

**THE ECONOMIC IMPERATIVE FOR PROMOTING  
INTERNATIONAL TRAVEL TO THE UNITED STATES**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES AND BORDER SECURITY

OF THE

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

SECOND SESSION

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# CONTENTS

## STATEMENTS OF COMMITTEE MEMBERS

|  | Page |
|--|------|
| Schumer, Hon. Chuck, a U.S. Senator from the State of New York .....           | 4    |
| Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama .....            | 6    |
| prepared statement .....   | 28   |
| Feinstein, Hon. Dianne, a U.S. Senator from the State of California .....      | 8    |
| Franken, Hon. AL, a U.S. Senator from the State of Minnesota .....             | 10   |
| Klobuchar, Hon. Amy, a U.S. Senator from the State of Minnesota .....          | 10   |
| Lee, Michael S., a U.S. Senator from the State of Utah, prepared statement ... | 36   |

## WITNESSES

|  |    |
|--|----|
| Witness List .....   | 27 |
| Mikulski, Hon. Barbara A., a U.S. Senator from the State of Maryland .....   | 2  |
| prepared statement .....   | 37 |
| Donohue, Thomas J., President and Chief Executive Officer, U.S. Chamber<br>of Commerce, Washington, DC .....                       | 12 |
| prepared statement .....   | 40 |
| Dow, Roger J., President and Chief Executive Officer, U.S. Travel Association,<br>Washington, DC .....                             | 15 |
| prepared statement .....   | 50 |
| Gambler, Rebecca, Acting Director, Homeland Security and Justice, U.S. Gov-<br>ernment Accountability Office, Washington, DC ..... | 17 |
| prepared statement .....   | 56 |

## QUESTIONS

|  |    |
|--|----|
| Questions from Senator Dianne Feinstein submitted to Thomas Donohue .....  | 75 |
| Questions from Senator Dianne Feinstein submitted to Roger Dow .....       | 76 |
| Questions from Senator Dianne Feinstein submitted to Rebecca Gambler ..... | 77 |
| Questions from Senator Mike Lee submitted to Thomas Donohue .....          | 79 |
| Questions from Senator Mike Lee submitted to Roger Dow .....               | 80 |
| Questions from Senator Mike Lee submitted to Rebecca Gambler .....         | 81 |
| Questions from Senator Jeff Sessions submitted to Rebecca Gambler .....    | 82 |

## QUESTIONS AND ANSWERS

|   |    |
|---|----|
| NOTE: At the time of printing, after several attempts to obtain responses<br>to the written questions, the Committee had not received any communica-<br>tion from Thomas Donohue or Roger Dow. .... | 84 |
| Responses of Rebecca Gambler to questions submitted by Senators Sessions,<br>Feinstein, and Lee .....   | 85 |

## SUBMISSIONS FOR THE RECORD

|   |     |
|---|-----|
| Federation for American Immigration Reform, John Martin, statement .....  | 95  |
| McCormick, Michael W., Executive Director and Chief Operating Office Glob-<br>al Business Travel Association, Alexandria, Virginia, statement ..... | 100 |
| Letter to Senator Barbara Mikulski from Senator Mark Kirk, March 27,<br>2012 .....  | 106 |



**THE ECONOMIC IMPERATIVE FOR PROMOTING INTERNATIONAL TRAVEL TO THE UNITED STATES**

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**TUESDAY, MARCH 27, 2012**

U.S. SENATE,  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND  
BORDER SECURITY,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC*

The Subcommittee met, pursuant to notice, at 10:10 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, Chairman of the Subcommittee, presiding.

Present: Senators Schumer, Feinstein, Franken, Klobuchar, and Sessions.

Chairman SCHUMER. With the permission of the Members of the Committee, we will waive opening statements until after Senator Mikulski gives her remarks, if that is fine with everybody. Great.

Senator MIKULSKI. It is fine with me.

[Laughter.]

Chairman SCHUMER. Mr. Franken objects, Senator Mikulski. I want you to make a note.

Senator Franken, having thought it over, withdraws his objection.

OK, so let me then call on Senator Mikulski, who has worked hard with us on this bill and is one of the lead sponsors and is interested in some particular provisions in the bill, but has been supportive of the entire bill that we have.

We are going to waive, if that is OK with you, Senator Sessions, our opening statements until after Senator Mikulski gives her opening remarks.

Senator SESSIONS. We do not get to pontificate?

Chairman SCHUMER. We do, but a little bit later.

Senator SESSIONS. Later. OK. On our own time.

Chairman SCHUMER. No. We can do opening statements.

Senator SESSIONS. Thank you.

Chairman SCHUMER. So let me recognize Senator Mikulski, whom we were all joyous, I guess is the right word, about her record-setting stint in Congress that we all celebrated and spoke about last week. But as she has said, it is not how long you serve but how well you serve, and today is an example of how well she is serving.

Without further ado, Senator Mikulski.

**STATEMENT OF HON. BARBARA A. MIKULSKI, A U.S. SENATOR  
FROM THE STATE OF MARYLAND**

Senator MIKULSKI. Thank you very much, Senator Schumer and Members of the Judiciary Committee. Again, I might be the longest serving, but I assure you I will not be the longest talking at this hearing.

I am pleased to be here and joined also this morning by the Chamber of Commerce and by the hotel industry and so on. I want to talk about reforms that I am suggesting that are included in the JOLT Act, but I want to say, first of all, thank you to this Committee and, Senator Schumer, for your leadership in the bill itself, because I am a strong supporter of this bill. I think we need to do two things: We need to enhance and facilitate people being able to visit our country, come and do their business, get their health care, like many do when they visit Hopkins or Maryland, or be leisure tourists and then return home.

We also, though, while we encourage visitors, need to stand steadfast and true to protect our borders. I, therefore, want to thank Senator Feinstein for her most welcomed advocacy in the area, particularly in the Visa Waiver Program.

I want to talk today about the visa waiver provisions in the bill that I developed along with my esteemed colleague, Senator Kirk of Illinois. I have a letter from Senator Kirk I would like to share with the Committee at the end of my testimony.

Mr. Chairman and Members, I am here because I think the Visa Waiver Program Enhanced Security and Reform Act, which I introduced and is now part of this bill, is an opportunity to revisit, refresh, and reform the Visa Waiver Program. It has three goals: protecting our borders, creating American jobs by increasing visits to the United States, and honoring and respecting our most treasured allies. I introduced this bill with Senator Kirk. All of you know Senator Kirk is a naval reserve officer, an intelligence officer who also served in Afghanistan. So when we developed our reforms, we were absolutely committed to protecting our borders. And as I said, Senator Feinstein has been an activist in this and has made many great recommendations.

Reforms have not been made since 2007, and in those five years since we changed the Visa Waiver Program, threats have evolved, technology has changed, and it is a time to look at lessons learned.

So why are my elements very good? Modest as I am in saying that, this bill would allow the Secretary of Homeland Security to allow countries that meet national security requirements to participate in the Visa Waiver Program. But let me be clear. Even if a country meets those security requirements, it is not a guarantee of entry into the Visa Waiver Program. The Secretary must determine a country does not pose a security threat to the United States before it can come into the Visa Program. So Senators Kirk and Mikulski are committed to protecting our border and that the Visa Waiver Program not be a back door for a country to get in that does not want to respect our security protocols.

Second, it also creates a probation system for countries not following the rules. It requires the Secretary to place a country on probation if it does not shape up in one year. In order to meet the requirements of the bill, meet the reforms they need to do in their

home country, the message is simple: Get it right or get out. So once you are in, it does not mean you stay in. You must, again, meet these security requirements.

