementally over the last several years. Biometric *entry* procedures are currently in place at 116 airports, 15 seaports and in the secondary inspection areas of 154 land ports of entry. When the alien arrives at a designated port of entry, inspectors will scan two fingerprints of the foreign national with an inkless device and will take a digital photograph of the person. The Department is currently moving from a 2-fingerprint to a 10-fingerprint collection at entry in an effort to integrate US-VISIT with the Department of Justice's 10-fingerprint Integrated Automated Fingerprint Identification System (IAFIS). In fiscal year (FY) 2006, 30.7 million travelers went through the US-VISIT biometric entry process.¹⁷

US-VISIT *exit* procedures were initially tested at 12 airports and two seaports. Under the exit pilots, departing foreign travelers at designated air and sea ports would go to a work station or kiosk to scan travel documents, have a photograph compared, and provide fingerprints. The Department terminated the exit pilots on May 6, 2007. In FY

¹⁵ *Hearing on Organizational and Policy Proposals for the FY 2008 Department of Homeland Security Authorization: Positioning US-VISIT for Success and Establishing a Quadrennial Homeland Security Review Process* (statements of Mr. Zitz, Deputy Under Secretary for Preparedness).

¹⁶ The Secretary administratively moved the US-VISIT Program Office to NPPD pursuant to his broad §872 reorganization powers. See P.L. 107-296, §872; codified at 6 U.S.C. §452.

¹⁷ FY 2006 Annual Report on the Integrated Entry and Exit Data System as required by the Data Management Improvement Act of 2000 and the Visa Waiver Permanent Program Act (May 2007) at 8 [hereinafter FY 2006 Annual Report].

2006, US-VISIT collected the biometrics of 2.8 million travelers and matched roughly 94% of the records to data contained in the biometric repository.¹⁸

According to the Department, new biometric exit procedures in the air environment are slated to begin in FY 2007 with exit at seaports to follow. Yet with less than 4 months remaining in FY 2007, the Department has yet to publish comprehensive plans delineating these new exit procedures. The Department has only stated that the new air exit procedures “should be incorporated into the airline check-in process.”¹⁹

With respect to land exit, the Department tested passive, automated, radio frequency identification (RFID) as an alternative means of recording a visitor’s exit from land POEs. Although the tests provided valuable information, the RFID pilots did not meet the legislative requirement for a biometric exit capability and performed below target read rates.²⁰ In February 2007, the US-VISIT Program Office acknowledged that a biometric exit capability could not be implemented at land POEs without incurring significant costs and economic impacts, and that a feasible solution compliant with the law may not be available for another 5- to 10-years.²¹

Budget

Despite the myriad changes in direction and coverage, Congress has continued to fund US-VISIT at relatively stable levels every year since the program’s inception. As the chart below indicates, Congress has appropriated US-VISIT approximately \$1.7 billion dollars since 2003.²² For FY 2008, the President has requested \$462 million for carrying out US-VISIT, an increase of roughly \$100 million over FY 2007.

**US-VISIT Appropriations Enacted
Fiscal Years 2003-2007**

Fiscal Year	2003	2004	2005	2006	2007	Total
Funds Appropriated	\$362 million	\$328 million	\$340 million	\$337 million	\$362 million	\$1.7 billion

Source: GAO-07-248.

CLOSING GAPS IN OUR SECURITY

¹⁸ FY 2006 Annual Report, at 9.

¹⁹ The Department of Homeland Security, US-VISIT, IRTPA Section 7208(c) Report and US-VISIT Status Plan (May 2007), at 17 [hereinafter Strategic Plan].

²⁰ GAO Report GAO-07-499T, *Homeland Security: US-VISIT Has Not Fully Met Expectations and Longstanding Program Management Challenges Need to be Addressed* (Feb. 16, 2007), at 15.

²¹ GAO-07-248, *Border Security: US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry* (Dec. 2006).

