

**IMPROVING AMERICA'S SECURITY,
STRENGTHENING TRANSATLANTIC RELATIONS:
AN UPDATE ON THE EXPANSION OF THE VISA
WAIVER PROGRAM**

HEARING
BEFORE THE
SUBCOMMITTEE ON EUROPE
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
SECOND SESSION

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**IMPROVING AMERICA'S SECURITY,
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EXPANSION OF THE VISA WAIVER PROGRAM**

WEDNESDAY, MAY 14, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EUROPE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m. in room 2200, Rayburn House Office Building, Hon. Robert Wexler, (chairman of the subcommittee) presiding.

Mr. WEXLER. I apologize for the delay. The Europe Subcommittee will now come to order. And again to both gentlemen, I apologize for the delay, and for all those that were waiting.

I would like to thank Assistant Secretary Richard Barth and Deputy Assistant Secretary Tony Edson for testifying regarding the expansion of the Visa Waiver Program and its impact on Transatlantic relations.

This is the second hearing that this subcommittee has had focusing exclusively on the Visa Waiver Program, and I want to again offer my unequivocal support for continuing and expanding this important program, which has mutually benefitted millions of Americans as well as our allies abroad.

The Visa Waiver Program is a crucially important security, economic, cultural, and diplomatic tool for the United States, and has enabled temporary visa-free travel for Americans and citizens in 27 allied nations for over 22 years.

In 2006, more than 15 million people entered the United States under the program to conduct business, education, travel, and visit with friends and family. This program significantly boosts our nation's economy. The United States Chamber of Commerce estimates that the Visa Waiver Program adds over \$60 billion to the American economy each year.

The Visa Waiver Program is also critical to providing greater security for Americans and our allies in the post-9/11 world. To that end, this hearing is timely, given that it is taking place several months after H.R. 1, the 9/11 Commission Act of 2007, was signed into law.

The 9/11 Act included important changes to the Visa Waiver Program, which enhance American security and simultaneously open the door to additional countries to participate.

Despite the rhetoric of opponents to the Visa Waiver Program, these new provisions greatly improve American security by setting higher standards for travel documents and information sharing, and create incentives for other nations to share critical intelligence with the United States.

There are also new security requirements on the American side that enhance our national security, as well. H.R. 1 created a waiver allowing the administration to admit countries with non-immigrant-refusal rates below 10% to the Visa Waiver Program.

However, this waiver authority is contingent upon certification by the administration to Congress that, one, an air exit system is in place that can verify the departure of not less than 97% of foreign nationals that exit through American airports; and two, the electronic system for travel authorization, known as ESTA, is operational.

Once these security elements are in place, the United States will be able to monitor the entry and exit of travelers and match travelers' information with terrorist watchlists, no-fly lists, and other databases, to better identify potential threats to our nation.

As the process moves forward, I want to express my strong support for the administration's efforts to engage in negotiations with those countries who meet the necessary security criteria to join the Visa Waiver Program. As it stands, eight countries—the Czech Republic, Estonia, Latvia, Hungary, Lithuania, Slovakia, Malta, and the Republic of Korea—have signed Memorandums of Understanding with the administration, signaling America's commitment to expanding the Visa Waiver Program to these nations.

Despite the positive movement forward, I cannot hide my disappointment with respect to the administration's failure to sign a memorandum of understanding with Greece, an important NATO ally that has met all of the program's requirements. It is my understanding that Greece was slated to actually be the first additional country, and now it seems its application to join the program has been pushed back to the end of the line. This delay is unacceptable, and I urge the administration to move quickly to finalize the memorandum of understanding with Athens.

It is essential over the coming months that the administration does everything in its power to move the memorandums of understanding forward, fully implementing mandated changes to the program, as specified, and begin admitting new countries to the program before the end of the year. Expansion of this program will positively impact American security, as well as diplomatic relations with many of our allies who stood shoulder-to-shoulder with us in support of democracy, human rights, and the fight against terrorism.

Again, I look forward to hearing from our two witnesses. Mr. Gallegly is not here yet. I saw Mr. Bilirakis, but I think he came and went.

So with that—he is outside? Okay. Why don't we move, then, to the two witnesses.

Dr. Richard Barth was appointed Assistant Secretary for the Office of Policy Development by Secretary Chertoff on August 28, 2006. He is the principal action officer for coordinating policy

among department entities, State and Federal agencies, and foreign governments.

Prior to assuming his current position, Assistant Secretary Barth was corporate vice president and director of homeland security strategy for Motorola's Government Relations Office in Washington, DC. Assistant Secretary Barth has also served in the National Security Council during George H. W. Bush's administration.

Stephen A. Tony Edson joined the United States Foreign Service in 1981, and is currently serving as Deputy Assistant Secretary of State for Visa Services in the U.S. State Department's Bureau of Consular Affairs.

Prior to that, Mr. Edson served as managing director of visa services and the senior advisor for strategic planning to the Visa Services Directorate from 2001 to 2005. He served as Consul General at the American Embassy in Jakarta, Indonesia, from June 1998 until January 2001. Mr. Edson has also held various overseas diplomatic assignments.

Gentlemen, thank you so much for being here. Thank you for being so patient. We are very anxious to hear your assessment of where we stand. And while by no means is the discussion limited to Greece, we really would like to hear about all of the nations, and what has happened with the memorandums of understanding and the like. But if you at some point could address the situation with Greece, I would be greatly appreciative.

Secretary Barth.

[The prepared statement of Mr. Wexler follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT WEXLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN, SUBCOMMITTEE ON EUROPE

The Europe Subcommittee will come to order. I would like to thank Assistant Secretary Richard Barth and Deputy Assistant Secretary Tony Edson for testifying today regarding the expansion of the visa waiver program and its impact on transatlantic relations.

This is the second hearing in this Subcommittee over the past year focusing exclusively on the visa waiver program, and I want to again offer my unequivocal support for continuing and expanding this important program—which has mutually benefited millions of Americans as well as many of our allies abroad.

The visa waiver program is a crucially important security, economic, cultural and diplomatic tool for the United States, and has enabled temporary visa-free travel for Americans and citizens in 27 allied nations for over 22 years.

In 2006, more than 15 million people entered the United States under the program to conduct business, education, travel, and to visit friends and family. This program significantly impacts our nation's economy. The US Chamber of Commerce estimates the visa waiver program is responsible for over 60 billion dollars annually.

The visa waiver program not only impacts our economy and diplomatic relations but is also critical to providing greater security for Americans and our allies in the post 9/11 world. To that end, this hearing is timely given that it is taking place several months after H.R. 1, the 9/11 Commission Act of 2007, was signed into law.

The 9/11 Act included important changes to the visa waiver program, which enhances American security and simultaneously opens the door for additional countries to join this program. Despite the rhetoric of opponents to the visa waiver program—these new provisions greatly improve US security by setting higher standards for travel documents and information sharing, and creating an incentive for other countries to share critical intelligence with the United States.

There are also new security requirements on the American side that enhance our national security. H.R. 1 created a waiver allowing the Administration to admit countries with refusal rates under 10% to the visa waiver program. However, this waiver authority will only be available on the date on which the Secretary certifies to Congress that (1) an air exit system is in place that can verify the departure of not less than 97% of foreign nationals that exit through U.S. airports; and (2) the electronic system for travel authorization (ESTA) is operational.

Once these security elements are in place, the US will be able to monitor the entry and exit of travelers, and to match travelers' information with terrorist watch lists, no-fly lists and other databases and better identify potential threats to our nation.

As the process moves forward, I want to express my strong support for the Administration's efforts to engage in negotiations with those countries who meet the necessary security criteria to join the visa waiver program. As it stands, 8 countries—the Czech Republic, Estonia, Latvia, Hungary, Lithuania, Slovakia, Malta and the Republic of Korea—have signed memorandums of understanding with the Administration, which is an important step in the process of accession to the visa waiver program.