It also strengthens the ability of the United States to track lost passports. In the Visa Waiver Program, countries have to keep tight controls on passports and must report lost or stolen passports to Interpol. I visited Interpol and found that what they do on the lost and stolen passport is significant. It also gives the Secretary discretion to allow countries to join the Visa Waiver Program, and what we do is this: In the past, we counted the number of refusals by our consulate, and if you were above a certain percentage, you could not get in. But it did not count the most important thing, which was overstays, where people use the Visa Waiver Program, the good will invested in the Visa Waiver Program, and they just used it to come in and kind of disappear into our National ethers. That is unacceptable. So what we have done in our reform is focus on the overstay rate and tracking the overstay rate.

The second thing is to look at real numbers. They were counting refusals, but somebody could come 12 times, and it would be counted as 12 separate applications rather than one person coming. There are older women in Warsaw and Krakow and Gdansk right this minute who want to visit grandchildren in Chicago and drop a thank-you note off at Senator Kirk's office who might be coming to the visa office and the consulate office in Krakow 12 times, but it is still the same old Polish lady. Or it could be the scientist, or it could be the Polish students in Canada. So we reform that by looking at the number of people rather than the number of applications.

We know the Visa Waiver Program works. Most recently, in granting South Korea their ability to come in, there was a 49-percent increase in South Korean tourists. This resulted in great visits, money spent in our country, and jobs in our tourism and leisure world.

I am here—and I got very interested in the Visa Waiver Program because of Poland, and it is something that drew Senator Kirk and I together in addition to our work on national security.

Chicago is the home base, if you will, of most of the Polish heritage organizations. Poland is really cranky that it is not in the Visa Waiver Program. In fact, when any foreign leaders visit, they are cranky to volcanic, and the reason that they feel that way is they feel that they are great allies, they have been steadfast and true, they feel that they have always counted on the United States of America, and they serve with us in many capacities. During the darkest days of communism, a Polish electrician named Lech Walesa jumped over a wall in the Gdansk shipyard. He took the whole world with him when he went. But when he landed on the other side, he had President Reagan on his side, and then working together and working with the free world, we were able to bring down that Iron Curtain. But that Iron Curtain is still a problem because Poland cannot come into the Visa Waiver Program.

When they asked for the Coalition of the Willing, Poland was the first to step up. Their troops fight and die alongside of our troops in Iraq and Afghanistan. They do not understand why it is OK to go to Afghanistan with the United States of America but not be

able to visit the United States of America under the Visa Waiver Program. They are acting as our emissary in Syria, looking out for American interests in Syria. So it is OK for them to protect us and act on our behalf, but that Polish lady, that Polish scientist from the Copernicus Institute, cannot visit without a visa.

In reforming the Visa Waiver Program, I would hope that we have the kind of rules in the game that acknowledge where there is someone that is a treasured ally, a consistent and persistent ally, can be able to visit the United States if they work to defend the United States. So I hope you take a look at the legislation. I really want to help move the JOLT Act. And Senator Kirk has a letter that he wants into the record that will—he just says he is sorry he cannot be here, and we are sorry he cannot be here. He was just great to work with on this. We worked very well with all of you. He looks forward to returning to the Senate to move this to the floor.

Mr. Chairman, I want to thank you for your courtesy, and I hope the JOLT Act moves forward and that these Visa Waiver Programs are in it.

[The prepared statement of Senator Mikulski appears as a submission for the record.]

Chairman SCHUMER. Well, thank you very much for your excellent testimony, and without objection, we will add Senator Kirk's comments to the record. We know he is here in spirit, and we know he wants to help us move the act quickly.

Senator MIKULSKI. Thank you.

[The letter from Senator Kirk appears as a submission for the record.]

Chairman SCHUMER. I know you have a busy schedule, and thank you for being here, Senator Mikulski.

Senator SESSIONS. Thank you, Senator Mikulski. That was very, as you always are, honest, direct, and to the point, and we get your message, and I think it has great value. We need to listen to it and see what we can do, and thank you for remembering Senator Kirk. We look forward to his return and participation actively on this issue.

Chairman SCHUMER. Thank you.

Senator SESSIONS. And congratulations on your fabulous service to our country.

Senator MIKULSKI. Thank you.

Chairman SCHUMER. Any questions of Senator Mikulski?

[No response.]

Chairman SCHUMER. Thank you for coming, Senator. We appreciate it.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S.  
SENATOR FROM THE STATE OF NEW YORK**

Chairman SCHUMER. OK. Now we will go to opening statements, and then we will call our next panel of witnesses.

I want to thank everybody for coming. Today's hearing is on the importance of promoting and facilitating international travel to the United States in order to create jobs. This is a jobs bill, no question about it.

International travel to the U.S. represents a significant component of our economy. To give some context, the average overseas visitor spends about \$4,000 in America per visit. In total, foreign nationals spent more than \$134 billion in travel to the U.S. last year. It supported 1.8 million American jobs, represented 8.7 percent of exports of goods and services. That is huge for our economy at a time when we are looking to grow, and it is one of the growing industries in America, one of those industries with a future, as the world becomes more affluent and more people can travel.

The global travel market is expected to double over the next decade, reaching \$2.1 trillion, making it an increasingly important contributor to GDP growth. In 2000, the U.S. had a 17 percent share of worldwide overseas travel, but over the last 10 years, our market share has decreased to less than 12 percent. That is a dramatic drop in just 10 years. The single greatest reason for this decrease in market share is our inefficient visa system. The visa process is highly uncertain, lengthy, and costly. In some countries, the wait time for U.S. visas can be as long as 100 days. The \$140 visa application fee is non-refundable, must often be combined with other costs, such as to travel to distant consulates and lost work time, all of which makes travel to America less appealing.

If we had kept pace with the growth in global overseas travel between 2000 and 2010, 78 million more travelers would have visited the U.S., adding a total of \$606 billion extra to the economy and an additional 467,000 jobs per year. If we can recapture our historic share of worldwide overseas travel by 2015 and maintain that share through 2020, it will add \$100 billion to the economy and 700,000 jobs.

People want to come to America. Wherever we go, they want to come, and they say, "Why do you make it so hard?" And it does not make much sense. We can balance security and efficiency.

And so today we will discuss S. 2233, the Jobs Originated Through Launching Travel Act. That is how we get JOLT. It is a bill that a bunch of us have introduced: myself, Senator Lee, Senator Mikulski, Senator Klobuchar, Senator Blunt, Senator Kirk, and Senator Rubio—four Democrats, four Republicans. It is a completely bipartisan bill in the spirit with trying to get things done in a bipartisan way, and I want to thank so many people who worked on this bill. I want to give particular thanks and a shout-out to Senator Klobuchar. She introduced the first travel bill with Senator Blunt. And because many of her ideas were so good and did not require legislation, the President already adopted a lot of her recommendations, and that is why she graciously folded the remainder of her bill into ours. Some of the things that were included in her bill were to add more agents to process visa in Brazil, India, and China.

When we went on our codetrip to China last year, we visited one of these places, and the lines were enormous, and the people told us, those who we could speak to in English, they traveled two days, missed work, and then they were not sure they would get their visa—800 miles—because we only had a very limited number.

Also, the administration has adopted measures including tracking to see how fast the visas are being processed because no one had any idea. So let me go over the ways our bill creates jobs.

First, we encourage the State Department to issue Chinese visitor visas that last longer than the current one-year maximum. You go through an extensive background check. A year later, you should not have to go through it again to come back, particularly if you are a business person. This will encourage travel from China by making it faster for new travelers to get visas and by alleviating the burdens repeat travelers have to bear each year.

Second, we require the State Department to develop premium processing to expedite issuance of tourist and business visas for those willing to pay a substantial fee, not costing us any money. I just happened to turn in that direction. With these funds, we will invest in adding more capacity so everyone's visas can eventually be processed faster.

We permit Canadian snowbirds to stay here for 60 more days a year. They want to stay here. They spend a lot of money. Why not let them stay? It does not do any harm to our security.