²² Starting in FY 2004, funding for US-VISIT has been appropriated on a “no-year” basis, meaning that there is no time limit on the spending of appropriated funds; funds that remain unexpended at the end of a fiscal year are carried in to the next fiscal year.

US-VISIT is an important part of the Department's layered border security approach and fight against terrorist travel. In ten years, our nation's entry-exit system has gone from a mostly paper-based system to an automated program that now uses biometrics and draws on a number of databases. US-VISIT has developed into an essential part of border inspections and is used extensively every day at POEs.

Although US-VISIT has become more robust, certain essential and congressionally mandated components, specifically, the component of the program intended to track persons exiting the country, continue to languish. The system, moreover, seems to have undergone several transitions without proper forward-looking planning and with little regard for maintaining its core functions. For instance, in May 2007, two years after the 2005 deadline imposed under the Intelligence Reform and Terrorism Prevention Act of 2004, the Committee received US-VISIT's strategic plan. The strategic plan outlined, among other things, US-VISIT's vision, mission, and strategic goals; the system's immigration and border management capabilities; and a brief biometric exit plan. Overall, the plan was broadly written and did not provide the level of detail necessary for the Committee to fully evaluate proposed initiatives for US-VISIT, especially air exit. By the time the strategic plan, intended to delineate the purpose, goals and benchmarks for US VISIT had been delivered to Congress, the Department had already spent more than \$650 million on the system.

Without a commitment to its core congressional mandates, US-VISIT runs the risk of falling short of its one time description as "the greatest advance in border technology in three decades."²³

Changing Courses without Direction

In 1996, Congress called for the creation of an entry-exit system that would in part, help immigration officials, make admissibility decisions and determine visa overstays. Recent congressional mandates have called for an integrated entry-exit system that uses biometrics to verify the identity of travelers attempting to enter and exit the United States. The Department created US-VISIT to meet these mandates and it has served as a key component in the implementation of an overall border security strategy. In a March 2004 hearing, for example, the Deputy Director of US-VISIT, testified that the "vision of US-VISIT is to deploy an end-to-end border management program."²⁴ Indeed, much of the early emphasis on the system focused specifically on the entry and exit processes at the ports of entry, which led program officials to call it a "port centric" solution.²⁵ A later initiative of US-VISIT Program Office was to adjust this focus to a "virtual border"

²³*Integrity and Security at the Border: The US-VISIT Program*, Hearing before the House Subcommittee on Infrastructure and Border Security, of the Select Committee on Homeland Security, 108th Cong. (Jan. 28, 2004) (statement of the Hon. Asa Hutchinson, Undersecretary, Border and Transportation Security Directorate).

²⁴ *US-VISIT--A Down Payment on Homeland Security*, Hearing before the House Subcommittee on Immigration, Border Security, and Claims, of the Committee on the Judiciary, 108th Cong. (Mar. 18, 2004).

²⁵ *Id.*

solution, placing equal emphasis on the pre-entry, entry, status management, exit, and analysis processes associated with the program.²⁶

Despite a lengthy congressional record of mandating an entry-exit system and an early strategy to place “equal” emphasis on the system’s capabilities, the Department has made significant efforts to redefine US-VISIT as an “identity management” or “identity services” system. This new vision for US-VISIT – the third in as many years – calls for a clear and consistent picture of individuals or a “person-centric” view that can house all relevant information about an individual in a single data repository.²⁷ According to the Director of system, US-VISIT “has evolved from a program office established to address specific congressional mandates to an organization that provides identity services for the entire department.”²⁸

Yet the characterization of US-VISIT as having evolved beyond congressional mandates is questionable. Typically, when an entity is described as having evolved, it has mastered the rudimentary elements and has become more complex and elegant in its operation or execution. However, because US-VISIT has not met basic congressional mandates, the term “evolved” does not render an accurate description. On the contrary, the current iteration of US-VISIT does not include the fundamental congressional mandate of an operational biometric exit system.