Despite the positive movement forward—I cannot hide my disappointment with respect to the Administration's failure to sign a Memorandum of Understanding with Greece, an important NATO ally that has met all of the program requirements. It was my understanding last year that Greece was slated to be the first country to join the visa waiver program, and now it seems their application to join the program has been pushed back to the end of the line. This delay is unacceptable, and I urge the Administration to move quickly to finalize a Memorandum of Understanding with Athens.

It is essential over the coming months that the Administration does everything in its power to move the Memorandums of Understanding forward, fully implement mandated changes to the program as specified, and begin admitting new countries to the program before the end of the year. I strongly believe expansion of this program will have a positive impact on US security as well as diplomatic relations with many of our allies who have stood shoulder to shoulder with America in support of democracy, human rights and the fight against terrorism.

Again, I look forward to hearing from our witnesses. I would now like to call on my colleague, Congressman Elton Gallegly, the Ranking Member of the Europe subcommittee, for his opening remarks.

STATEMENT OF THE HONORABLE RICHARD BARTH, ASSISTANT SECRETARY, OFFICE OF POLICY DEVELOPMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BARTH. Thank you, Mr. Chairman.

Chairman Wexler and other distinguished members of the committee, I would like to thank you for your personal support to the Visa Waiver Program, and for the opportunity to appear before you today and have this discussion on what we believe, I think both in Congress and the administration, is a very important foreign policy program for this year.

A modernized VWP that strengthens our country's national security law enforcement and immigration interests is a clear top priority for us, and for most in Congress. Sec. 711 of the 9/11 Act supports this objective by enhancing the VWP's security requirements, while expanding opportunities for new countries to become VWP members.

The twin goals of security and expansion are complementary. Expanding the circle of countries admitted creates tremendous incentives for VWP aspirants to enhance their security standards at home and deepen their cooperation with the United States on security-related issues.

Current VWP members will simultaneously meet the same high security bar, as well, over time. Since summer of 2007, DHS has engaged both current and aspirant VWP countries alike to explain the enhanced security measures mandated by the 9/11 Act. The outreach effort with over 35 countries has involved both senior-level and working-level consultations between the foreign partners in DHS, in collaboration with our colleagues at the Department of

State, Department of Justice, as well as members of the Intelligence community.

More recently the Department has formalized security enhancements in the memorandum of understanding, as you have noted already, sir, and has started to discuss implementing arrangements to detail the terms of the new security measures. DHS is requiring each country to sign an MOU, and to agree to appropriate implementing arrangements, as specified in our new law, unless other arrangements or agreements are already in place that fulfill the new security requirements of the legislation.

Those countries seeking to join the VWP program will have to comply with all the new security measures upon admission. Current participants will have to meet those new requirements by our current plans no later than October 2009. Staggering the times for compliance in this way best enables us to ensure a smooth and efficient path to uniform security standards for all measures.

We believe the arrangements under discussion, which include requirements to provide certain information on air passengers, serious crime, known or suspected terrorists, asylum and migration matters, and timely reporting of lost and stolen passport data, as well as cooperation on airport and aviation security, will provide our front-line staff with new tools to secure our nation.

My written testimony goes into greater detail. I can assure you that the U.S. is already receiving useful data from the aspiring VWP countries that does, indeed, enhance our security.

The security breakthroughs made possible by these bilateral discussions have also created momentum on a parallel path with the EU. Extension of visa-free travel privileges has been, and will remain, a bilateral matter, for legal and very practical purposes. We must measure and evaluate the concrete actions of those countries responsible for implementing security and travel requirements on their citizens.

That said, cooperation with the EU has and will continue to remain vital. The United States and European Union share a common vision of combating terrorism, crime, and other serious issues, other crimes, while facilitating Transatlantic travel for the vast majority of travelers who post no security risks or law enforcement risks.

As you know, initial VWP designation, as well as continuing designation, depends on a determination by DHS, in consultation with the Department of States that such designation would not negatively impact U.S. security, law enforcement, or immigration interests.

To that end, DHS-led interagency teams have or soon will visit each aspiring country to review their counter-terrorism capabilities, their immigration citizenship and naturalization laws and enforcement of those laws, passport production and issuance controls, efforts to combat crime, law enforcement cooperation with the United States, and, very importantly, border control mechanisms.

Again, in my written testimony I have included a status report of the Secretary certifying to Congress that an air exit system is in place that can verify the departure of at least 97% of the foreign nationals who exit through U.S. airports; and second, that the im-

plementation status for an electronic system for travel authorization is moving well along.

DHS is committed to strengthening the VWP in a substantive way in bringing new members into the program this year, if at all possible. Let me assure you that new countries will not be admitted to the program until both they and DHS meet the statutory requirements.

The Department is well on its way to achieving the twin goals of security-enhanced and -expended VWP, as embodied in the 9/11 Act. In fact, we are already reaping the rewards of enhanced security cooperation, even before VWP expansion is a reality.

Mr. Chairman and members of the committee, I want to thank you for the opportunity again. And I would be pleased to respond to any questions, I presume after Tony Edson gives his opening comments, or if you would like to do them separately.

Thank you.

[The prepared statement of Mr. Barth follows:]

PREPARED STATEMENT OF THE HONORABLE RICHARD BARTH, ASSISTANT SECRETARY,
OFFICE OF POLICY DEVELOPMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Chairman Wexler, Mr. Gallegly, and Distinguished Members of the Subcommittee: I would like to thank you for the opportunity to appear before you today to discuss how the Department of Homeland Security (DHS or the Department) is enhancing the security of the Visa Waiver Program (VWP) as it works to expand the program's membership pursuant to the requirements of the "Implementing Recommendations of the 9/11 Commission Act of 2007" (9/11 Act).

A modernized VWP that strengthens our country's national security, law enforcement and immigration interests is a clear top priority for the Administration. Section 711 of the 9/11 Act supports this objective by concurrently enhancing the VWP's security requirements and expanding opportunities for new countries to become VWP members. These twin goals of security and expansion are complementary: expanding the circle of countries admitted to the Program creates tremendous incentives for VWP aspirants to enhance their security standards and deepen their cooperation with the United States on security-related issues. Current VWP members include our closest international partners; DHS will ensure that these countries continue to meet this same high security bar as well.

Let me spend a few moments updating you on the steps the Department has taken to further strengthen the VWP's security features and expand the program's membership.

Since summer 2007, DHS has engaged both current and aspirant VWP countries alike to explain the enhanced security measures mandated by the 9/11 Act. This outreach effort has involved both high-level consultation and working-level technical conversations between foreign partners and DHS personnel, in collaboration with our colleagues in the Departments of State and Justice. More recently, the Department has formalized the security enhancements into memoranda of understanding (MOUs) and has started to discuss implementing arrangements that detail the terms of the new security measures. DHS is requiring each member and aspirant country to sign an MOU and to agree to the appropriate implementing arrangements, unless other arrangements or agreements already in place fulfill the new security requirements of the VWP legislation. Those countries seeking to join the VWP will have to comply with all of the new security measures upon admission; current participants will have to meet those new requirements no later than October 2009. Staggering the times for compliance in this way best enables us to ensure a smooth and efficient path to uniform security standards for all VWP members. As we have stated before, uniform security standards are essential because the terrorist threat is not confined to particular corners of the globe.

To date, eight countries have signed MOUs—the Czech Republic, Estonia, Hungary, the Republic of Korea, Latvia, Lithuania, Malta, and Slovakia. Discussions on the associated implementing arrangements are currently ongoing with these countries as well. The aspirant countries with which we have signed MOUs have strong incentives to commit to implementing the full suite of security standards—not just the four mandatory measures of the 9/11 Act, but the three discretionary measures

as well—and each has indicated its willingness to do so. Talks are also underway with several current VWP members on compliance with the new standards.