We change the visa fee structure to spread demand for visas evenly across all four seasons and increase total visa numbers. We allow Customs and Border Protection to add important foreign dignitaries to the global entry program on a case-by-case basis. We set tough standards for visa processing times and, most importantly, we make much needed changes to the Visa Waiver Program to update eligibility requirements and make the program more secure—not less but more. And if enacted, Poland would be added to the Visa Waiver Program, which Senator Mikulski eloquently talked about.

The legislation is endorsed by the U.S. Chamber of Commerce, the U.S. Travel Association—they are both here today—as well as many other industry groups and labor union groups. I hope we can pass this bill as quickly as possible to create thousands of jobs. We are looking for ways that we can get jobs created in a bipartisan way.

Speaker Boehner, Senator Reid, Senator McConnell, and Minority Leader Pelosi have all said they seek job-creating measures that are bipartisan. Well, voila. The work of the eight of us and many others has made that happen, and I hope we can move quickly.

Let me call on Senator Sessions first and then my other colleagues for opening statements.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM  
THE STATE OF ALABAMA**

Senator SESSIONS. The JOLT Act, I thought, Chuck, that was your middle name, JOLT.

[Laughter.]

Senator SESSIONS. Well, you have jolted this forward. This is something that we need to work on, we can improve. We can enhance job creation in America, and every single thing we do that rationally and reasonably and responsibly creates growth and jobs in America we should try to do. We even supported together the currency bill that I think would have helped create jobs here and create fairness in our trade system.

So the Visa Waiver Program is a good program. It has to have integrity. It cannot be politicized. Every country seems to feel if they are not in it, they are somehow aggrieved. But those countries

still have the opportunity to emigrate, as most countries did just a few years ago with the same requirements.

So the Visa Waiver Program is good. It should have certain standards. It should be reviewed, and nations should qualify for it. For reasons I am not quite sure, Poland has not qualified. They have worked really hard to get in, and there has been a lot of attention given to it, but they just have not met the standards the State Department has required. We can look at that, but we do not want to politicize the process.

I do believe that countries not in the Visa Waiver Program can also benefit from streamlined, technologically advanced screening processes that will reduce the cost and delays in coming to America. We just had in rural Alabama, in Monroeville, a group of Chinese business people come, about 60. More would have come. The number exceeded the number that could have been accommodated, and a number did not make it because of visa problems. These were pretty significant people looking to invest in America. So we do need to make sure the countries that do not qualify for the Visa Waiver Program are able to proceed effectively.

Now, I am so pleased—and Senator Mikulski and you mentioned integrity in the system, because one of the gaps, one of the problems is that we have no exit system that records exits. This should easily be able to be done. A decade ago, we were talking about this. Actually, the law, as I recall, required it to be in effect by 2004, if not earlier. President Bush promised he was going to do it. He never did it. President Obama is not. Now, I understand in a few months, maybe by May, we will have a report on how to create an exit system. But since probably 95-plus percent of our visitors exit at airports, that should not be hard to do. And if you have the right kind of card, it seems to me you could put that in a machine and it would read it like—remember that great speech Newt Gingrich used to give about being in Europe and putting his card in the machine and a bank in Atlanta within seconds delivers money into his hand in France? So we should be able to do this effectively, it seems to me, and I do believe one of the problems in not advancing further has been the failure to complete an exit system that would work.

Mr. Chairman, thank you. I will scrutinize this bill, but it looks pretty good, and I certainly can say that I would favor most of it for sure. I do believe the overstay problem is important, and I think if we address that, we might surprise ourselves how much progress we could make.

Chairman SCHUMER. Senator Sessions, thank you for your kind comments, and we look forward to working with you to try and move it forward, and we want to hear your suggestions.

[The prepared statement of Senator Sessions appears as a submission for the record.]

Senator Feinstein has been very active in the Visa Waiver Program and wants to make sure it is tight and secure, and I know she had discussions with Senator Mikulski about that. Let me call on her.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR  
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. That is right. Thank you very much, Mr. Chairman. I have watched the Visa Program now for 20 years. I have held multiple hearings. I have said over and over again that it is the soft underbelly of our Nation's immigration system because it offers the citizens of 36 nations to visit the United States for tourism or business for 90 days or less without a visa. We do not verify that that individual returns to their home when the visa runs out in 90 days.

The program brings in more than 17 million foreign nationals. Some have estimated that as much as 40 percent of the undocumented population is visa overstays. So we have a whole immigration system to consider as we do this.

I have asked and asked that there be an exit system. I just met with Mr. Heyman, I think last week, Assistant Secretary of Department of Homeland Security, who told me that by June 2012, the Department of Homeland Security will have a fully operative biographic exit system in place and will provide real-time information for those who exit U.S. airports. However, I have heard that before and before and before.

The new exit system is expected to allow DHS to calculate overstays per country by April or May of this year. We will see.

In September 2012, DHS will begin two pilots at Canadian land ports of entry that will allow DHS to receive traveler entry data directly from the Canadian Government. DHS will use this data to match it with that data that were received when the traveler enters the United States. The pilot will be expanded to all Canadian land ports next spring. DHS is working with the Mexican Government to establish a similar pilot program.

Mr. Chairman, I cannot support doing this prior to the time there is an exit system that has been tested in place. We have to remember Richard Reid, the shoe bomber, came in on a Visa Waiver Program. Moussaoui came in on a Visa Waiver Program. And I can say, as Chairman of the Intelligence Committee, I know that visas are being scrutinized abroad as they have never been scrutinized before. I also know that there is a very good reason for this. I was the one that put the 10 percent and convinced Senator Lieberman to put it in the Department of Homeland Security bill.

Now, since then, Poland, for example, has had a major program to educate people and has been able to drop their overstay rate to something like 3.2 percent. That is excellent. So what Senator Mikulski proposed here today I have no problem with. I am happy to support it.

Now, you have got distinguished Americans before us who are saying, "We need this for travel and tourism." I can tell you there is no dearth of Chinese efforts to buy companies in the United States. There is a lot of that going on. I am really concerned about extending this. China will not reciprocate. In other words, we cannot hold somebody in detention if they violate the visa entry. They then become part of the undocumented population of the United States. And China will. However, China will not make a reciprocal agreement, at least to this point. To do it one-sided to me makes no sense. But to do it before we have this exit system in place is

something that I believe is foolhardy. I cannot support it. If another terrorist came in on a visa entry program and without an exit and stayed in this country, as the Chairman of the Intelligence Committee, I could never forgive myself. You know, it is that clear in my mind because of what I know.

No one should think that people are not plotting against us. No one should think that they are not trying to come after us. The FBI has made 20 arrests this past year alone, announced in public, of people who participated in, raised money for, or conspired to commit terrorist attacks in this country. So the exit system becomes integral to a program.

Additionally, I understand there are some Eastern European countries that if you go into for 24 hours, you are then eligible to go to another country and come in on a Visa Waiver Program. So, you know, I know the chamber has good points, and I want to facilitate all of this. But I do not want to do it at great risk to our country. And—well, I was just sent a note. Maybe I misstated it. China will not take back visa overstayers in this country. So that is the problem, and this means that you can have tens of thousands of people coming here from China and overstaying their visas.

So I think, you know, we should listen to this testimony carefully. Unfortunately, I have to leave at 11. I chair the International Caucus on Drug Control, and we have the Afghan Minister for counternarcotics at 11 o'clock.

Chairman SCHUMER. That sounds important.

Senator FEINSTEIN. I think it is. He is doing a good job, actually, by building food zones in those southern Afghan areas to replace the poppy and needs help in doing more of it.

So that is my view in a sort of straightforward way, and I appreciate the time to express it. Thank you.

Chairman SCHUMER. I think, Senator Feinstein, you have a great deal of expertise and a major responsibility, and we want to work with you because we believe we can tighten the program up.

