

Moving Forward on Visa Policy

Prepared statement by

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Before the

Subcommittee on Immigration Policy and Enforcement

Committee on the Judiciary

*United States House of Representatives
Second Session, 112th Congress*

Hearing on the “Welcoming Business Travelers and Tourists to America Act of 2011”

I want to thank Chairman Smith, Chairman Gallegly, Ranking Member Lofgren, and the distinguished members of the subcommittee for inviting me to testify today on H.R. 3039, the “Welcoming Business Travelers and Tourists to America Act of 2011.”

I have studied U.S. visa policy for many years. My 2008 book, *The Closing of the American Border: Terrorism, Immigration and Security Since 9/11*, detailed the mistakes made in visa processing before the 9/11 attacks, but also examined the negative economic and diplomatic consequences of the decline in travel to the United States after 2001, in part because of visa delays that resulted from efforts to tighten security. More recently, I co-authored with Liam Schwartz, an American-Israeli immigration lawyer who is one of the world’s foremost legal experts on visa processing, a Council on Foreign Relations Policy Innovation Memorandum recommending improvements to the U.S. visa system to speed processing without sacrificing security.¹ It is clear from the record of progress in recent years that efficiency and security can go hand-in-hand, and that the United States does not need to harm its economy to safeguard its borders.

While it is far from comprehensive, and not without some problems, the legislation before you today deserves support. It would promote job creation by addressing inefficiencies in the visa processing system. In particular, it takes on one of the chronic problems in the visa system over the past decade, which is that

¹ Edward Alden and Liam Schwartz, “Faster, Safer and Smarter: A Modern Visa System for the United States,” Council on Foreign Relations Policy Innovation Memorandum No. 12, at <http://www.cfr.org/immigration/faster-safer-smarter-modern-visa-system-united-states/p27055>.

improvements in visa processing times have not been durable. The State Department has periodically reduced wait times by surging staff when the backlogs have grown unacceptably long, only later to relocate staff or fail to anticipate demand increases and have the wait times balloon again. This legislation would set a new visa processing standard of twelve days or fewer in the biggest markets which have been subject to the longest delays, namely China, Brazil, and India. It would increase transparency, including making publicly accessible historical data on wait times, and require reporting to Congress that includes visa demand forecasts and the consular strategy for meeting that demand.

H.R. 3039 should, however, be approved as part of a broader package of legislation that includes reforms to the criteria for expanding the Visa Waiver Program, and encourages more efficient visa security screening.

Background

The United States has four compelling interests in the proper functioning of visa policy. The first is security, ensuring that citizens of foreign nations who could do harm to the United States, whether terrorists or serious criminals, are not permitted to enter the country. The second is the integrity of the immigration system, which means ensuring that temporary visa holders do not overstay and remain illegally in the United States. The third is economic, ensuring that tourists and business travelers are able to come and spend money or invest in the United States. And the fourth is broadly diplomatic, which means ensuring that would-be travelers to the United States are treated in a fair and dignified fashion that reflects the values of this country.

In the pre-9/11 era, as was explored in detail by the 9/11 Commission investigation, security and immigration integrity did not receive appropriate attention.² While the State Department made serious efforts to screen visa applicants against lists of known terrorists, the security and immigration review process was riddled with holes. Some mistakes were the consequence of poor technology and inadequate information sharing. Others were simply the result of the volume of visa applications and other demands overwhelming the capacity of the consular system. From 1993 to 2001, the number of non-immigrant visas adjudicated increased from 7 million to more than 10 million annually, and the number of U.S. passport applications doubled to more than 7 million. But consular service staffing actually declined over that period, and in too many cases the scrutiny of visa applicants was cursory.

In the wake of 9/11, a number of steps were taken to strengthen the security aspects of the visa system. The State Department implemented, and then Congress later legislated as part of the Intelligence Reform and Terrorism Prevention Act of 2004, a requirement that nearly all visa applicants be interviewed in person by consular officers. Consular officers themselves receive additional training in security/counter-terrorism and in detecting visa fraud. New security reviews for visa applicants from certain countries were established, and reviews for individuals with scientific and technical skills were expanded.³ Information sharing within the U.S. government was significantly improved. Enhancements in passport security and biometric requirements for visas and for entry into the United States have made it extremely difficult for individuals to travel on fraudulent documents. Watch lists for terrorists and serious criminals have been expanded and made available across the relevant agencies. And, most recently, the U.S. government has greatly enhanced its capacity to identify visa overstayers.

