

**STATEMENT FOR THE RECORD OF CLARK KENT ERVIN, FORMER INSPECTOR GENERAL OF THE U.S. DEPARTMENT OF HOMELAND SECURITY BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY ON “STRENGTHENING THE SECURITY OF INTERNATIONAL TRAVEL DOCUMENTS” - MAY 2, 2007**

Thank you very much, Chairman Feinstein, Ranking Member Kyl, and other members, for inviting me today to testify before the subcommittee on the critically important topic of Strengthening the Security of International Travel Documents.” This is **not** an academic issue. For whatever reason, all 19 of the 9/11 hijackers entered the United States through official ports of entry and, in so doing, used travel documents – visa and passports – to do so. Even though it is almost as easy today as it was then to enter our country illegally, without any travel documents at all, it is certainly possible that terrorists in the future will likewise attempt to enter the United States through legal channels, attempting to exploit remaining vulnerabilities in travel documents to do so.

To be sure, and to be fair to the Administration, there certainly have been improvements with regard to travel documents, and related processes, in the last six years. The Departments of State and Homeland Security, in particular, are to be applauded for this. But, since my time is limited, and since I know that State and DHS will, quite understandably, highlight their respective achievements in this regard, I will focus my remarks on where security gaps remain and how, in my judgment, they should be closed.

*The Visa Waiver Program Should be Terminated*

To my mind, the greatest single vulnerability that remains lies in the visa waiver program. Terrorists put a premium on passports from the 27 countries whose citizens do not need visas to visit the United States, provided they intend to do so for a limited time (90 days) and for limited purposes (tourism or business). It is not for nothing that would-be shoe bomber, Richard Reid, was a British citizen, or that the man some think might have been the 20<sup>th</sup> 9/11 hijacker, Zacarias Moussaoui, was a French citizen. As my staff and I put it in a report we issued during my time as DHS Inspector General, “The visa is more than a mere stamp in a passport. It is the end result of a rigorous screening process the bearer must undergo before travel. By the end of the process, U.S. authorities have collected and stored considerable information about the traveler and the traveler’s planned journey. When the visa is waived for broad classes of travelers, those travelers avoid this extensive examination and the United States does not collect comparable information regarding them.”

In the post 9/11 world, most visa applicants (about 90% according to some estimates I have seen) are interviewed by U.S. consular officials at our embassies and consulates abroad. Many, if not most, of the interviewers are conversant in the language of the applicants, familiar with their customs, and trained in fraud detection techniques. Consular officials have the further luxury of spacing the interviews so as to maximize the time that they have to question applicants.

By way of contrast, there's no time for port of entry inspectors to interview visa waiver travelers. Hundreds of passengers disembark at any one time from international flights and inspectors feel pressure to clear them within forty-five minutes. And, even if they did interview passengers, most inspectors speak either only English. The relative few who speak another language speak Spanish, not languages like Arabic, Farsi, or Urdu spoken in "countries of concern."

Far more information is known about those traveling on visas, increasing the likelihood that the traveler is, in fact, who he says he is and that he is not a terrorist or connected to terrorism.

All visa applicants must complete a forty question form. Male applicants between the ages of sixteen and forty-five must complete a supplemental form. Applicants' name, birth date, place of birth, employment history, travel purpose and itinerary, visa history, and the immigration status of close family are obtained. Consular officials take prints of two of the applicants' fingers. This information is then stored in the Consular Consolidated Database, and much of it can be accessed electronically by port of entry inspectors to enable them to verify travelers' identities. The finger scans taken by consular officials abroad can be compared to the finger scans taken at the port of entry through the U.S. VISIT automated entry system to confirm that the person standing before the inspector is the very same person who applied for a visa.

The visa waiver traveler, on the other hand, gives only his name, present citizenship, country of residence, passport number, and address in the United States where he will be staying. While finger scans are taken at the port of entry, there is nothing to compare them to to confirm identity.

I pointed out in my book, *Open Target: Where America is Vulnerable to Attack*, last year that, at least as of then (and I have seen nothing to indicate that circumstances have changed since), it was relatively easy to obtain citizenship in certain visa waiver countries. At least as of then, only three years of residence were required to become citizens of Belgium, Sweden, and Denmark, respectively. Italian or Irish citizenship could be obtained "derivatively" and "virtually," without ever setting foot in those countries, by simply having a parent or grandparent with such citizenship.

But, terrorists needn't be born in a visa waiver country or subsequently acquire citizenship in one to get a passport from a visa waiver country. They can simply steal blank passports from government issuing offices and substitute their own photographs and biographical data for those of the real applicants, or they can steal already issued passports from unsuspecting holders.