Senator FEINSTEIN. I would be happy to work with you.

Chairman SCHUMER. I agree with you, the exit program is very important so we can keep track of who goes out when they come in. And they say they are going to have it ready by May. I do not know if that is true. They have said it before. You are right. My staff says that he thinks it is for real this time, but we shall see. But we want to work with you.

Senator FEINSTEIN. You should get them in here and be sure, and one is Mr. Heyman, Assistant Secretary.

Chairman SCHUMER. I know. But thank you for your work, and we look forward to working with you.

Senator FEINSTEIN. Thank you.

Chairman SCHUMER. And thank you for working with Senator Mikulski on her particular issue, which is very important.

Senator SESSIONS. Thank you, Senator Feinstein. You have a historical knowledge that was so valuable. Thank you for sharing it.

Chairman SCHUMER. Senator Franken.

**STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM  
THE STATE OF MINNESOTA**

Senator FRANKEN. I want to thank you, Chairman Schumer, for holding this hearing and Senator Mikulski for her powerful testimony. Thank you, Senator Feinstein, for your concerns. And I would like to commend my Minnesota colleague, Senator Klobuchar, for her terrific work on this issue. This is an important issue for our Nation and for my State. Tourism and travel are a huge part of the Minnesota economy, generating \$11.3 billion in sales and supporting over 200,000 jobs. Travel and tourism also generate \$732 million in State sales tax, which is 17 percent of our total sales tax revenue. It is very important to us. And it is no wonder that travel is such a major part of the Minnesota economy. We are world renowned for our natural beauty, the beauty of our land and our lakes. It is the perfect setting for hunting and fishing and many other outdoor activities. And then there is the Mall of America where tourists represent about half of their annual sales.

And the tourism industry has actually been growing in Minnesota. That means we are all the more poised to benefit from increases in international travel, the subject of today's hearing. As our witnesses are making clear, the last 10 years have seen a significant increase in global international travel, but the United States has seen our share of that travel shrink. There have been several reasons for that, but we now have an opportunity to pass common-sense measures to spur more travel to the United States by business people and tourists without reducing our National security.

The demand for travel to the United States from fast-growing countries like China, like Brazil, and like India is there. We need to be able to meet that demand, and that is what the JOLT bill does by lowering barriers to access that do not make a lot of sense and by increasing the capacity of the State Department to process visas more quickly without any loss in confidence in the process.

I thank the witnesses for being here, and I thank the Chair for this hearing.

Chairman SCHUMER. Thank you, and thank you for your active participation today, Senator Franken, and on the proposal.

Senator Klobuchar, I mentioned, is the—well, she is one of the originators of this idea. I was going to use another word, but I did not want to. I was going to say “Godfather” and then say “Godmother.”

Senator KLOBUCHAR. Then you got all tied up in gender politics.

Senator FEINSTEIN. Only because it has not been tried a lot. You should make “Godmother”——

Chairman SCHUMER. I think I will leave that to you and Amy, if you wish.

Anyway, Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR  
FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Senator Schumer. Thank you, all of you, for being here. Thank you, Senator Feinstein, for your thoughtful comments. I think it is important that security is front and center. I know no one knows that better than

Senator Schumer after what happened with New York City. And so I think all of us have been aware of that from the beginning as we have approached this issue, and I am still very excited about this bill and the work that we have done with Homeland Security, that Senator Blunt and I have done with them, as well as the State Department, to move forward. Because when you look at the real facts here, we have lost, since 9/11, 16 percent of the international tourism market. And the way I look at it is not just the percentage points. Anyone can look at that. But every point we have lost is 160,000 jobs in this country, and it is time to get back those jobs.

Some of this is going to involve advertising our country internationally so we are finally on an even playing field, and a lot of it has to do with the rules and regulations that have to change.

In my State, I was thinking of Senator Schumer with his Empire State building—I thought that would make you stop talking—with his Empire State building—

Chairman SCHUMER. Hard to get anything that does.

Senator KLOBUCHAR. I know, but it worked. And the Statute of Liberty. In Minnesota, Senator Franken gave you the stats, but I will give you some even better ones. How much do you think we spend on worms and bait every year in Minnesota? How much money do you think we spend, Senator Schumer?

Chairman SCHUMER. A net load.

Senator KLOBUCHAR. Fifty million dollars a year people spend in our State on worms and bait because fishing is so important to our economy. And my favorite stat, the Mall of America, more people visit the Mall of America every year than there are people living in the country of Canada. A true fact, more than 40 million people visit every single year. These international tourists spend an average of \$4,000 to \$5,000 a year, and that is why Senator Blunt and I put together our bill. As Senator Schumer pointed out, many of those recommendations were already adopted by the President in his Executive order. We continue to work with the State Department to figure out how to put incentives in place, business-type incentives, so that they put the consulate officers where the people are. Those consulate officers are profit centers for the Government, generating sometimes \$1 million in fees a year. And so trying to get those consulate officers there doing their job, protecting the security that Senator Feinstein referenced, is going to be very important.

This bill, I love the authors of this bill, with Senator Blunt and myself, I would have to mention Branson, Missouri, or I cannot go on since we do everything together, also a very important tourist spot, as well as Senators Mikulski, Kirk, Lee, Rubio, and Senator Schumer. I think it really tells great—I think the authors alone will tell you how important this is to our country as we move forward to business. It is the best way to pick up those export numbers. The jobs are here in America, so I am excited to move forward and work with you, Senator Schumer, to get this bill passed.

Thank you, everyone.

Chairman SCHUMER. Thank you. And we are looking to get a broad consensus, because while obviously we believe this bill would merit time on the floor, if we could get it done by UC, that would be great.

OK. I want to thank our witnesses for being here, and your being here shows how important this bill is. I would like to particularly welcome Tom Donohue, because he is my home boy from Brooklyn, New York.

[Laughter.]

Chairman SCHUMER. He is president and CEO of the Chamber of Commerce. He has held that position since 1997. That is pretty good, 15 years in a very tough job. It is the world's largest business organization. It represents three million businesses of all sizes, sectors, and regions. Members range from mom-and-pop shops and local chambers to leading industry associations, and he was educated at two of the greatest universities in the world: St. John's University and Adelphi University, one in Queens and one in Nassau County.

Roger Dow is president and chief executive officer of the U.S. Travel Association, a position he has held since 2005. I do not know where he is from originally, but I am sure it is a nice place.

Mr. DOW. South Jersey.

Chairman SCHUMER. Oh, Jersey, good. Almost as good as Donohue. The U.S. Travel Association is the national umbrella organization representing all segments of the \$770 billion U.S. travel and tourism industry. It is headquartered in Washington but has an active presence in Europe, Asia, and Latin America. Mr. Dow rose through the ranks at Marriott International in a career that began as a summer lifeguard at the sixth Marriott Hotel. Where was that?

Mr. DOW. Saddlebrook, New Jersey.

Chairman SCHUMER. Saddlebrook, oh, yes. I bet you got good tips there as a lifeguard in Saddlebrook. And he spanned 34 years to become senior vice president global and field sales, leading Marriott's 10,000-person worldwide sales organization.

Rebecca Gambler is Director of Homeland Security and Justice issues at the GAO, a valued public servant, and she joined GAO in 2002 and has worked on a wide range of issues related to homeland security and justice, including border security, immigration, and Department of Homeland Security management and transformation. Although she has three master's degrees, I will mention her degree from Syracuse University, another one of the greatest universities in the world, and I watched—Senator Gillibrand and I had to give a speech in Albany, and we stayed at the airport and watched the game, sadly, but maybe next year Syracuse will make the Final Four.

In any case, I thank all of the witnesses. Their entire statements will be read in the record, and we look forward to your testimony.

Mr. Donohue, you may proceed.

**STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNITED STATES CHAMBER OF COMMERCE, WASHINGTON, DC**

Mr. DONOHUE. Thank you very much, Senator, and I appreciate the comments about New York. We have gone deeper in that in our occasions when we might disagree about something by suggesting who came from which neighborhood, but that is for another day.

We are very honored and pleased to be here, and I know, Senator Feinstein, that you have to leave at 11. I have one point and I will get to it before you have to go. But all Members of the Senate and to you, Mr. Chairman, thank you for putting together this hearing and for pushing forward on this important issue.

The U.S. Chamber of Commerce is singularly focused on economic growth and job creation, and this is a jobs bill. Promoting business travel and tourism to spur growth, to create jobs, and boost exports is one of our top priorities.

Now, let me be crystal clear about why these issues are so important to the business community. America's trade relationships and economic prosperity depend on the ability of foreign customers to travel to the United States to visit our manufacturing operations, inspect products and services they are purchasing, and negotiate contracts. Many of our member companies are global in nature, and many of those are small companies. They need to bring key employees to America from overseas to attend meetings, to receive training, and to integrate project work and meet with U.S. business partners. Technology has been great for business communications, but there are no replacements for face-to-face business meetings. It is still an essential part of American companies' ability to thrive and compete in the global economy.

When travel is unnecessarily impeded, when visitors get frustrated with long visa delays, when they get hassled at an airport, America's bottom line takes a beating. When it is necessary to protect our security, we fully support it, however, Senator.

This applies not just to State travelers but to tourists as well. The travel and tourism industry currently employs 7.4 million Americans and generates more than \$700 billion in revenue. And guess what? When foreign visitors spend their money here, it is counted here as an export. But we are leaving travel-related jobs and revenues on the table because we are not laying out the welcome mat as much as we should to travelers and tourists.

Consider what is at stake. If we could restore the U.S. share of the global travel market to its 2000 level—granted, that was before the recession—we could create 1.3 million jobs, generate \$860 billion in economic activity without costing the taxpayers a single dime.

As to the JOLT Act, that is why the chamber is pleased to strongly support the Act. If passed, the legislation could dramatically increase international travel to the United States by reforming the visa process and removing impediments, hassles, and other deterrents that keep tourists and business people from visiting our country. It would do so in four fundamental ways.

First, one of the most important ways the JOLT Act could strengthen our economic system and create jobs is through the expansion of the Visa Waiver Program. And, Senator Feinstein, one of the issues—and I am going to come and visit you about this, because I am very committed and deal in many of the same venues that you do, is the safety of our country. But my understanding is that this bill would not put China into the Visa Waiver Program. But your arguments about how long Chinese tourists who come in through other systems stay here is valid and should be addressed in the activities that we all hope get done before the summer. So

I am going to make an appointment to come and talk to you about that.

Senator FEINSTEIN. Thank you.

Mr. DONOHUE. Thank you.

Then, when we are talking about the Visa Waiver Program, travelers make up one of the largest sources of our inbound overseas travel to the United States, and according to the Department of Commerce—and we have got to get Commerce numbers, and we have got to go make sure we have numbers from Homeland Security as well because they do not always jibe—65 percent of all overseas visitors to our country travel under the program. I think we ought to ask the question that you raised: How many of them went home? Many of them go home and come back and go home and come back. But we need to figure out how to follow that. And while they are here, these visitors spend, as we said, a lot of money.

In addition to the obvious economic benefits, expansion of this program would actually make our Nation more secure if we did some of the things the Senator was suggesting.

Before getting accepted into the program, countries must agree to adopt strict security measures, strong travel document standards, and enhance information sharing. Maybe that is why China would not be included in this particular deal. Together, the economic and national security benefits of the Visa Waiver Program amount to a huge win for the U.S.

Our second reason for supporting the Senator's bill, the legislation would give travelers an option to expedite their visa for a fee. Expedited visa processing is especially useful for companies because it allows them to effectively move their personnel and clients to the United States to conduct business. And we all know that in a global economy, speed and flexibility are vital to success.

The third reason we support it, the Act would allow the State Department to offer lower visa application fees for business visitors and leisure travelers during typical off-peak seasons of low demand. It is like a sale at the Mall of America. It is a good thing to do. This would incentive those travelers with greater flexibility to plan ahead.

And, finally, the JOLT Act would bring some needed predictability to the U.S. visa application process by requiring the State Department to process and interview visa applicants within a two-week window. This requirement would encourage the State Department to hire enough consular officers to consistently meet the two-week timeframe. And while the Department has reduced delays, we still have a long way to go. But, again, coming back to Senator Feinstein's suggestion, people could be taken out of line that need a longer period of review so that the great majority of visitors to the United States could be processed in a hurry.

So let me conclude. All told, the chamber believes that the JOLT Act would allow the United States to recapture a good portion of its share of the global travel market and help Americans get back to work. Put in a simple sentence. Canadians now go and visit Europe more often than they ever did because they cannot get into the United States in a reasonable timeframe. That is not smart. The chamber is collaborating with Roger Dow and our friends at the Travel Association and other partners to unleash the economic

power of the U.S. travel and tourism industry. To do so, we need to reduce the hassle factor for visitors; we need to provide adequate resources to our consular posts to do an efficient, time-effective job; we need to bring more countries, after careful scrutiny, into the Visa Waiver Program. And with a struggling economy, we cannot afford to forgo this business. We need to ensure that when tourists are ready to travel and business people are ready to make deals, they come to the greatest destination of them all—the United States of America.

Thank you very much. I appreciate the opportunity to be here, and thank you, Senator, for staying while we made those comments.

[The prepared statement of Mr. Donohue appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Donohue. We look forward to your visit with Senator Feinstein, and we want to make sure all those Canadians go fishing in Minnesota, not Scotland.

Mr. DONOHUE. Well, I bet you a lot of them go to Minnesota, and some of them come across the border legally.

Senator KLOBUCHAR. Of course they do because, as you now, Senator Schumer, we can see Canada from our porch.

[Laughter.]

Senator KLOBUCHAR. OK. It is a bipartisan event.

Mr. DONOHUE. No, that was fine.

Chairman SCHUMER. Mr. Dow.

**STATEMENT OF ROGER J. DOW, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNITED STATES TRAVEL ASSOCIATION, WASHINGTON, DC**

Mr. Dow. Thank you, Mr. Chairman and Senators, for this very important session. Increasing inbound travel is a huge economic benefit. You very articulately went through the numbers, as did my colleague, Tom Donohue, so I will spare you that. But when you look at it, three percent of our GDP is travel and tourism, 4.5 percent of our jobs, a very labor-intensive business, and that does not even count the people who come and buy Caterpillar tractors, et cetera.

As Mr. Donohue said, it does not cost the taxpayers a dime, and I think that is so important. They come here, they spend their money, they go home. We do not have to give them health care. We do not have to fix their potholes. We do not have to feed their homeless. It is a beautiful thing.

When you talk about the revenues, they are breathtaking, as you have said—\$130-some billion—they are huge. America's largest service export. Chinese travelers spend upwards to \$6,000 per visit, and many want to come and do the Robert Trent Jones Golf Trail, so it will be huge in your area and spend that money in Mall of America.

But business travelers, I think, are so important because when they do not come here, as Mr. Donohue said, they do not sign the contracts, they do not buy the Caterpillar tractors, they do not buy our electronic goods.

As you have all stated, we have not remained competitive. We have lost share. And that lost decade has cost us a tremendous amount, as you said, Mr. Chairman.

We applaud recent progress. The State Department has made great progress. Mr. Tom Nides and his group have been tremendous in pulling down the wait times, as you said, that used to be over 100 days. President Obama's Executive order is going to make a huge difference in having a strategy for travel and tourism and really greatly increase it. And Congress is paying close attention.