While most of these security improvements are welcome, they were not accompanied for many years either by staffing increases or by technological improvements to maintain efficient visa processing. The result has too often been long delays for visa applicants, both for interviews and for final visa processing.

² Thomas R. Eldridge et. al, "9/11 and Terrorist Travel," Staff Report of the National Commission on Terrorist Attacks Upon the United States. http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf.

³ Stephen Yale Loehr, Demetrios G. Papademetriou, and Betsy Cooper, "Secure Borders, Open Doors: Visa Procedures in the Post-9/11 Era", Migration Policy Institute, 2005. http://www.migrationpolicy.org/pubs/visa_report.pdf.

Visa delays have been one significant factor in the decline in overseas travel to the United States. As the bill under consideration today notes in its findings, worldwide long-haul travel grew by 40 percent over the past decade, but the United States gained almost none of that increase. Instead the U.S. global share of such travel fell from 17 percent in 2000 to 12 percent in 2010. Visa delays have also discouraged business travelers, foreign students and others who contribute to the U.S. economy, though the State Department has rightly given priority to timely processing of these applications.

There are certainly many reasons for the falling U.S. share of global travel, and the difficulty that some foreign travelers face in obtaining a visa is only one. But visas clearly matter. A detailed study by the Department of Homeland Security that looked at the period from 2001 through 2007 found that, while travel to the United States from visa waiver countries had recovered to pre-9/11 levels by 2006, travel from visa countries remained significantly depressed.⁴ Indeed, it was not until the most recent fiscal year, FY2011, that the number of non-immigrant visas issued for travel to the United States, just over 7.5 million, finally approached the record 7.6 million issued in 2001.⁵

Recent Developments

The State Department in recent years has made improved visa processing a high priority. The Obama administration's January 2012 Executive Order on Travel and Tourism, which sets ambitious targets for increasing the number of visas issues, largely served to give high-level support for efforts already well under way in the State Department to increase capacity to adjudicate visas in the biggest sending countries such as China and Brazil.⁶

In China, for example, the U.S. Consular Mission considered more than one million visa applications in FY2011, a 35 percent increase over the previous year. The State Department recently authorized another fifty consular officers to adjudicate NIV visa applications, which would be a nearly 50 percent increase on the current 105 officers.⁷ Wait times for interviews at the five visa granting missions in China have fallen from as long as 100 days in 2010 to current wait times that are typically two days or less. In the first four months of FY2012, the number of visa processed in China grew by 33 percent.⁸

In Brazil, which had been plagued with some of the longest interview wait times in the world, waits for U.S. tourist visa interviews currently range from just two days in Brasilia and Recife to twenty-five days in Sao Paulo. As recently as January 2012, the wait times were seventy-eight and seventy-five days in Sao Paulo and Recife respectively. In the first four months of FY2012, the number of visas processed from Brazil grew by 62 percent.

⁴ Derekh Cornwell and Bryan Roberts, "The 9/11 Terrorist Attack and Overseas Travel to the United States: Initial Impacts and Longer Run Recovery," Office of Immigration Statistics, Policy Directorate Working Paper, March 2010.

http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ni_911_wp.pdf.

⁵ The 7.6 million visas issued in FY2001 included nine countries that are now part of the Visa Waiver Program – (Czech Republic, Estonia, Greece, Latvia, Lithuania, Hungary, Malta, Slovakia and South Korea) – though two, Argentina and Uruguay, were removed from the VWP since 2001.

⁶ The White House, "Executive Order – Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness," January 19, 2012. <http://www.whitehouse.gov/the-press-office/2012/01/19/executive-order-establishing-visa-and-foreign-visitor-processing-goals-a>.

⁷ American Chamber of Commerce in China, *American Business in China White Paper*, April 25, 2012. <http://www.amchamchina.org/whitepaper2012>.

⁸ Written statement of David T. Donahue, Assistant Secretary for Visa Services, Department of State, before the Senate Appropriations Committee, subcommittee on Homeland Security, March 21, 2012.