Indeed, it appears that the so-called “evolution” of US-VISIT has come at the expense of the biometric exit component. For instance, it was recently noted by the Government Accountability Office (GAO) in testimony before the Committee on Homeland Security that “although in budget documents there is a pledge of sorts to complete the entry-exit part of it [US-VISIT], it just seems that that has taken a secondary role.”²⁹ A secondary role might even be an overstatement upon examination of the US-VISIT’s budget. Of the \$362 million the Department received in FY2007, the Department intends to spend approximately \$93.9 on the identity services component of US-VISIT, but only \$7.3 million on exit functions.³⁰ Budget documents for 2008, moreover, demonstrate that the Department does not plan on requesting or spending any new monies on the system’s exit capabilities.³¹ Biometric exit at land POEs, moreover, is completely lacking and there seem to be no formal plans to complete the capability any time soon. Therefore, it seems implausible for the Department to argue that US-VISIT

²⁶ *Id.*

²⁷ 2007 Expenditure Plan, at B.5.1.

²⁸ *U.S.-VISIT Border Security Program*, Hearing Before the Committee on House Appropriations, Subcommittee on Homeland Security 110th Cong. (Feb. 16, 2007) (Statement of Mr. Robert Moczynski, Acting Dir. of US-VISIT).

²⁹ *Hearing on Organizational and Policy Proposals for the FY 2008 Department of Homeland Security Authorization: Positioning US-VISIT for Success and Establishing a Quadrennial Homeland Security Review Process* Before the Committee on Homeland Security, (statement of Mr. Richard Stana, GAO, Director for Homeland Security and Justice Issues).

³⁰ The Department intends to carry over \$20 million from 2006 for exit functions in FY 2007. *See* FY 2007 Expenditure Plan, at 2.2.

³¹ Department of Homeland Security, NPPD, US-VISIT, Fiscal Year 2008 Congressional Justifications, at 3 (describing a \$30.9 decrease in funding from prior years “for the implementation and further deployment of the existing exit technology”).

has evolved when the system currently being developed has apparently severely diminished the importance of one of Congress' initial and most important requirements – the biometric exit component.

The shifting of US-VISIT's priorities and move to NPPD also occurred before the Committee received the system's strategic plan. In the business world, when a company intends to launch a new initiative or merge with a new company, it has likely conducted a significant amount of planning and investigating well-before any type of final action. This generally applicable business model, however, was not adopted by the Department. Rather, it initiated US-VISIT's transition months *before* any type of comprehensive, forward-looking plan was delivered to the Committee. An "action before planning" approach not only increases the risk of duplicative efforts, thereby increasing the overall cost of a project, but also places our security in jeopardy. GAO reported that without such an overarching strategic framework, "the Department risks investing in programs and systems that are duplicative, are not interoperable, and do not optimize enterprise-wide mission operations."³² At a cost of roughly \$1.7 billion, US-VISIT needs to be guided by a detailed outline with firm benchmarks.

The program faces many implementation challenges at the POEs, such as converting to a 10-point biometric standard, expanding the biometric exit program, and addressing different logistical concerns.³³ Because of these operational and technical border security issues that US-VISIT must address, its placement outside of an operational component such as CBP raises concerns. Moving US-VISIT's Program Office away from its operational context could widen the gap between management and the officers using the system; thus, further complicating the systems current implementation issues and hampering law enforcement efforts. For example, there seems to be little discussion about how US-VISIT will work in combination with other border security initiatives, such as the Western Hemisphere Travel Initiative and the Secure Border Initiative, to accomplish its mission.

Moreover, the Department's current plan to re-define US-VISIT as an identity services system which can provide information to support other activities within the Department is troubling. In this vision of US-VISIT, the Department seeks to deploy a system that could be connected to another country's border screening systems.³⁴ The expanded customer base for US-VISIT was one of the primary reasons given by the Department for relocating the US-VISIT program office to the NPPD.³⁵ The

³² *Id.*

³³ In a 2006 report, for instance, GAO discussed several instances where US-VISIT computers at POEs malfunctioned and program officials were never made aware of the situation. *See* GAO Report GAO-07-248, at 33. GAO concluded that the Program Office's monitoring and control activities were not sufficient to ensure that US-VISIT performs in accordance with its security mission and objectives.