This JOLT Act is absolutely the right name. It will jolt the economy. The infrastructure is built here. You do not have to build another Mall of America. You do not have to build hotels or airports. It is there. It is just turning on the faucet a little bit.

When you look at—two things I am going to focus on, and Mr. Donohue did so articulately, so I will go quickly through them, is the codification of the two-week visa processing standard. We are getting there. We got it now. Let us codify it, let us make sure it stays.

Next is the expansion of the Visa Waiver Program. We have spoken articulately about that. And the problem is the press has had a field day with our policies and what happens and the perception around the world hurts us so much not only in people coming here, but in the perception of America.

The challenges we have talked about are large. When you really look at the Executive order, it has huge opportunities. But with the JOLT Act, I think you really look at the Visa Waiver Program, as Senator Feinstein talked so much about security, it really is a national security program when you look at the Visa Waiver Program. When you had in 2007, when Congress really added all those criteria to the Visa Waiver Program, they really phenomenally enhanced since the shoe bomber and people like that tried to get here, all that data and the data sharing is so important.

Requiring overstays to be less than three percent is a qualification. In fact, John Cohen, who is a homeland security terrorism expert, says visa waiver countries have less than one percent overstays. So I think the recommendation of allowing the Secretary of Homeland Security to designate countries to go into the program would be a great opportunity.

So, in closing, I would like to say the same thing. Global travel is booming. We are not getting our fair share. People have choices to go anywhere in the world, and the world is promoting them to come there. Interest in coming to the U.S. is huge. Everybody wants to come here. But potential visitors are discouraged by the real and perceived hassles, and this program would eliminate that, and we can do it at no cost to the taxpayers and no cost to security.

We need to recapture that share, and we appreciate everyone's continued interest in this. It will make a difference in jobs and how we stand and to our economy, and we would like to work side by side with you, and this is a great bill.

Thank you.

[The prepared statement of Mr. Dow appears as a submission for the record.]

Chairman SCHUMER. Thank you.

And now Ms. Gambler.

**STATEMENT OF REBECCA GAMBLER, ACTING DIRECTOR,  
HOMELAND SECURITY AND JUSTICE, U.S. GOVERNMENT AC-  
COUNTABILITY OFFICE, WASHINGTON, DC**

Ms. GAMBLER. Good morning, Chairman Schumer and Members of the Subcommittee. I appreciate the opportunity to testify at today's hearing to discuss GAO's work on the Visa Waiver Program as well as overstay enforcement. In both areas, I would like to cover progress made by the Department of Homeland Security as well as challenges that need to be addressed.

First, under the Visa Waiver Program, from fiscal year 2005 through 2010, over 98 million visitors were admitted to the United States. Since 2001, we have issued five reports that have highlighted progress made by DHS in managing the program. For example, the Department has implemented the Electronic System for Travel Authorization, or ESTA, as required by the 9/11 Commission Act, and took steps to minimize the burden associated with this requirement. Airlines are now complying with ESTA requirements about 99 percent of the time.

Further, about half the countries in the Visa Waiver Program have signed required information-sharing agreements with the U.S. for such things as lost and stolen passports and watchlists. While these are positive developments, we have also identified challenges in DHS' management and oversight of the program.

For example, in 2010, about 360,000 travelers boarded planes for the U.S. without verified ESTA approval. DHS is now taking actions to review a sample of noncompliant travelers to identify potential risks posed by these travelers.

In addition, while a number of Visa Waiver Program countries have signed information-sharing agreements with the United States, we have reported that many of the agreements have not yet been implemented. DHS had established a schedule to finalize the agreements by June 2012; however, at this point it is unclear whether DHS will meet this target timeframe.

Now turning to the issue of overstays, in 2006 the Pew Hispanic Center estimated that there were between four million and 5.5 million overstays in the U.S. out of an estimated total unauthorized alien population of about 11.5 million to 12 million. DHS has made progress in addressing overstays. For example, DHS' Immigration and Customs Enforcement, or ICE, uses a risk-based approach for allocating its limited resources to address overstays. It focuses those resources on potential overstays who are more likely to pose homeland security or public safety threats. ICE has also considered plans for expanding resources it dedicates to overstay investigations.

However, as we reported, DHS has taken action to address a small portion of the estimated overstay population. For example, from fiscal year 2004 through 2010, ICE's unit primarily responsible for overstay investigations made about 8,100 overstay arrests, and ICE devoted about three percent of its investigative resources to overstays.

In addition, DHS has some data reliability issues that hinder the Department's efforts to identify overstays. For example, DHS has implemented an entry capability under the US-VISIT program through which the Department collects biographic and biometric

data on foreign nationals. However, and as we have discussed, DHS has not yet implemented a biometric exit system, and there is inconsistent collection of departure records at land ports of entry.

DHS' current process to identify overstays involves matching primarily biographic entry and exit information. As a result of these challenges and others, DHS cannot yet reliably identify overstays in the U.S.

In closing, the Visa Waiver Program was designed to facilitate international travel and focus limited resources on higher-risk visa applicants. Much progress has been made to address issues we previously identified, and the Federal Government is better positioned today to identify and prevent potentially dangerous travelers from boarding U.S.-bound flights under the program.

That said, we have reported that the program continues to face challenges and that DHS has a ways to go to address overstay issues. We have made a number of recommendations to DHS in these areas to help strengthen implementation efforts, and the Department has generally concurred with these recommendations.

This concludes my oral statement. I would be pleased to answer any questions Members may have.

[The prepared statement of Ms. Gambler appears as a submission for the record.]

Chairman SCHUMER. Thank you for your excellent testimony. GAO does a great job because of people like you who have been there for a long time working hard.

I will save my questioning for the end so my colleagues can move along, and I am going to start with Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. Gambler, how do you keep track of someone who comes in on a visa? Do we find out where they are staying? Do they have to say where they are staying? And what happens if they do not exit in time? Do we know that if they do not exit when they say they were going to?

MS. GAMBLER. When foreign nationals enter the U.S., they are required to provide an address of where they will be staying for the time that they are in the country. If they do not abide by their authorized periods of admission and do not leave the country by that time, the Department of Homeland Security generates basically a list of those individuals who they have entry records but for whom they do not have a corresponding departure record for and their departure time has passed. And that is the starting place for DHS to try to identify overstays.

There are some difficulties in having complete departure records. As we mentioned, there is no biometric exit system, and at land ports of entry, as people depart the U.S., they are voluntarily turning in their entry-exit forms. There is no consistent collection of those forms as they leave the country.

Senator FRANKEN. OK. Thank you.

Mr. Dow, in your testimony you focus—first of all, I would like to thank you for mentioning the Mall of America.

Mr. DOW. Great place.

Senator FRANKEN. And Mr. Donohue as well. You know, it is very convenient to the airport, actually.

Mr. DOW. Yes, it is.

Senator FRANKEN. Mr. Dow, in your testimony you focus on the codification of a two-week or 10-day visa processing standard. If a tourist wants to come to the U.S., they should not have to wait endlessly for a visa appointment. The administration has made major improvements in key countries like China and Brazil, and the JOLT Act builds on that progress. It requires that the State Department submit a strategic plan for bringing down wait times along with an account of the resources required to do that.

Can you tell us what happens to the funds that consular posts collect in visa application fees? The reason I ask this is because I am wondering whether speeding up the process would involve significant new costs or would instead produce a virtuous cycle. More visas processed means more visa fees, which could in turn support the increased capacity at the State Department to meet the demands for the visas.

Mr. DOW. Senator Franken, first, on the funds, as Senator Klobuchar said, each of the officers, consular officers, brings in—they interview 12,000 people a year, so they bring in about \$1.5 to \$2 million each, and fully loaded, maybe there are 300,000 with training, travel, et cetera. So they are a profit center of \$1.2 million. But it does not even count the \$65 million that the people they interview bring to this country, so it is a huge opportunity.