We believe that the arrangements under discussion—which include requirements to provide certain information on air passengers, serious crimes, known or suspected terrorists, asylum and migration matters, and timely reporting of lost and stolen passport data, as well as cooperation on airport and aviation security—will provide our operators and analysts with new tools to secure our nation as well as help prevent terrorist and criminal activities in our VWP partner nations. As such, they will in many ways substantially enhance travel security with our Visa Waiver partners.

Indeed, we are already seeing tangible security benefits from these agreements, well in advance of VWP expansion. For example:

- Sharing screening information on known and suspected terrorists will be required for VWP membership. As a direct result of this link to VWP, the majority of aspirant countries have concluded, or are close to concluding, agreements with the United States to share their known or suspected terrorist watch-lists.
- The timely reporting of lost and stolen passports is a VWP entry requirement. As a result of the connection to VWP accession, several VWP aspirant countries have improved their lost and stolen passport reporting to Interpol and are also sharing the information directly with the U.S. government. This improved reporting enables U.S. Customs and Border Protection (CBP) to more effectively screen arriving passengers in order to detect, apprehend, and limit the movement of terrorists, fugitives, and other criminals who use fraudulent travel documents.
- Agreeing to accept U.S. Air Marshals is another consideration for VWP designation. As a result of the connection to the VWP, we have seen a willingness to conclude negotiations with the Transportation Security Administration (TSA) on Air Marshals.

The security breakthroughs made possible by these bilateral discussions have also created momentum on the parallel discussions with the EU. The extension of visa-free travel privileges has been and will remain a bilateral matter for legal and very practical purposes: we must measure and evaluate the concrete actions of those countries responsible for implementing security and travel requirements. That said, cooperation with the EU has been and will remain vital. The United States and European Union share a common vision of combating international crime and terrorism while facilitating transatlantic travel for the vast majority of travelers who pose no security or law enforcement risks.

Secretary Chertoff and his EU counterparts agreed to a “Twin Track” approach to the trans-Atlantic dialogue on VWP at the Justice and Home Affairs Ministerial meeting this past March in Slovenia. Under this approach, we will continue our negotiations with the EU member states on issues that, under EU law, fall within the competence of the member states, while simultaneously discussing with the EU Commission issues under EU community competence. The bilateral track of the Twin Track approach is well underway. In the EU track, we have also begun discussions and anticipate a number of possibilities for deeper reciprocal cooperation to enhance security on both sides of the Atlantic. To cite one example, we are discussing ways to share best practices or to reciprocally share information about dangerous individuals prohibited from entry into the United States or the European Union. Such arrangements will enable more effective border screening systems by making additional data available and providing additional tools to officers responsible for making entry decisions. It is important to stress, however, that the results of the bilateral track will determine whether aspirant countries qualify for the VWP.

In addition to the very real security benefits just described, the VWP produces significant economic benefits for this country. In 2006, for example, VWP travelers accounted for 60 percent of travel-related business transactions. That year, Florida welcomed nearly 2.5 million VWP travelers from overseas. These international visitors to Florida typically stayed an average of 11 days, twice as long as domestic tourists. These economic benefits apply to all 50 states and can be expected to increase as more countries are eligible to use the program.

The VWP also contributes to cross-cultural exchanges with American allies and friends throughout the world. VWP travel provides the opportunity for foreigners to expand their understanding of American culture, history, and values. As visitors explore our national parks, museums, and communities, they will form their own positive opinion of America, beyond the images often portrayed in foreign media. This

“people-to-people” diplomacy strengthens our nation’s image around the world, enhancing our ability to take the lead on challenging global issues.

As you know, initial VWP designation (as well as continuing designation) depends on a determination by DHS, in consultation with the Department of State, that such designation would not negatively impact U.S. security, law enforcement, or immigration interests. To that end, DHS-led interagency teams have traveled to the Czech Republic, Estonia, Greece, Hungary, and Slovakia to comprehensively review their counterterrorism capabilities; immigration, citizenship and naturalization laws; passport production and issuance controls; efforts to combat crime; law enforcement cooperation with the United States; and border control mechanisms. DHS will undertake a similar assessment of Latvia, Lithuania, and South Korea next month.¹ A country cannot be admitted into the Program until it receives a favorable determination from DHS.

As noted earlier in this testimony, the twin goals of security and expansion are mutually reinforcing. The 9/11 Act gives the Secretary greater flexibility with regard to aspirant countries’ nonimmigrant visa refusal rate provided the Department: (1) certifies that an air exit system is in place that can verify the departure of at least 97% of the foreign nationals who exit through U.S. airports and (2) implements an Electronic System for Travel Authorization (ESTA).

As to the first requirement, DHS continues to evaluate and look for ways to ensure accurate and timely receipt of passenger manifest information and to improve the methodology underpinning the air-exit calculations. We expect to make this certification—in a transparent manner—later this year.

The development of the ESTA program is also well underway. ESTA will substantially strengthen the security of the VWP by providing DHS with the capability to conduct enhanced advance vetting of VWP travelers. It is essential to transforming the VWP from a program that evaluates security threats on a country-by-country basis to one that is capable of making traveler-by-traveler judgments. DHS expects that ESTA will be online during summer 2008. In addition to enhancing security, ESTA should provide for greater efficiencies in the screening of international travelers by reducing traveler delays at the ports of entry.

DHS is committed to strengthening the VWP in a substantive way and to bringing new members into the program. Let me assure you that new countries will not be admitted to the program until both they and DHS meet the statutory requirements.

As I have outlined today, the Department is well on its way to achieving the twin goals of a security-enhanced and expanded VWP, as embodied in the 9/11 Act. In fact, we are reaping the rewards of enhanced security cooperation even before VWP expansion is a reality.

Mr. Chairman and Members of the Subcommittee, I want to thank you for the opportunity to present this testimony today. I would be pleased to respond to any questions you might have at this time.

Mr. WEXLER. Thank you very much.
Secretary Edson.

**STATEMENT OF MR. STEPHEN A. EDSON, DEPUTY ASSISTANT
SECRETARY FOR VISA SERVICES, BUREAU OF CONSULAR
AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. EDSON. Thank you, Chairman Wexler and distinguished members of the subcommittee. I am delighted to be here this afternoon, and appreciate this opportunity to discuss the role the Department of State plays in the Visa Waiver Program under the new legislative requirements of Sec. 711 of the 9/11 Act, as well as the implications that potential expansion of the VWP may have for our international relations.

In November 2006, in Tallinn, Estonia, President Bush announced his initiative to revamp and strengthen the VWP. With the passage of the 9/11 Act last summer, we welcomed the Congressional initiative in modernizing the VWP, particularly the addi-

¹Although DHS is actively engaged with each of the Roadmap countries, Greece is the only VWP-candidate country that has been formally nominated for designation by the Department of State

tional security measures. The new law not only strengthens the security framework of the program, but also creates a path for expansion of the program to include some of our closest allies. These enhancements help secure U.S. borders, and will promote safer international travel environment.

Countries hoping to join the program have worked hard to quickly implement these travel security requirements. As I have testified previously before this committee, together with our colleagues at the Department of Homeland Security, we strive constantly both to protect America's borders and to preserve America's welcome to legitimate international visitors.

The 9/11 Act supports these efforts by making clear that the security provisions of the VWP must be enhanced before VWP participation can be extended to any additional countries.

With the advancement of both new security technologies and new security risks, we can and must ensure that for VWP participants and aspirant countries, we are able to assess the risks posed by individuals, not just countries, as threats. The changes in VWP in the 9/11 Act give us the tools to do this.