³⁴ Strategic Plan, at 8.

³⁵ *Reforming FEMA: Are We Making Progress*, Hearing before the Subcommittee on Emergency Communications, Preparedness and Response, joint with the Subcommittee on Management, Investigations, and Oversight, Committee on Homeland Security, 110th Cong. (Feb. 28, 2007) (Response by Mr. Foresman, Under Secretary, Preparedness, Department of Homeland Security) available at CQ Transcripts: [<http://www.cq.com/display.do?dockkey=/cqonline/prod/data/docs/html/transcripts/congressional/110/congressionaltranscripts110-000002460667.html@committees&metapub=CQ->

Department's argument that US-VISIT supports government-wide clients as a rationale for the program's placement within NPPD, however, ignores the fact that other cross-cutting programs within the Department such as Customs and Border Protection's Automated Targeting System and ICE's Law Enforcement Support Center, reside within their primary organizational entities and provide law enforcement support to internal and external stakeholders.

The need for more interaction with the Department's leadership as a rationale for US-VISIT's placement in NPPD also raises a number of questions. As was stated by Mr. Robert Zitz, then Deputy Under Secretary for Preparedness in a hearing before the Committee on Homeland Security, the system needs "an advocate in an undersecretary who has direct access to the Secretary and the Deputy Secretary."³⁶ At NPPD, US-VISIT was supposed to be under the guidance of (then) Under Secretary George Foresman. Mr. Foresman was noted as a tremendous supporter of the program and was going to "make sure it [exit] happens," and make sure "reports are on time."³⁷ Mr. Foresman, however, resigned from the Department before US-VISIT was transferred to NPPD. With such a heavy reliance on one person, it seems reasonable to remain skeptical about the future of US-VISIT in NPPD and level of commitment that was previously anticipated.

Finishing What We Started

There is little doubt that preventing the entry of terrorists into the country should be one of the main priorities of US-VISIT but it should not be the only priority. The Department should also obtain and expend adequate resources to complete the exit portion of US-VISIT as well. Indeed, the Department, by its own admission, declared that "the challenge for national security in an age of terrorism is first to prevent the few people who may pose unacceptable risks from entering or *remaining* in the United States undetected."³⁸ Similarly, the 9/11 Commission stated that the challenge for national security is to determine the risk posed by individuals entering or "remaining" in the United States undetected.³⁹ It is difficult to determine the risks that remain in the country without the completion of one of the most effective tools, a biometric exit process.

While biographic exit has its benefits, it has been recognized as performing below the accuracy provided by a biometric system.⁴⁰ A biometric system, on the other hand, would make it extremely difficult for any person that entered under US-VISIT to exit through the system undetected. According to the Department, the "full deployment of the biometric exit system will enhance the capability of the system to affirmatively match

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³⁶ *Hearing on Organizational and Policy Proposals for the FY 2008 Department of Homeland Security Authorization: Positioning US-VISIT for Success and Establishing a Quadrennial Homeland Security Review Process* Before the Committee on Homeland Security.

³⁷ *U.S.-VISIT Border Security Program*, Hearing Before the Committee on House Appropriations, Subcommittee on Homeland Security 110th Cong. (Feb. 16, 2007) (response of Mr. Robert Mocny, Acting Dir. of US-VISIT).

³⁸ Strategic Plan, at 16 (italics added).

³⁹ The 9/11 Commission Report (Washington: GPO, 2004), p. 383.