During my time as DHS Inspector General, we investigated the problem of lost and stolen passports. Because of the laxity in reporting, we could not definitively determine the scope of the problem. But, we were able to get some sense of its magnitude, noting that 28 foreign governments reported that 56,943 of their passports were stolen between

January 2002 and January 2004. Intrigued by that number, we decided to focus on the nearly 4,000 blank passports stolen from visa waiver countries that were reported to the U.S. government from 1998 to 2003.

We found 176 attempts to use some of those passports to enter the United States. Some attempted entries were made before “lookout” notices were posted in Customs inspectors’ computer systems indicating that the passports in question were stolen, and some were made after the lookout notices were posted. Aliens presenting stolen passports before lookout notices were posted for them were successful in being admitted to the United States 81% of the time. Shockingly, the success rate of aliens presenting stolen passports *after* lookout notices were posted was almost as high – 73%. Of the 57 aliens in the latter category, 33 were admitted into the country *after* 9/11, when, presumably, our border inspectors should have been on high alert. Even more incredibly, some of the aliens used stolen passports to enter the United States *multiple* times after lookout notices were posted. Because the then nascent U.S. VISIT system lacked an exit feature, there was no way to tell for sure whether any of those aliens had left the country. And, in any event, there was no formalized procedure to ensure that any such aliens were brought to the attention of the Department of Homeland Security’s “ICE” (Immigration and Customs Enforcement) investigators so that the aliens could be tracked down and either prosecuted by us or deported to their home countries. At least some of the stolen passports at issue were linked in one way or another to 9/11, and yet ICE had not made a priority of investigating those cases. Finally, another shocking finding was that, in those instances where Customs inspectors rightly refused to admit people presenting passports known to be stolen, inspectors would sometimes allow the alien to return to his country of origin with the stolen passport. Of course, the alien should have been either prosecuted by the U.S. government and/or deported and the passport confiscated to prevent re-use. DHS duly promised to implement the recommendations that we made in our December 2004 report to address the lost and stolen passport problem, and otherwise to tighten the visa waiver program, but my long history with the department inclined me to be skeptical of that claim.

My skepticism proved to be warranted when the Government Accountability Office released its report to this very subcommittee last fall titled, “Border Security – Stronger Actions Needed to Assess and Mitigate the Risks of Visa Waiver Program.” According to GAO, some visa waiver countries sometimes fail to notify our government when their passports are discovered to be lost or stolen. (One country waited *nine* years before advising Washington of the theft of nearly 300 of its blank passports.) Though countries have been required by law to do since 2002, as of last fall, DHS had yet to develop standard operating procedures for them to report passport thefts, including the means of reporting and the U.S. government entity to which such information should be reported. While most visa waiver countries contribute to Interpol’s database, four do not, and even some of those countries that do report lost and stolen passport information to Interpol fail to do so occasionally. Furthermore, the Interpol database is not automatically accessible to U.S. border inspectors at primary inspection. To quote the report, “According to the Secretary General of Interpol, until DHS can automatically query Interpol’s data, the United States will not have an effective screening tool for checking passports. However,

DHS has not yet finalized a plan to obtain systematic access to Interpol's data." The problem continues to be a real one, not merely a theoretical vulnerability. From January to June 2005, DHS confiscated 298 visa waiver country passports that travelers were trying to use to enter the United States. Of course we do not know how many lost or stolen passports, if any, DHS failed to catch, or how many, if any, border inspectors spotted, but nevertheless permitted travelers to use to gain entry.

Another troubling development since our report in 2004 on this subject is DHS' decision a few months ago to give up on its goal of developing an exit feature to U.S VISIT. As a practical matter this means that if the department subsequently discovers that a known or suspected foreign terrorist was somehow admitted to the country at a legal point of entry at some point (on a lost or stolen passport or otherwise), there is no way to know for sure whether, and, if so, when that terrorist left the country.

Though, for the foregoing reasons, the visa waiver program remains a security gap (to say nothing of the laxity in DHS' review of countries' eligibility to continue in the program), the Administration and some in Congress want to expand the program to still more countries. This would be a serious mistake. As we put it in a report issued by the DHS Office of Inspector General in April 2004, "Every time a new country entered the VWP [Visa Waiver Program], its passports became valuable targets for counterfeiters, petty crooks who attempt photo substitutions, and organized criminals who steal blank passports, as well as forgers who use modern technology to create false identities in blank passports and criminal rings who manufacture phony identity documents in order to obtain VWP passports."

Rather than expanding the visa waiver program, we should end it. In the post 9/11 era, participation in the visa waiver program should not be held out as a carrot to entice other countries to support American policies. There are many other carrots at our disposal and many other ways of showing our appreciation that do not endanger our security.