The 9/11 Act spells out several areas of enhanced security cooperation, to which both participant and aspirant countries must agree, including participating in an electronic system for travel authorization, more thorough and frequent reporting of both blank and issued passports that are lost and stolen, exchanging passenger information, repatriating nationals ordered removed from the United States, increased airport security and travel document standards, and expanding the use of air marshals. The Department of State believes these enhanced security measures promote safer international travel.

By statute, DHS has the lead for the VWP program, and works in close coordination with the Department of State on all aspects of that program. The Department of State has responsibility for formally nominating a country for consideration of VWP membership. We are the primary conduit of guidance in VWP issues to our posts abroad.

State Department officers in those posts in turn are the primary interlocutors with host governments, the travel industry, the media, and the public on issues related to the VWP. We provide input to DHS's evaluations of VWP aspirant countries' law enforcement, immigration, and security cooperation, as well we provide input during DHS's statutorily mandated country reviews for both initial and continuing participation.

We participated in negotiations along, throughout the year with the roadmap countries on the VWP accession process, and have given them guidance on meeting the new statutory requirements. We are also working with our DHS colleagues and our posts abroad on the development and implementation of the ESTA program.

In closing, the Department appreciates Congressional passage of the VWP provisions of the 9/11 Act. We see the new requirements as a positive means to strengthen the security of visa-free travel, permit some of our closest friends and allies to join the program, and thereby enhance our cooperation and ties to those countries over the long run.

The Department looks forward to working with our partner agencies and this committee toward that goal.

And of course, I am happy to answer your questions.

[The prepared statement of Mr. Edson follows:]

PREPARED STATEMENT OF MR. STEPHEN A. EDSON, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Thank you, Chairman Wexler, Ranking Member Gallegly and distinguished Members of the Subcommittee. I am delighted to be here this afternoon and appreciate this opportunity to discuss the role Department of State plays in the Visa Waiver Program (VWP) under the new legislative requirements in Section 711 of "Implementing the 9/11 Commission Recommendations Act of 2007" (the 9/11 Act) as well as the implications that potential expansion of the VWP may have for our international relations.

European and Korean leaders told President Bush repeatedly of the desire of their citizens to travel visa-free to the United States. In November of 2006, in Tallinn, Estonia, President Bush announced his initiative to revamp and strengthen the VWP. With the passage of the 9/11 Act last summer, we welcomed the Congressional initiative in modernizing the VWP, particularly the additional security measures. The new law not only strengthens the security framework of the program but it also creates a path for expansion of the program to include some of our closest allies. These enhancements help secure U.S. borders and will promote a safer international travel environment. Countries hoping to join the program have worked hard to quickly implement these new security requirements.

As I have testified previously before this Committee (please verify that this is in fact true), together with our colleagues at the Department of Homeland Security (DHS), we strive constantly both to protect America's borders and to preserve America's welcome to legitimate international visitors. Section 711 of the 9/11 Act, "Modernization of the Visa Waiver Program," supports these efforts by making clear that the security provisions of the VWP must be enhanced before VWP participation can be extended to any additional countries.

With the advancement of both new security technologies and new security risks, we can and must ensure that for VWP participant and aspirant countries, we are able to assess the risks posed by individuals on a traveler-by-traveler basis, rather than a country-by-country basis alone. The changes to the VWP in the 9/11 act give us the tools to do this.

The 9/11 Act spells out several areas of enhanced security cooperation to which both participant and aspirant countries must agree, including participating in an Electronic System for Travel Authorization (ESTA), more thorough and timely reporting of both blank and issued passports that are lost or stolen, exchanging passenger information, and repatriating nationals ordered removed from the United States. The law also provides, where necessary, for increasing airport security and travel document standards, and expanding the use of air marshals. The Department of State believes these enhanced security measures promote more secure international travel.

By statute, DHS has the lead for the VWP and works in close coordination with the Department of State on all aspects of the program. The Department of State has responsibility for formally nominating a country for consideration for VWP participation. We are the primary conduit for guidance on VWP issues to our posts abroad. State Department officers at these posts, in turn, are the primary interlocutors with host governments, the travel industry, the media, and public on issues related to VWP. We provide input to DHS's evaluations of a VWP aspirant country's law enforcement capabilities and cooperation, immigration requirements, and security standards, as well as during DHS's statutorily mandated country reviews for both initial and continuing participation in the VWP. We are also working closely with our DHS colleagues and our posts abroad on the development and implementation of the ESTA program.

The U.S. has committed to collaboratively work with the new EU states and Korea on measures that further international security and cooperation to fight transnational threats like terrorism, crime, and document fraud. We have called this process the "roadmap" process. The roadmaps themselves are commitments to work together to identify areas where additional actions, cooperation, dialogue and assistance can bring countries closer to meeting VWP legislative criteria. We have participated in the negotiations throughout the year with the "roadmap" countries on the VWP accession process, and have given them guidance on meeting the new statutory requirements.

Provisions requiring a non-immigrant visa refusal rate of less than three percent remain in the law, but the 9/11 Act gives the Secretary of Homeland Security a new waiver authority for countries with a refusal rate greater than three percent but less than ten percent in the previous fiscal year. This waiver authority is conditioned on a number of factors, including DHS implementation of the ESTA and certification that an air exit system is in place that can verify the departure of at least 97 percent of foreign nationals who exit through U.S. airports, and the aspirant country's adoption of the enhanced security measures of the new law. The Department of State monitors and reports on these visa refusal rates annually on our website at www.Travel.State.Gov.

I wanted to briefly clarify what a nonimmigrant refusal rate means in the context of the VWP. For purposes of the VWP, the nonimmigrant visa refusal rate is based only on the number of visitor ("B") visa applications submitted worldwide, by nationals of that country. (B visas are issued for short-term business or pleasure travel to the United States.) The Department adjusts the refusal rate to exclude the number of visa refusal cases that are overcome and subsequently issued. Adjusted visa refusal rates for nationals of current Visa Waiver Program countries reflect only visa applications submitted at U.S. embassies and consulates abroad. They do not take into account persons who, under the Visa Waiver Program, travel to the U.S. without visas. Published refusal rates for VWP countries therefore tend to be higher than they would be if the Visa Waiver Program travelers were included in the calculation, since such travelers would in all likelihood have been issued visas had they applied.

For those aspirant countries whose refusal rate is above the three percent requirement but below ten percent, once DHS is able to exercise its waiver authority, State will formally nominate those countries which meet the criteria for VWP membership. Based on a comprehensive interagency assessment of the effect of a VWP aspirant country's participation on U.S. security, law enforcement, and immigration interests that DHS would coordinate, DHS could then admit the country to the program. The Administration expects to be able to admit new, qualified countries to the Visa Waiver Program by the end of the year.

A number of other countries have refusal rates below ten percent and/or meet other VWP criteria. We know, for instance, that Israel and Taiwan's governments have expressed interest in being considered for VWP membership. In addition, last month the President stated that the Administration should work with Croatia on its future VWP candidacy. We will continue to work with interested countries on implementing security measures and enhancing cooperation to help them move closer to meeting VWP requirements. However, DHS and State's first priority must be to work with nations who have engaged the U.S. Government (USG) for the past several years in discussing these issues.

The revised VWP legislation also gives the Department the means to increase security information sharing with our all of our VWP partners. The USG now has signed memoranda of understanding (MOUs) with eight VWP roadmap countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia, and South Korea). We are negotiating similar arrangements with current VWP countries as well.

We are working closely with DHS on the second part of the MOU process, the bilateral negotiation of specific plans for enhanced information sharing with VWP members and aspirants. Moreover, the European Union Commission received a mandate from the Member States to negotiate with the USG certain travel security and information sharing topics that fall within EU competencies. The USG and representatives of the Commission have held constructive preliminary discussions on these topics. Both sides agree that the outcome of U.S.-EU talks will not affect the aspirant countries' ability to join the VWP.