⁴⁰ FY 2007 Expenditure Plan, at D-7.

entry and exit records of all visitors.”⁴¹ Exit data can be delivered to ICE for investigative purposes; it can be used to examine a particular applicant to the United States; or, it can be used in comprehensive trend analysis to study and identify weak areas in immigration systems that are susceptible to overstays.⁴²

In spite of the benefits that can be obtained from exit data, the Department has made only limited progress towards completing a biometric entry-exit system. For example, since 2003, the Department has only tested RFID technology at land POEs and has conducted a total of 14 pilots at air and sea POEs. Now, however, the Department is poised to begin a new biometric exit process in the air environment. The Department intends to begin implementation of new exit functionality at airports in FY 2007, using approximately \$20 million in carryover funds from FY 2006 and \$7.3 million from FY 2007. According to the FY 2007 expenditure plan, the Department expects to complete deployment in calendar year 2008, though program officials have stated that completion may occur sometime in 2009.⁴³ The strategic plan states that the Department will publish the applicable regulatory framework for the new exit procedures in FY 2007.⁴⁴ Biometric exit at seaports will occur after the deployment in the air environment.

Unfortunately, other than these general guidelines on the new air exit procedure, details remain very limited. The Department has only made it known that the exit process should be incorporated into the “airline check-in process.” The new exit system will integrate US-VISIT with Customs and Border Protection’s pre-departure Advance Passenger Information System and the Transportation Security Administration’s Secure Flight, which are systems used by the air carriers to share information with the government. The plan also indicates that the Department will engage in a “more detailed conversation with the airline industry” and make a subsequent announcement about its exit strategy. US-VISIT will prioritize the departure airports based on volume and destinations of travelers departing the United States.

The new biometric exit process that is vaguely outlined in planning documents raises a number of issues. Foremost, is the concern that the Department is delegating security screening responsibilities to private air carriers. The entry-exit system and immigration enforcement, in general, have always been Federal responsibilities and our national security should not be freely shifted to the private sector. There is also some indication that the Department is moving forward with its biometric exit system in a vacuum, without adequate consultations with stakeholders, including most notably, the airline industry.⁴⁵ For any biometric exit system to work in the air environment, the air carriers and airports must be involved in the decision-making process. The integration of biometric exit procedures into the existing international visitor departure process may

⁴¹ FY 2007 Expenditure Plan, at D-7.

⁴² Strategic Plan, at 17.

⁴³ Eleanor Stables, Congressional Quarterly, *DHS Entry-Exit Plan Alienates Airlines Over Fingerscans* (May 9, 2007) available at: [<http://public.cq.com/docs/hs/hsnews110-000002508467.html>].

⁴⁴ Strategic Plan, at 18.

⁴⁵ See ATA Issue Brief, *US-VISIT Biometric Exit* (May 2007) available at: [<http://www.airlines.org/government/issuebriefs/US-VISIT+Biometric+Exit.htm>].

also interfere with the constantly evolving check-in process that seems to be occurring further away from the ticket counter.

Notwithstanding the new promise of an air exit process, biometric exit, regrettably, has still received little attention from the Department and the trend seems to be continuing. According to the 2007 Expenditure Plan for US-VISIT, for instance, program activities that will take the bulk of US-VISIT time and resources include: the delivery of 10-print collection at entry, the deployment of e-passport readers, and the interoperability between US-VISIT and IAFIS.⁴⁶ Funding for biometric exit, as previously discussed, also keeps dwindling.

The Department's departure from its statutory mandates becomes even more evident upon an examination of exit at land ports of entry. The strategic plan states that because of the immense scope and complexity of the land border, exit information cannot be based on biometrics in the short term. Accordingly, the Department will continue to match entry and exit records using biographic – name and date of birth – information. Consultations about data collection and information sharing with the Canadian government have also been conducted by the Department. While such efforts are important, the Department should continue its planning efforts and make biometric exit a priority, so that the next Administration may move forward without delay. However, instead of setting forth a course of action, the Department acknowledged in its strategic plan that it has yet to determine a timeframe or cost estimates for the initiation of land exit.⁴⁷

The massive reductions in resources, planning, and funding can hardly be said to constitute a commitment to either the Congressional mandated biometric exit system or to our national security.