In response to the President's Executive Order, the State Department has promised further steps that will increase processing capacity in China and Brazil by 40 percent. These steps include expanding consulate hours, remodeling consular facilities to increase the number of interview windows, and adding staff.

Since the January 19 Executive Order, the State Department and the Department of Homeland Security have also initiated a two-year pilot program to waive interviews for certain low-risk visa applicants who are renewing a non-immigrant visa in the same category within forty-eight months of the expiry of their previous visa. The pilot program has been implemented in China and will be extended to Brazil, Mexico, India, and Russia.

It is critical to keep in mind that these improvements are being made without additional expenditures of taxpayer dollars, which is important given U.S. budget constraints. The fees charged to foreign travelers for visa processing fully cover the costs of additional staffing and improved technology. Just last month, the State Department raised the fee for a tourist visa to \$160 per person in order to support processing costs and pay for expanded overseas facilities.

This reduction in wait times has come even as the Obama administration has continued to make improvements in terms of security and immigration integrity. The most significant recent development is the progress in identifying visa overstayers. Since April, 2011, the State Department has used airline departure data (known as ADIS) to help check whether visa applicants may have previously overstayed their visas in the United States and therefore may be ineligible for a new visas.⁹

The Contributions of H.R. 3039

H.R. 3039 would build on this recent progress. The establishment of a processing standard of twelve or fewer calendar days in China, Brazil, and India is a reasonable target. The Department of Commerce's U.S. Travel and Tourism Advisory Board has recommended a more ambitious five-day target for visa processing to compete with European countries.¹⁰ Virtually all U.S. missions in these countries are currently meeting the twelve-day target, and indeed State has its own internal target of keeping visitor visa wait times below twenty days.

The State Department has opposed this new standard, however, suggesting it would limit the department's flexibility to re-deploy consular resources as needed – whether to meet unexpected spikes in demand in other locations, or to provide services to American citizens abroad. But it is important to recognize that a processing standard is not a deadline. It in no way directs consular officers to resolve any particular case within a specific time frame. It in no way directs consular officers to approve or deny any visa application. It does not forbid the department from missing that goal at certain times and in certain places, though Congress would expect, and should receive, an explanation. It is instead a standard that expresses the desire of Congress that the administration budget and plan to reach that goal. Legislative language to clarify this intent may be warranted.

⁹ Written statement of David T. Donahue, Assistant Secretary for Visa Services, Department of State, before the U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Border and Maritime Security, March 6, 2012.

¹⁰ Final Report, U.S. Travel and Tourism Advisory Board, U.S. Department of Commerce, http://tinet.ita.doc.gov/ttab/docs/TrvlTourAdvisyBord_Thumb_NEWSMALL.pdf.

There also may be other issues to be resolved. It is not clear, for instance, whether the 12-day processing goal includes cases that are referred for scrutiny under the Security Advisory Opinion (SAO) review process, which I will discuss in more detail below.

The bill also promises better transparency. The Department of State currently maintains on its web site current information about the visa wait times at all its consulates worldwide. But it does not publish historical data on whether wait times have been growing or shrinking at particular locations. The bill would require rolling monthly reporting on the web site of the median wait times for interviews and visa processing at each diplomatic and consular mission. The legislation would also require the State Department to produce an annual visa demand forecast in key high-growth markets and to report on how the missions are managing the nonimmigrant visa workload. While Congress should be careful not to increase unnecessarily reporting burdens on the agencies, these measures would make clear that Congress places a high priority on efficient visa processing.

The State Department is also opposed to the provision that would require more extensive pilot testing of remote video-conferencing for consular interviews. In large countries such as Brazil and China, the expense and burden associated with travelling for personal interviews at one of the small number of U.S. consulates is considerable for those living outside the main cities. Video conferencing seems to offer one way around this issue, but State has said that pilot testing to date has demonstrated that video interviews are less efficient, use more consular resources, and may raise security issues in some countries. I cannot speak directly to these issues, except to suggest they probably could be resolved. But I would note that the fundamental problem remains the legislative requirement that virtually all visa applicants be interviewed. If the department were allowed to waive interviews for more routine cases, the issue of finding alternatives to in-person interviews would be less urgent.