Sharing information on known and suspected terrorists remains a high priority. As part of State's responsibility for Homeland Security Presidential Directive 6 (HSPD-6) agreements on the integration and use of terrorist screening information, we anticipate signing HSPD-6 terrorist watchlist sharing arrangements with all the VWP roadmap countries by September. The successful conclusion of operational arrangements for an increased level of cooperation in this area has been stimulated by the dialogue on VWP.

The foreign policy, diplomatic, and economic implications are important as well. Here, the benefits of VWP are substantial. The two largest participants in the VWP by traveler volume are the United Kingdom and Japan, two of our closest allies. When looking at the current program as a whole, over 80 percent of the current VWP participants, and nearly all of the aspirant countries, are in Europe, and many have been among our closest partners in counterterrorism cooperation and other national security matters. We have very close foreign policy, commercial and cultural

ties to VWP members, and the VWP provides a foundation on which these ties can flourish. As well, we have a strong overlap of values, interests, and responsibilities with many of the VWP countries.

In commerce, the U.S.-European trade and investment relationship is the largest in the world. Transatlantic trade totals over \$500 billion annually, and the United States and the European Union are the largest investors in each other's markets. Of the \$5 trillion in foreign assets owned by U.S. companies, nearly 60 percent are in Europe. Similarly, nearly three-quarters of all foreign direct investment in the United States comes from EU investors. U.S.-owned affiliates in Europe employ six million workers; over four million Americans work for European companies. Similarly, Japan, a current VWP member, and the Republic of South Korea, which seeks membership in the VWP under the new legislation, are among our largest partners in trade and investment and among our closest strategic partners in Asia.

In closing, the Department firmly supports the provisions in the 9/11 Act. We see the new requirements as a positive means to strengthen the security of visa-free travel, permit some of our close friends and allies to join the Visa Waiver Program, and thereby enhance our cooperation and ties with those countries over the long term. The Department looks forward to working with our partner agencies and with this Committee toward that goal. I would be happy to answer your questions.

Mr. WEXLER. Thank you very much. I want to thank Mr. Bilirakis and Mr. Poe for joining us. I will defer my questions until you gentlemen have an opportunity. So I think Mr. Bilirakis had come first, and then we will go to Mr. Poe.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I would like to submit my statement into the record if that is okay.

Mr. WEXLER. Of course.

[The prepared statement of Mr. Bilirakis follows:]

(As Prepared for Delivery; Submitted for the Record)

**OPENING STATEMENT PREPARED FOR
THE HONORABLE GUS M. BILIRAKIS
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON EUROPE**

**AN UPDATE ON THE EXPANSION
OF THE VISA WAIVER PROGRAM**

May 14, 2008

I would like to thank Chairman Wexler and Ranking Member Gallegly for holding this hearing. To our distinguished witnesses, Assistant Secretary Barth and Deputy Assistant Secretary Edson, thank you for your insightful testimony here today.

The Visa Waiver Program provides the United States with an opportunity to expand and deepen ties with its friends and neighbors. The program promotes and enhances social economic growth in both the United States and participant nations, while demonstrating to America's allies the great deal of trust it has in them.

The 9/11 Commission Recommendations Act made significant improvements to the Visa Waiver Program. A uniform set of security standards created under the 9/11 Act will help the bilateral security environment between existing and future Visa Waiver Program countries and the United States.

When this committee met last year, the message was clear that Greece was well ahead of all other EU applicant nations in the "roadmap process." I remain concerned, however, that Greece's membership aspirations have been held captive by the dragging of negotiations on a Memorandum of Understanding (MOU) with the United States.

While I am fully supportive of the need for a clear bilateral understanding between the United States and both current and future Visa Waiver participant countries on areas of security and safety, I believe that such negotiations with countries already in the program and those countries closest to the end of the "roadmap process" should take priority. In terms of Greece, this does not seem be the case.

I believe that an MOU with Greece should be made a priority of the U.S. government before continuing on with others. We should not delay this process any longer, and if there are fundamental issues that stand in the way, or have arisen in the past few months that make Greece's situation any more complicated than the European nations of Malta, Czech Republic, Lithuania, Latvia, Hungary and Estonia, that is something this Committee should be made aware of.

Greece, which has remained a steadfast ally of the United States, has been up for consideration in the Visa Waiver Program since the late 1990's. In recent years, Greece has proven to be one of the most economically sound members of the European Union. It has the highest economic growth rate of most other European nations and has invested billions of dollars in its neighbors to help bolster their economies which have, in turn, provided greater stability in the Balkans and throughout the southern Mediterranean corridor.

I look forward to having an opportunity to question this distinguished panel as to their thoughts on the Visa Waiver Program.

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Mr. BILIRAKIS. Thank you very much. My first question is, for the panel, Is it important that we provide a better sense to applicant countries where they stand in their bid to qualify for the Visa Waiver Program, since the passage of the implementation of the 9/11 Commission Recommendations Act, the roadmap for Visa Waiver memberships set forth by the United States has shifted? Where does Greece stand in terms of the proscribed roadmap? And how much farther do they need to travel for Greek citizens to be able to enter the United States through the visa-free?

And then my next question is, What are the specific issues causing a continued delay in negotiations between the United States and Greece over finalizing the MOU?

Mr. WEXLER. And if I could just supplement Mr. Bilirakis' question.

Mr. BILIRAKIS. Yes, sir.

Mr. WEXLER. My understanding is that on April 18, the Greek Government sent yet another draft to us with respect to their proposal. About a month has elapsed. Eight MOUs, as we said earlier, have been signed with other candidate countries. Greece was originally viewed to be the number one candidate for this program.

So with that background, could you tell us the answer to Mr. Bilirakis' question?

Mr. BARTH. Yes. That is a very reasonable question, because indeed, Greece was first and at the head of the list to join the Visa Waiver Program as a new member, as the legislation was passed last year. And indeed, our Deputy Secretary of Homeland Security called in the Greek Ambassador to express our desire to move along quickly with that country to move them into the Visa Waiver Program as quick as practicable, while meeting all the security requirements of the law.

To implement that, indeed, my first overseas visit to try to move the Visa Waiver Program along, the MOUs particularly, was back in February of this year. And Athens was my very first stop among the three or four countries we were visiting.

As we arrived in Athens, we sat down for what we expected to be a full-day negotiating session. And at the end of listening to our opening comments of about 1 hour, 1½ hours in length, the Greek Government's senior representatives across the table from me indicated that they had absolutely nothing to discuss with us at that point in time; they were not prepared yet for negotiations because of certain concerns their government had with respect to where the negotiations needed to proceed with Brussels, with the European Commission, as opposed to directly with the Greek Government.

And indeed, as I left Athens later that day, I met with the Deputy Foreign Minister. And when I entered his office, he said I understand Greece is at the front of line. I said, unfortunately, sir, you were, but your government has not been able to conduct negotiations with us at this time; so I am moving on to Prague. And indeed the Czech Republic moved to the front of the line, because they showed a very high willingness to negotiate an MOU, which in very short order was, indeed, signed.

The Greek Government did, then, several months later, come in with a proposal that, for reasons I am sure that are well known to their government, substantially varies from the draft agree-

ments that we signed, that are virtually identical with all the other countries that you have already mentioned, sir. And it has posed us with a substantial set of new negotiating issues that we are in the midst of trying to work out within the United States Government agencies that are involved in the program, before we, hopefully in the near future, go back to the Greek Government with a response to their, I presume you are correct, April 18 proposed draft.

Mr. BILIRAKIS. What are those specific issues? Can you get into that? Causing the delay?