FULFILLING THE MISSION *Recommendations*

A Reassessment for the Future

The placement of US-VISIT within NPPD, while likely helpful to its cross-cutting nature, may undermine Congress' border security vision by shifting fundamental priorities of the system to a Directorate that is not focused on border security and the screening of foreign persons. As a recognized border management and immigration enforcement tool, US-VISIT might be better served by being located in one of its organizational components. CBP, for instance, is the operational component at the Department that is closest to screenings conducted at the border, while ICE is the primary agency responsible for addressing visa overstays. Instead of facilitating these relationships by placing US-VISIT within an agency that supports enforcement activities,

⁴⁶ FY 2007 Expenditure Plan (Executive Summary).

⁴⁷ Strategic Plan, at 19.

the Department arbitrarily placed US-VISIT in a directorate that may not fully appreciate border and immigration dynamics.

As the Department considers further reorganizations, it should reassess the placement of US-VISIT within NPPD. In the alternative, Congress could reconvene a Data Management Improvement Act Taskforce of all stakeholders to examine the issue and report to Congress on the best course of action for US-VISIT.⁴⁸ In general, much thought should be given to relocating US-VISIT to an organizational entity that has a true understanding of immigration, the border, or law enforcement, should the move to NPPD lead to a slowdown in effective law enforcement or an overall degradation in border screening. Since January 2004, US-VISIT has processed more than 76 million visitors and intercepted approximately 1,800 immigration violators and people with criminal records.⁴⁹ ICE apprehended 139 aliens based on overstay records identified by US-VISIT in FY 2006 and the numbers are anticipated to rise as biometrics become more prevalent.⁵⁰ If clear channels of communication are not properly maintained, these numbers and security, in general, could be significantly compromised. Prudence dictates that an entity's placement on an organizational chart should reflect its core functions, mission, and plan.⁵¹

A Plan for Exit

While some progress is being made in the air environment, Congress and key stakeholders have been left guessing about the details of the plan. With respect to land exit, the Department's inaction will leave an even bigger gap in our security for subsequent administrations and Congresses. Even though our land ports of entry present significant challenges to biometric exit, completely abandoning Congress' vision for border security leaves the country vulnerable. Terrorist operations are often very sophisticated and we need a 21st century entry-exit system to thwart their efforts. It all starts with a vision, a plan; unfortunately, the current Administration's plan seems to be one of delay and neglect.

The Department must take concrete steps towards deploying US-VISIT's biometric exit capabilities before changing the core functions of the system. The first measure should include an exit action plan that identifies implementation benchmarks, anticipated pilot projects, funding, and completion dates. A well-planned biometric exit system would create reasonable expectations in the capabilities of US-VISIT, allow

⁴⁸ The DMIA Data Management Improvement Task Force was a public/private group created by the provisions of DMIA and chartered by the Attorney General in 2002 to evaluate how the Attorney General could carry out the provisions of DMIA and improve the flow of traffic at airports, seaports, and land border ports of entry. See P.L. 106-215.

⁴⁹ *US-VISIT: Challenges and Strategies for Securing the U.S. Border*, Hearing before the Senate Subcommittee on Terrorism, Technology and Homeland Security, of the Committee on the Judiciary, 110th Cong. (Jan. 31, 2007) (Statement of Robert Mooney, US-VISIT, Acting Director).

⁵⁰ 2006 Annual Report, at iv.

⁵¹ See *Hearing on Organizational and Policy Proposals for the FY 2008 Department of Homeland Security Authorization: Positioning US-VISIT for Success and Establishing a Quadrennial Homeland Security* (statement of Mr. Stana, GAO, Dir. of Homeland Security and Justice Issues) (stating that US-VISIT's "alignment decision should flow from the mission and the plan, not the other way around").

industry stakeholders to contribute and make adjustments, and enhance our national security. Overall, an exit action plan would ensure that the Department does not lose sight of what Congress intended, a biometric entry-exit system that can identify visa overstays. In addition, or in the alternative, Congress should evaluate the benefits of setting forth a statutory deadline for the completion of biometric exit, particularly in the air and sea environment. This would ensure that the Department continues to proceed with tangible actions to complete biometric exit.