As far as allocation of the funds, the funds go back to the State Department to that area. However, also the Secretary of State has the ability to allocate funds in different places. But if you were running this as a business, you would add those people as quickly as possible. I call it very much like having one cashier at Costco during the holidays. It makes no sense. You could make a lot of money. You can get the people through, and you can focus the resources on finding the bad guys versus the good guys. So it is a huge opportunity and no cost to the U.S. Government.

Senator FRANKEN. Now, you talk also about the barriers that particularly stifle travel from high-growth countries such as Brazil, China, and India. That pretty much tracks what I have heard in Minnesota.

Obviously a lot of our international tourists come from Canada, but to take one example, folks at the Mall of America—have we mentioned that? Oh, yes, we have.

[Laughter.]

Senator FRANKEN. They have identified those same countries as emerging markets for visitors to the Mall. And as I said, shopping is a huge part of the tourism industry in Minnesota, along with recreation. You referred to those visitors as “high spend.” Can you talk a little bit more about the patterns of spending among tourists from those relatively new markets?

Mr. DOW. Those new markets, basically all you have to do is stand at the airport and watch the folks return to China, India, Brazil, et cetera. They have no problem paying the excess baggage fees. They pay a lot because those bags are full of American products. The Brazilian traveler spends up to \$5,000 per person. The average is \$4,000 internationally. The Chinese spend up to \$6,000, so they are among our largest spending.

We had the head of China tourism here and the 31 provincial ministers to a meeting in Orlando. We meet every year with them.

The one thing they want to do is go to an outlet mall. These are people that have very high level, and they said, "We need more time at the malls." So when people go somewhere, the question they ask is: What do you do? Where can you shop? At least my wife does. And where is a good place to eat?

So the amount of money that these people spend, discretionary income, is huge, and a lot of it, a huge portion, goes to the retail community.

Senator FRANKEN. Well, thank you, and I just want to say what a culinary renaissance we have had in the Twin Cities of late.

Mr. DOW. Absolutely.

[Laughter.]

Chairman SCHUMER. Including fish, I presume.

Senator FRANKEN. Oh, the walleye in Minnesota, always available and always fresh.

Chairman SCHUMER. Senator Sessions.

Senator SESSIONS. But no worms, I hope.

[Laughter.]

Senator SESSIONS. Senator Franken, before you leave, just one thing I would like to clarify because it relates to your question and the GAO witness. But the fact is they declare where they are going, but in overall statistical terms, nobody is tracked, nobody has to go where they say they are going to go, nobody is out looking for people who overstay, and there is no mechanism whatsoever as a practical matter. Is there, Ms. Gambler?

MS. GAMBLER. Well, two points, Senator. One, we have said ICE devotes about three percent of its investigative resources to overstay enforcement, and that is relative to the overall resources that they have. And so if you do overstay your authorized periods of admission, unless you act out in some way or are prioritized by ICE as being a threat to national security or public safety, you may go undetected.

Senator SESSIONS. Wait a minute. I will answer the question. Nobody looks, nobody checks, because we do not have the money, resources, or a mechanism. And, in fact, when a person is apprehended by a police officer for a DUI and they are illegally here, if they determine that, nothing is done about that, whether they came in across the land border or flew in and overstayed, because they release them. That is the policy throughout America because ICE and Border Patrol will not come and get them.

So, anyway, the numbers are so large that I just wanted to highlight the fact that we are pretty much on a volunteer honor system. And the best way to tighten it up would be a good biometric system.

Ms. Gambler, Senator Feinstein mentioned biographic and you mentioned biographic and biometric, I believe. Would you describe the difference between a biographic and biometric identifier for people who enter the country?

MS. GAMBLER. Sure. Biographic information is basically name, passport number, country of origin, that kind of information. A biometric indicator for the purposes of an entry-exit system is currently a photograph and fingerprints, and those fingerprints are taken when a person applies for admission at a port of entry.

Senator SESSIONS. One of the requirements of the Visa Waiver Program is that the country have a biometric passport with a biometric identifier; is that correct?

MS. GAMBLER. I believe the requirement for the Visa Waiver Program is that it be a machine-readable passport and that it have electronic information embedded in the passport, an e-passport.

Senator SESSIONS. Well, this has been discussed in years past when we have dealt with this, and nobody wants to confront it, but it is rather simple, it seems to me. If you move, Mr. Donohue and Mr. Dow, to a prompt entry-exit system, the one I would like to see is here you have something like a driver's license; a businessman would not mind paying for this, especially if he is going to come maybe many times to the United States. He puts it in a machine that reads it and goes on through.

Well, the problem is, the obvious problem is anybody could take anybody else's card and put it in the machine. So the way to deal with that is to have a biometric, not a biographic data but a biometric system.

Now, Mr. Ridge, he and I had many conversations on this, and the last thing he said when he left Homeland Security was, "You should use the fingerprint biometric." That is so because our entire criminal justice system, every fugitive is already fingerprinted, we are looking for them, that kind of thing.

So what should happen is a biometric should be in this card, and then if it is a fingerprint and it is your thumbprint, you put your card in the machine and you put your thumb on the machine. It compares the card to your thumb, and if you are the person on the card, you go right on through and it takes just a few seconds. And, indeed, right now police officers in America have in their cars machines that read people's fingerprints. So if they arrest somebody on the highway, they print them, and the computer while he is talking to him finds out they are wanted for murder in South Jersey. And it can be done with immigrants, too, but it is not being done.

Chairman SCHUMER. It is not being done if you pick up somebody DWI? Do they check their immigration status?

MS. GAMBLER. They do if the jurisdiction or the State is enrolled in the Secure Communities program.

Chairman SCHUMER. It is up to the State.

Senator SESSIONS. That is not exactly correct. Ms. Gambler is technically correct, but what happens is that there are two different systems. They are not merged. So you have to run—the police officer has got to run both the immigration system and this one. He does not have the automatic immigration system. He has got to call some ICE person that he does not know. And the fact is they do not do it, because I talked to them. I asked, "What happens if you arrest somebody in your community illegally in the country?" And they say, "Nothing. We let them go." That is the policy throughout America because nobody will come and get them if they detain them.

All right. So has any study been done of a biometric system like this that could expedite and enhance the security of the system?

MS. GAMBLER. Senator, the Department of Homeland Security has tested over the years various pilot programs for trying to cap-

ture biometric information from foreign travelers as they leave the U.S., specifically at airports and seaports. Our understanding is that they are studying the results of those pilots and that they are planning to issue a plan, as we discussed earlier, sometime in the coming months.

Senator SESSIONS. Now, is that going to be biometric, as you understand it?

MS. GAMBLER. That is our understanding. We have not seen the plan. We have not evaluated it.

Senator SESSIONS. Well, that would be a key thing, that it be a biometric and not, as Senator Feinstein expressed concern, biographic because a biographic just—it is probably not worth the effort. It will not be much better than we are today.

With regard to our visa waiver countries, we should insist that they meet the minimum standards that it requires. You said only about half of the countries are in compliance with the information sharing on such things as lost or forged passports and things of that nature. Is that accurate?

MS. GAMBLER. That is right. About half of the countries in the Visa Waiver Program have currently signed the required information-sharing agreements.

Senator SESSIONS. Now, Mr. Donohue, if someone—European, Chinese, Brazilian—business people who travel a lot, don't you think they would be perfectly willing to pay several hundred dollars, if need be, to get a card that will allow them to prompt entry and exit and have a biometric in it so it would expedite their ability to travel? And couldn't this be a breakthrough that really would accelerate their ability to enter and exit the United States?

Mr. DONOHUE. Conceptually, I think that is absolutely true. I think with lots and lots of smaller companies coming back and forth, that might be a question. But the only thing that we would all recognize is to get—the idea we are trying to shorten the time frame, we would have to make sure wherever these cards were being produced, that the time frame would not be impeded by a long period to produce the card. And then, of course, we do have a lot of challenges in the United States. Our own citizens are very reticent to have certain biometric identifiers, and you and I have been on both sides of that issue before.