Mr. BARTH. The specific issues, well, I don't actually recall what the points, what the changes were that the Greek Government is proposing to what has amounted to a consistent MOU with eight other nations. I just don't have that in the back of my mind. But we can respond to that—

Mr. BILIRAKIS. Please give me that information, yes. We would appreciate that.

Mr. BARTH [continuing]. And give you the specifics of how they proposed something substantially different from what eight other countries have signed.

Mr. BILIRAKIS. Thank you very much.

Mr. BARTH. Because one of the things, as I addressed in my opening comments, Congressman, is that we are trying very hard to maintain a single-tier Visa Waiver Program with all visa waiver programs. We do not want to have to manage a program that is individually tailored with virtually 35 different governments, and requires 35 different sets of monitoring procedures and reporting processes for lost and stolen passports, et cetera, et cetera.

It increases the burden multiple times over if we have a multiple-tier different varying visa waiver program with each and every country.

And again, I walked into the government offices in Athens in February expecting that they would negotiate that first draft. And they were unable to do so at that time.

Mr. BILIRAKIS. I would like to follow up with you, please, on it. And if you can give me that specific information, I would appreciate it.

Mr. BARTH. Happy to.

Mr. BILIRAKIS. Thank you, thank you.

The next question I have in general, is America less safe today because we have the Visa Waiver Program? And do the benefits outweigh the costs?

Mr. BARTH. From a DHS perspective, I believe that the benefits of the security-enhanced Visa Waiver Program substantially outweigh the costs of the risks that are obviously inherent in having the process. And I would point most specifically at the data-sharing elements that are built into the MOU, and will be built into the implementing arrangements.

And very, very importantly, from a DHS perspective, having advance knowledge of the profile of the passenger who will be coming to the U.S. by plane several days, or several weeks or even months in advance, through the electronic travel authorization program, is a tremendous advantage. Rather than getting that same data basi-

cally when the door closes and the jet is about to take off from the foreign airstrip.

So I think that that enhancement, with our other data systems and ability to analyze and integrate all the data sources that we have, is a tremendous leap forward.

Mr. BILIRAKIS. Well, what steps is the administration taking to work with nations like Romania and Poland to bring down their high refusal rate, within the target of the 10%?

Mr. BARTH. Well, I visited Poland, Romania, and Bulgaria last month to have a discussion with them on those points. And they are all very much enthused about moving along on the Visa Waiver Program, while recognizing that there are very real reasons for the visa rejection rates in their countries.

I would submit that over probably a fairly short time, the next several years, the refusal rates will come down pretty dramatically. Because from first-hand witnessing it, their economies are growing and developing to the point where the typical reason for a refusal, which is a threat of an overstay and working in the U.S. and economic migration, is diminishing fairly substantially. So we are in very active dialogue with those three nations in particular, which are already on our roadmap, such that when we expect to see the visa refusal rates come down, we will be very much ready and able to move forward with them.

Mr. EDSON. Just from the State's perspective, I can reiterate what Richard said. The primary driver for non-American visa refusals is normally economic factors. The law requires that we examine whether an individual might intend to remain in the United States beyond the temporary stay, or work illegally in the United States. And so the availability of other opportunities for them in their home country, or in the region of their home country, now that Europe has open labor markets, that is a significant factor mitigating any draw, any pull to the United States, and tends to lower refusal rates.

As they have gone down in all of these countries, including Romania and Poland, over the past several years, and as the economies improve and opportunities improve, we would expect them to decrease.

We have tried to work with the governments to explain these kinds of factors, explain our law and how it is applied. Some governments have chosen, in addition to launch public outreach campaigns, to try to educate their nationals about sort of the harm that is done to everyone if people try to work illegally in the United States, instead of working legally in Europe, for example.

It is difficult to figure out what the impact of those kinds of programs are on the refusal rate, and to separate out that factor, but that sort of thing has been done.

Mr. BILIRAKIS. Thank you. Thank you, gentlemen. I would like to follow up with both of you on this issue.

Thank you, Mr. Chairman, I appreciate it.

Mr. WEXLER. Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. Thank you both for being here.

Without going into the philosophy of the Visa Waiver Program, it seems to me that more folks would be coming to the United

States. And I am concerned about a very relatively simple, but I think important, issue, of recording folks that come here, recording them when they leave. But the ones that don't leave, which is a lot of folks—I mean, why would anybody want to leave, you know? What new and improved system is designed to find folks that won't go home when they are supposed to?

Mr. BARTH. I believe that it is an open secret, if you will, that the Department has moved less than some in Congress would have liked us to toward a biometric exit program, to have a higher degree of certainty for when people are leaving the country.

There have been other priorities that have taken precedent over that. But the Department has published a proposed rule that would, by June 2009, implement a biometric exit capturing program, so that, with a much higher degree of certainty, we would know who specifically is overstaying a visa waiver authorization for a 90-day stay in the U.S., and then would be able to deploy the resources in our case of the Immigration and Customs Enforcement Organization—

Mr. POE. Excuse me, excuse me. Just because the time is limited. But just to be certain, right now we don't have that system, is that correct?

Mr. BARTH. We do not have that system.

Mr. POE. The person comes over here. They get here the right way, the legal way, and we don't have any capability of knowing how long they are supposed to be here, or have a system to record when they leave, or if they do leave.

Mr. BARTH. We do have a system in place. It has just not got the degree of accuracy that we all want. And we should have that system in place by next summer.

Mr. POE. Wouldn't you think you would have that system in place before you start letting more people come in the United States?

Mr. BARTH. If that were a substantially higher risk in our view, I assure you the Department of Homeland Security would probably—

Mr. POE. What is the estimate of overstays in the United States? People that don't go home.

Mr. BARTH. We have a country-by-country overstay effort to calculate the overstay rate, so that we have a higher handle on that.

Mr. POE. Four percent? Fifty percent? What would you say?

Mr. BARTH. No, it is in the, it is definitely in the single digits. And for most, for the vast majority of countries. And varies widely from country to country.

And in large part we have discovered that the system we have in place now, which is biographic, which depends on airlines to turn in information on people who are leaving, is more often affected by the airlines' meeting or requirements for turning in that data than any other factor.

When we go after a country that appears to have a high overstay rate, it more often than not is the airline servicing that country isn't turning in the data. Once we approach the airline and get that data, we have a pretty highly confident rate of overstay, which is pretty low for the vast majority of countries.

Mr. POE. I would like to see those statistics. Because in all due respect, I disagree with you on other information that I have received about overstays. And the other question, of course, is, So if they are not going home, what is being done to go find somebody and send them home?

Mr. BARTH. ICE has a variety of programs in place to try to track those people, working with the State Department. It even includes in some cases trying to track down those individuals in their country to see if they have returned, we just don't have the documentation of it.

And again, we can follow up with a more detailed itemization of the programs in place that primarily ICE has, Immigrations and Customs Enforcement, to track down those individuals and find them.

Mr. POE. Once again, it would seem to me that we would have a system in place to find overstays and help them go back home, before we started letting more folks come into the country. So that is very disturbing for all of the reasons why people shouldn't stay here longer than their guest permit allows them to.

But I would like to see the statistics regarding the number of overstays.

Thank you, Mr. Chairman.

Mr. WEXLER. Sure. I will go to Mr. Inglis. But to Mr. Poe's question, which is a legitimate question, respectfully, I don't think the answer was maybe entirely full.

Under the current situation, under current law with the current technology, the Department makes a determination if there is an inappropriate level of overstay in the United States. And tell me if I am right or wrong: Argentina and Uruguay have been deposed from the program because we determined that there was too great a stay in terms of overstaying the Visa Waiver Program.

Mr. BARTH. That is right.

Mr. WEXLER. So obviously there is some degree of implementation under the current system even. Is that accurate?