Finally, the bill would make clear that the Secretary of State has the authority to extend the validity of visas even in cases where a foreign country refuses to reciprocate. This is an issue primarily with respect to China, which has repeatedly refused U.S. requests to increase the visa validity period for U.S. citizens to more than one year. The U.S. therefore does not offer Chinese citizens a longer visa period. There are a number of issues at stake in these negotiations, and the issue should be seen in the broader context of U.S.-China relations. But extending the validity of visas issued to Chinese citizens would clearly be in the U.S. interest, both in encouraging Chinese visitors and in reducing the enormous burden on consular staff to process visa applications.

What Else is Needed?

H.R. 3039 is only one element of the changes needed to make sure that the United States has the most secure and efficient travel system in the world. Increasingly, improvements in screening technology and information-sharing are making it possible to enhance security even as processing speeds improve. The approach should be, wherever possible, to use those enhancement to focus consular resources on higher-risk travelers

This is why expanding the Visa Waiver Program makes sense. As I wrote recently in *Foreign Affairs*, the new VWP system “in many ways provides greater security against terrorist or criminal travelers than the regular visa system.”¹¹ Applicant governments are required to share criminal and intelligence information, which greatly enhances the Department of Homeland Security's ability to identify and stop travelers who pose a threat. New VWP countries that join must implement better passenger and baggage screening; adopt secure, forgery-proof passports; and agree to timely reporting of stolen passports. Further, countries must allow

¹¹ Edward Alden, “If You Extend the Visa Waiver Program, They Will Come,” *Foreign Affairs*, April 9, 2012.

<http://www.foreignaffairs.com/articles/137390/edward-alden/if-you-extend-the-visa-waiver-program-they-will-come>.

regular U.S. government auditing of their travel-related security programs. And finally, they must enroll in the Electronic System for Travel Authorization (ESTA), which requires U.S. screening of all travelers against U.S. terrorist and criminal watch lists. James Carafano of the Heritage Foundation recently testified to this committee that the Visa Waiver program is "arguably the nation's most important visa program."¹² With the recent gains in identifying and tracking overstayers, Congress should support expansion of the VWP. A number of bills have been introduced that would make this possible.

I would also urge the Congress to increase its oversight of the Security Advisory Opinion process. The SAO system, which is intended to allow for more in-depth reviews of certain visa applicants, has grown enormously. In FY2011, consular officers submitted more than 366,000 SAO requests.¹³

As I noted in my testimony to this committee last year, the SAO reviews are often very long, forcing some visa applicants to wait for months or even years for a decision.¹⁴ In the vast majority of cases, these visa applications are eventually approved. But the delays are hugely inconvenient for foreign students, business travellers, skilled employees, and others who need visas issued in a timely fashion. And the SAO criteria are such that many of those captured by the system are precisely the sort of individuals we want to come to the United States. The American Chamber of Commerce in China said in its White Paper published last month that:

“While the overall percentage of visa applicants subject to [these] checks may be in the low single digits, the delays are a serious problem for US high-tech companies in China, including those in the aerospace and semiconductor industries. Fifty percent or more of the employees, customers, and partners of many such companies are subject to security checks. Delays mean that customer and project meetings and training sessions often have to be postponed or cancelled. Chinese customers’ travel delays to the US are serious enough to jeopardize US companies’ competitiveness with European rivals.”¹⁵

As I noted last year, the State Department and the Department of Homeland Security have been working on improved screening systems to permit far more accurate targeting of those applicants who genuinely raise security concerns, so that the lengthy SAO reviews could be reserved for perhaps tens of thousands rather than hundreds of thousands of visa applicants annually. I would urge Congress to make streamlining visa security procedures a high priority.

Thank you for considering my testimony, and I am happy to respond to any questions.

¹² James J. Carafano, “next Steps for the Visa Waiver Program,” written testimony before the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Dec. 7, 2011.

¹³ Written statement of David T. Donahue, Assistant Secretary for Visa Services, Department of State, before the U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Border and Maritime Security, March 6, 2012

¹⁴ Prepared Statement of Edward Alden, Council on Foreign Relations, before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, May 11, 2011.

¹⁵ American Chamber of Commerce in China, *American Business in China White Paper*, April 25, 2012.

<http://www.amchamchina.org/whitepaper2012>.