I fully recognize that my position on this matter is controversial. I do not take this position lightly. I fully understand the benefits that it provides to our country. It serves to encourage foreigners to visit the United States, a time when I think it is more critical than ever before in our history that we be, and be seen as, a nation that is eager embrace the world. It enables our citizens to travel to these countries without our obtaining a visa from them. I travel abroad fairly regularly, and mostly to visa waiver countries. So, if enacted, my policy proposal could inconvenience me. But, the inconvenience of paying a fee and waiting some period of time to obtain a visa to visit a foreign country is, it seems to me, a small price to pay to close a gaping hole in our nation's security. And, of course, there need not be much inconvenience. If the State Department's budget were adequately increased, it could hire the requisite number of additional consular officers to ensure no material delay in the issuance of visas to a significantly greater number of applicants. As a committed internationalist, and the former Inspector General of the State Department as well as the Department of Homeland Security, I have long believed that the State Department has been shortchanged, particularly in the consular area.

### *The Visa Security Officer Program Should be Expanded and Strengthened*

Another undertaking that could have the effect of enhancing the security of the visa process is expanding and strengthening the Visa Security Officer (VSO) program. The law creating DHS, the Homeland Security Act of 2002, established the program in Saudi Arabia and contemplated that it would ultimately be in place in virtually every embassy and consulate abroad from which visas to visit the United States are issued. VSOs were to be DHS personnel thoroughly familiar with visas, passports and other travel documents, trained in fraud detection, and cognizant of foreign countries and cultures and U.S. State Department protocol and procedures. They were to work side by side with State consular officers to provide a final check before issuance that visas are not inadvertently issued to terrorists. The rationale was that, as DHS personnel, VSOs would be naturally inclined to make security, rather than diplomacy and “customer service” a priority in the visa issuance process.

When we examined the then nascent program in Saudi Arabia in 2004 during my time as DHS Inspector General, we found that the program was not meeting its potential. At the time, there were no designated VSO slots; the positions were filled by volunteers. And, the volunteers were serving on only a temporary basis, resulting in a rapid turnover of personnel. The temporary volunteers were lacking in the basic skills needed to be effective. For example, one officer had no law enforcement experience. Another had never worked outside the United States, and, as a result, had no idea of how an embassy works. Another had no knowledge of the visa process. Only one of the 10 could speak Arabic. Even though the DHS VSOs and the State Department consular officers were located just a few feet from each other, neither could access the others’ databases, so both were inputting and then sending back to Washington for a background check essentially the same information. As a consequence, precious time was being wasted by the State Department, the Department of Homeland Security, their respective headquarters, and other key members of the U.S. law enforcement and intelligence communities, leaving the VSOs little time to do what they were supposedly uniquely competent to do – reviewing visa applications from a strictly counterterrorism perspective.

The last review of the program that I am aware of is a GAO review about a year and a half ago, in September 2005. As of then, things were improving somewhat in the critically important country of Saudi Arabia. Four permanent employees had been hired, trained, and deployed that summer, and those VSOs were to stay for a one year period. The program was to be expanded to five additional countries; I understand four of them to be Pakistan, Indonesia, the United Arab Emirates, and the Phillipines. Plans were made to expand the program at the rate of five per year. But, as I pointed out in House testimony at the time, “... this is troubling, because at that rate it will take about 40 years for VSOS to be deployed worldwide, giving terrorists plenty of time to apply for a U.S. visa from countries lacking the putative protections of the program.” The delay was attributable to State Department resistance to perceived encroachment on its turf, limited DHS resources, and the general lack of urgency on the part of DHS that, sadly, can be seen time after time on one issue after another.

It is unclear to me whether the program has been expanded since to additional countries. Certainly, it has yet to be expanded to virtually every country from which we issue visas, as the statute contemplated. This step should be taken urgently, provided, of course, the DHS personnel dispatched have the experience, expertise, and resources they need to be effective.

*DHS Should Continue to Insist on Meeting the Western Hemisphere Initiative Deadline*

In the area of passports, I want to commend the State Department for its efforts in this area since 9/11. The requirement that visa waiver travelers with passports issued, renewed, or extended on or after last October have machine readable passports with biometric identifiers included certainly strengthens security. And, the progress toward developing an “e-passport” for us Americans is likewise to be commended.

In terms of concerns in the area of passports, I would simply highlight one issue here. The 2004 law overhauling the nation’s intelligence structure also mandated that travelers, including American citizens, entering or re-entering the United States from Mexico, Canada, the Caribbean, and Central or South America present a passport or a limited number of approved alternatives when they do so, by a date certain. The original deadline for implementation as to air travelers was this past January 1; the deadline for land and sea travelers was to be next January 1. Though Congress has worked to extend that deadline by a year, Secretary Chertoff has insisted on working to meet it. The Secretary is heartily to be applauded for this stance, and I am hopeful that the department will meet this deadline. Any unnecessary delay in doing what we can to further secure travel documents is inexcusable.

Thank you, again, Madam Chairman and members for your invitation to testify today. I look forward to your questions.

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