Mr. BARTH. That is absolutely correct. And I would highlight a case several years ago now, but a case where 18 Egyptians came to the United States supposedly to study at a U.S. university. When they didn't show up to study, they basically went into out-of-status situations.

Mr. WEXLER. And Egypt is not on the Visa Waiver Program.

Mr. BARTH. No, no. But ICE tracked down all 18 of those people. ICE can track down people who are illegally here when there is appropriate reason to do so.

Mr. WEXLER. Well, do you know what level Argentina and Uruguay reached where the response was then to remove them from the program?

Mr. BARTH. That was an economic migration challenge at the time. I don't know what the number was, but I will try to research that, and we can get back to you, sir.

Mr. WEXLER. Okay. Mr. Inglis, please.

Mr. INGLIS. When you have a Visa Waiver Program, how do you track who is still here? In other words, what is, how does that process work?

It seems to me that if you had some card you are issued upon entry, and you can see a technology where you might be required to enter that card once a week in a reader somewhere, sort of like we do, you know, Visa knows where I am buying gasoline at all times. And if I try to use it too often, they will actually call and say what is going on with that card. I mean, they are right on top of it.

I guess, so the technology exists. I suppose you could do the same thing with, if we really wanted to police who is here, right?

Mr. BARTH. I believe you could. There is a certain high cost to such a system that the banks are willing to carry because of the potential for fraud and misuse financially, but there is nothing envisioned in law or within the Department of Homeland Security at this time to have that level of management of, I think it is whatever millions of people coming here each year. Since the vast majority of them go home, as we have already discussed, the economic migration reasons for so many staying in the past is evaporating in many countries across the world.

Mr. INGLIS. Right. And that is, you are confident we sufficiently track. I guess I am wondering how it is tracked, when somebody comes and goes.

Mr. BARTH. We believe that the tracking statistics we have indicate that the overstay rate is, as I said, in the single digits, probably below 5%, well below 5%. We just don't have a final analysis done yet of last year's data to be able to have me sit here and say it is 2.7% for the Visa Waiver Program countries, or whatever.

We hope to have additional data available certainly this year. But it is very difficult to capture the data today, relying on the biometric information turned in by airlines. When we have the biometric information in 2009, we will have a very high degree of certainty as to who is coming, who is leaving, and when, and by which airport. And that is when we will know where the risks are, and be able to track those people down with a higher degree of certainty.

I would add that any in Congress who are in favor of that biometric program, we, the Department of Homeland Security, are facing significant resistance from the airline industry with respect to biometric tracking of individuals coming and going. And we would welcome any statements of strong Congressional support to proceed forward with that program. Because in the face of this resistance, it may be difficult to implement the program and the schedule that Congress has demanded.

Mr. INGLIS. What is a typical period that you are allowed to stay? I should know that.

Mr. BARTH. Ninety days is the typical visa waiver stay. And that is for purposes of business or travel, tours and whatever. If you are coming here as a student, even from a Visa Waiver Program, you are supposed to apply for a student visa. So there are reasons to even apply for a visa from Visa Waiver Program countries that are outside the bounds of the normal Visa Waiver Program approval.

Mr. INGLIS. How do we decide what countries to put in the Visa Waiver Program?

Mr. BARTH. That is an interesting question. There was an inter-agency discussion some years ago, I think 2005 if I am correct, for

what countries looked attractive to bring into the program, because the level of tourism warranted it. Their visa overstay problem wasn't too severe. The American community would be able to absorb that population for reasons of historic productivity—Poland, for example, Greece. And a roadmap, a list of roadmap countries was drawn up for likely candidates.

The tipping point, though, has been, for a number of years now, the visa rejection rate in those countries. And currently only very few meet the current legislative standards, until Congress passed the August 9/11 Act that allowed the Secretary of Homeland Security, in conjunction with State, to accept visa refusal rates up to 10%, and still bring countries into the program.

Mr. INGLIS. So Taiwan, for example, has I think a 3% refusal rate. They are within the program, or not?

Mr. EDSON. No. They were, I wasn't having anything to do with this program back in 2005, so I don't know why they were or were not considered to be put in this program any more than any other country that is not in it. Some Latin-American countries currently have very low rejection rates, for example.

We are tending under the new law to deal with the current roadmap countries. This year we hope to get through most of them. We are in very, very preliminary discussions within State and other interagency partners, on developing, if you will, a roadmap, from a list of countries that weren't on the initial roadmap, but that are good candidates to come into the program. I couldn't say today because we don't have any final discussions on this, who would be on that roadmap or not. Taiwan is one country that could be considered, and there are others.

But if I could just add, because that is an important point, there are a number of countries today that have refusal rates below 10%. But we are, on the one hand, engaged pretty intensively in the current effort with the existing roadmap countries; in particular, those new members of the European Union and South Korea.

And working with DHS on establishing those two fundamental exit controls in the ESTA requirements, so that it is possible to move forward with other discussions. At the same time, we are concerned that we establish some sort of transparent fair way of evaluating which countries we should be working with closely.

Of course, countries can qualify without working with us on a roadmap process. There is no magic to it, except that it is a state of heightened coordination between our Government and the foreign government on sharing information and working together on programs to help them meet those VWP requirements.

We are definitely talking about it now, and look forward to a more formal process by the end of the year or early next year, as we work through the rest of these issues that we are dealing with now.

Mr. INGLIS. And I would hope the concern that the mainland may have about that wouldn't impact our decision, inasmuch as it seems to me we have got quite a robust relationship with Taiwan. So for whatever it is worth, I hope that, that external consideration isn't applied here. In other words, it really is on the merits of Taiwan, for example, appealing for entry into that program. It makes sense

to me to consider them separately, and not with the risk of what the mainland may think about that.

Thank you, Mr. Chairman.

Mr. WEXLER. You are very welcome. I support the program very strongly, in part because of the enhanced security aspect of the program, in part because of the diplomatic advantages I think it will inure to our country and to the economic advantages that will result from additional travel and additional business relationships and the like.

But I would like to be specific. Mr. Poe had raised some legitimate questions. If today there is a British citizen or a French citizen that traveled to Pakistan, say, and engaged in behavior that might be suspicious, and then that individual bought an airline ticket to come to New York, what security devices would be available to us to determine in fact whether or not that British citizen or French citizen traveled to Pakistan in a fashion, or engaged in activity that might be suspicious?

Mr. BARTH. There is an extremely high level of information sharing, both classified and unclassified, with a large number of governments around the world to try to track that kind of threat very closely.

And while in some cases you may look at the—some have pointed out that the UK is a far bigger threat than a number of other Eastern European countries. That threat is substantially mitigated by long-term relationships, again in the classified and unclassified sphere, to not allow that problem to grow into a real one.

So I think that, I echo your view quite clearly that the diplomatic benefits of this are substantial, but the risks have to be weighed against that.

Mr. WEXLER. Of course.

Mr. BARTH. And I think that the risks are being mitigated on a day-to-day basis with those countries.

And do the required changes under the visa waiver law and the systems that are being adopted enhance security for us, even in the context of the countries that already participate in the Visa Waiver Program? Absolutely, sir. The eight countries that have already signed the MOUs are already sharing at a much higher level than they had just months ago.

Lost and stolen passport information, for example. Lost and stolen passports that are then converted into a fraudulent passport to be used by a terrorist have been historically an extremely high risk for us. Well in advance of coming into the Visa Waiver Program, all of these countries are sharing that information with us already.

So I don't think this is a simple tradeoff, whereby on day 14 there is a tradeoff of information for VWP. We are already seeing enhanced security for the U.S. as a result of just moving these countries along toward VWP.

And I would just conclude by saying that it truly would be, as one of the ambassadors from one of these countries has indicated to us, a diplomatic catastrophe if we don't go forward with expanding the Visa Waiver Program, given the level of commitment, information-sharing, and fighting the war on terrorism that these countries have exhibited with us already.

Mr. WEXLER. On that score, in terms of that diplomat categorizing ramifications if we were not to go forward as being catastrophic, just being self-centered for a moment, what would be the ramifications to the State Department? To the American budgetary side? If, for instance, we were to curtail the Visa Waiver Program. What would be the ramifications to us?

Mr. EDSON. Complex. We have looked at this a lot. As you know, we would be losing visa fee revenue from these countries. The visa demand in many of these countries is actually quite low. Korea is obviously a different case; a huge volume there for us. But in a lot of the rest of these countries, the demand is relatively low.

We nonetheless lose the revenue on the one hand. On the other hand, we free up the resources for the other countries in other locations to do other work around the world.

One of the reasons I indicated it was complex, however, is the impact of the ESTA. ESTA will mean that a certain percentage—probably a very low percentage, but a certain percentage—of visa waiver travelers from current visa waiver countries will now need to get visas when they don't qualify for an ESTA, only to apply for a visa anyway, whether they qualify or not. So that will be additional workload in some of the traditional 27 countries that are currently in the Visa Waiver Program.

So on balance, I believe that—

Mr. WEXLER. But will they need to apply for a visa? Or are they going to apply for something different?

Mr. EDSON. It would be a visa. If they don't qualify for an ESTA and they still want to travel to the United States, they would apply for a visa.

Mr. WEXLER. Why wouldn't they qualify for an ESTA?

Mr. BARTH. Well, for example, if they indicate on their ESTA application, electronic application, that they were previously convicted of a crime in the UK, or a serious crime in the UK, or France or whatever, the system would pre-screen that and kick them out.

And under certain circumstances, depending on the crime and the number of years ago, et cetera, et cetera, someone who committed a burglary when they were 14 and now they are 67 years old, they would be kicked out of ESTA; go into the State Department perhaps overseas, and get a visa to come to the U.S. anyway.

Mr. EDSON. Those sorts of situations—I may have answered the wrong question, though. Were you asking about the cost of cutting the program altogether? I was talking in terms of expanding the program.

Mr. WEXLER. No, I actually meant it the other way. But I—

Mr. EDSON. Expanding the program altogether is expensive.

Mr. WEXLER. Why don't you elaborate?

Mr. EDSON. We can provide some estimates if you are interested, for the record. But these are, these countries in the Visa Waiver Program are, the largest sources today of travelers to the United States. This would more than double our visa workload. It would, well, triple—I am sorry—it would triple our visa workload.

We have roughly two times as many visa waiver travelers as we process visas in any given year. And so it would triple the workload, with the bulk of that work falling on precisely those countries

where labor and facilities costs are the highest for our operations in any event.

So it would be a very large hit, both in terms of revenue to the United States from tourism dollars and business, and in terms of the operations in the Department of State.

Mr. WEXLER. Have there been any discussions—in terms of this second wave—have there been any discussions, thoughts, plans with respect to Israel? Is the Israeli Government even interested?

Mr. BARTH. There have been very preliminary discussions about a variety of countries, including Israel. And historically, I think the issue has been, reciprocity is required as part of the Visa Waiver Program. And I think it has been the case that Israel has been wary of opening its doors to virtually any American getting on an airplane and flying into Israel.

Mr. WEXLER. But Americans can go to Israel without a visa?

Mr. BARTH. Not in all cases.

Mr. EDSON. Not in all cases. But it is, in Israel, as you probably know, the refusal rate is certainly low enough that they are in that list of countries that would be looked at seriously for the second—

Mr. WEXLER. So it may be that the Israeli Government is not particularly interested.

Mr. BARTH. They have not been as interested as some others.

Mr. WEXLER. Right.

Mr. BARTH. That is indeed the case.

Mr. WEXLER. Right. With respect to Greece, just going back to the Greek issue, what, if you could share with us in terms of the short term, next 4 weeks, 6 weeks, what do we expect might happen?

Mr. BARTH. We have told the Greek Government that moving forward would be substantially easier if they would go back and look again at their proposed pretty comprehensive redraft of the MOU, and consider bringing it much more closely in line with those agreements signed by the other eight countries.

They have not yet, in any formal or informal way, responded to that recommendation, which would ease their roadmap, if you will.

Until they respond to that, I really honestly couldn't give you a 4- to 6-week highlight of where they might be in that period of time. There is no, there is no reason they couldn't get back on track if they chose to come into line with what we again view as our single-tier VWP program.

Mr. WEXLER. I just want to reiterate Mr. Bilirakis' request. I mean, there is great interest in this subcommittee and on the committee-at-large as to Greece's progress. And we would be very interested in hearing an update particularly on Greece.

With respect to the current Visa Waiver Program countries, obviously their excitement for this program is a little bit less than the potential entries. And in some instances, the existing countries, representatives from the district, existing countries, have essentially said that the electronic system for travel authorization is, in effect, a visa in disguise.

What would be your response to that suggestion?

Mr. BARTH. I think, as most citizens of those countries know, when they travel to the U.S. and they are about to land, or some-

times when they board the airplane, they are handed a form to fill out, and I-94 form to fill out, that basically provides the U.S. with data upon landing by their citizens.

The ESTA system merely captures that data days, weeks, to months prior to their boarding the aircraft. So given the fact that at least initially there won't be any charge for the ESTA approval, given initially that there won't be any additional data burdens on the citizen, and frankly, from my own experience, that last-minute scurry to find a pen so you can fill out the form as you are landing in the U.S., whether you are a citizen or a non-citizen, it could in many ways provide a much easier system. You fill out the form once, you can come to the U.S. multiple times over a several-year period. It simply is a digitization, if you will, of a paper process that is now in place, with no additional burdens beyond the fact that you should do it before, rather than when you arrive at the airport or are boarding the airplane.

Mr. WEXLER. We are about to bring this to a close. I would just like to, in a very concise fashion, provide for the record a very cogent opportunity for you to make an argument as to why the new Visa Waiver Program will make America safer than we are today. So that we can continue to make this argument to those that still have reservations as to the security aspect of the United States.

So please take this opportunity, if you would, to cogently state for the record why America will be safer as a result of the Visa Waiver Program process.

Mr. BARTH. Thank you, Mr. Chairman. The law that the Congress and administration worked closely to pass last year has given us the tools to collect more information on more people, more data on known and suspected terrorists importantly, lost and stolen passports, serious criminals, and prevent those people from getting on the airplane to come to the U.S.

Tie that to the ESTA system that also pre-screens people to come to the U.S., and our security is substantially enhanced as a result of this new law being implemented, for both the aspiring countries and, I would argue, even more importantly for the existing VWP programs for which we will be expecting exactly the same high bar of new information-sharing.

Mr. WEXLER. Terrific.

Mr. EDSON. I couldn't say it any more cogently. The additional information is tremendously forward in the security of the United States, and of the travel process, and will set a standard, I think, or has set a standard for our discussions with other countries around the globe, whether or not they are in the Visa Waiver Program.

This is one of those leaps where travel became safer, and we started doing our business a different way.

Mr. WEXLER. I want to thank both gentlemen for being so patient, and maybe just state the obvious: That a new administration, whoever he or she may be heading it, will probably not, in its first couple of weeks and months, be focused on the Visa Waiver Program of all things.

So it is really an extraordinary sense of urgency for you and your colleagues to fulfill this program by the end of the year. Otherwise we could be looking at a very difficult situation.

And I thank both gentlemen for being here, and thank you for what you are trying to do and actually accomplishing.

We are adjourned.

[Whereupon, at 2:55 p.m., the subcommittee was adjourned.]