Senator SESSIONS. Well, give me a break. Do you want to come to the United States? Do you want to come quickly without a hassle? You go down to the embassy a week or two early, get your card, and then for maybe a decade or more, you are able to enter and exit—

MS. GAMBLER. If that was the deal, they would do that. They would do that. You are asking me would this be as smooth as the ice in Minnesota? No. But it would be worth pursuing.

Senator SESSIONS. Thank you.

Chairman SCHUMER. I think the problem with biometric is not any objection, just the cost, the cost of implementing it. In fact, as it is known, I proposed a biometric on the Social Security card to deal with illegal immigration, as Jeff and I have talked about.

Senator SESSIONS. I would just say—do I still have time or am I over?

Mr. DONOHUE. We might even get them on a voter registration card. That would be interesting.

Chairman SCHUMER. They gave you two five minutes because they respect you so much.

Senator SESSIONS. Oh, gosh. I wondered why I still had time. Well, with regard to a country that is not a visa waiver country but has many decent visitors who want to come to America, I think this could help them expedite their entry and exit and reduce the burden on the embassy people they have to repeatedly interview people.

Mr. DONOHUE. Listen, there are a lot of advantages to technology.

Chairman SCHUMER. That is in our bill. That is section eight of our bill.

Just one other point, as I understand it, and then I will go right to Senator Klobuchar. As I understand it, if a police officer picks you up, say, for DUI, DWI, your prints are sent to the FBI. The FBI sends them to two places. They send to the NIC system, which looks at your criminal record. They also send them to the immigration system, and you get two reports—and the local police officer gets two reports back, one on criminal status and one on immigration status. I believe that is the case, but we will check that.

Senator SESSIONS. I am not sure that is the case as a practical matter. But even so, the practical result is that nothing is done about the person who is here illegally because they are not—it is the policy not to do anything.

Chairman SCHUMER. That is a different issue, but I think we—am I right about that, Ms. Gambler?

MS. GAMBLER. I believe that is how the process works. We actually have ongoing work right now reviewing the Secure Communities program. We would be happy to come up and brief you and your staff on it at any time.

Chairman SCHUMER. Great. OK. Maybe you can do that for Senator Sessions and me, and anyone else who wants to come.

MS. GAMBLER. We will be happy to get in touch with the staff.

Chairman SCHUMER. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Senator Schumer. All the times you mentioned Mall of America reminded me of—I wrote a book on the building of our domed stadium when I was in college, and Harvey McKay, who is a rather well-known businessman, had actually commissioned a survey to see how many times they used the word “Minnesota” when we were in the Super Bowl to bolster his argument for the stadium, and that is what this reminds me of, so thank you.

The survey conducted by the Discover America Partnership, Mr. Dow, found that over 50 percent of respondents would not visit the U.S. if the visa process took longer than two weeks. This number jumps to 73 percent when the process takes two to three months. And so what I would like to know is: Do you think this is true? It is a survey. But, also, what have you seen in terms of progress that has been made since Mr. Nides came to the State Department—also a Minnesotan—and we started our work with Senator Blunt to try to push this issue?

Mr. DOW. Well, yes, I do believe those numbers, and the important thing, especially when you talk about the economics, is not to confuse a long line with security. The security is the same when they get there. So I think if we improved those lines, as has happened with Tom Nides, who has done a tremendous job putting focus on that, there is a great opportunity. As Mr. Schumer says, you have traveled the world. When you go to Brazil and watch those people stand out in the sun and the rain, and all their relatives, for three hours just to come here, jump through the hoops of waiting 100 days, can you imagine if it was two weeks, if it was a very welcoming process, what we could get? And we are talking about adding a phenomenal amount of income to the United States. So, yes, I do believe those, and it can be easily improved.

Senator KLOBUCHAR. Now, I understand there has been some improvement in China. Hubert Joly from Carlson Companies has been tracking it. The number is improving, say, us versus England, in terms of the time it takes to get the visas. Do you have any of those numbers or are they verified?

Mr. DOW. Yes, I do. There are five consulates in China. All of the five are under 15 days. They used to be up to 100 days. Now the question is: Is this sustainable? That is why this JOLT bill is so important to codify the two weeks, because you can make everything good for a while by refusing people, et cetera. But to keep those numbers, as the brand USA begins promoting, it is easier to come to the United States as far as time in line, more people want to come. So it is very important to codify and keep that two weeks. They have done a great job, but we need sustainability.

Senator KLOBUCHAR. Mr. Donohue, did you want to add anything?

Mr. DONOHUE. I think this is a very, very good discussion because it had two parts to it. One is how do we bring more people here for tourism and business and for our value, and the value is money, but it is something else, too, and that is, when you bring people to the United States, which we have demonstrated over a long period of time, it builds better relationships with folks all around the world.

The second part of this discussion today, which I think the Chairman sees as an important characteristic of what has to be dealt with here, is the security issue, and I think notwithstanding what is in the bill and what is not in the bill, both Senator Sessions and Senator Feinstein raised a number of issues that we should collectively look at. You never get a benefit without a risk, and we have to marginalize—keep the risk at a marginal level and try and drive the benefit as high as we can. The use of technology and the use of very sound intelligence will help us, and I think we put everybody in the same place and get two benefits for one bill.

Senator KLOBUCHAR. One of the things that is not in the bill that I would still like to continue to explore—I know that you would, Mr. Dow—is the idea of the videoconferencing for some of these visa interviews, this idea that you could do teleconference when you have situations in some countries where people are hours away from the nearest office where they could even get a visa. And I hope that is something that we pursue in the future because I have even heard the argument made that there could be some advan-

tages from a security standpoint because they will have it on video so other people can look at the videos if they want to get a sense of how someone reacts and watch their eye movement or do whatever they want in these interviews. So I hope it is something that we explore going forward.

I just wanted to end by emphasizing that we have been talking a lot about statistics and money, but it is really important to remember that this is about the owner of a small flower shop in Knoxville, or it is the hotel worker who has their first job out of college in Minneapolis and wants to move up at the hotel, or the waitress in New York City who is going to finally get some more tips in because people are coming into the restaurant that would not come in before, and that these are American jobs, and that is why this JOLT Act is so important.

So thank you to all of you.

Mr. DOW. I am in.

Mr. DONOHUE. And they are non-exportable jobs. You cannot outsource these jobs, which is a huge benefit.

Senator KLOBUCHAR. Exactly. Thank you.

Mr. DONOHUE. Thank you for all you do.

Chairman SCHUMER. Thank you, Senator Klobuchar of Minnesota, home of the Mall of Americas.

[Laughter.]

Senator KLOBUCHAR. That sounds like—it is Mall of America, and when you visit, you will see that.

Chairman SCHUMER. Oh, I see. Mall of America. We had hoped to build in Syracuse a mall even larger than the Mall of America with green bonds, but it has not happened yet.

I have some questions, but I am going to submit them for the record since we said we would end this hearing in a timely way. And Senator Feinstein has three more questions, and she will submit them for the record.

Chairman SCHUMER. Senator Sessions, do you have any other questions?

Senator SESSIONS. I do not. And I would submit my statement for the record and a statement from Mr. John Martin of Federation for American Immigration Reform regarding biometric entry-exit.

Chairman SCHUMER. OK.

[The prepared statement of Senator Sessions appears as a submission for the record.]

[The prepared statement of Mr. Martin appears as a submission for the record.]

Senator SESSIONS. Thank you. It has been a very good hearing. Thank you all.

Chairman SCHUMER. It really has. We are trying to move this bill, and the only way we will be able to move it is if it will not be a two-week contentious debate. And I think this hearing has narrowed down those parameters, you know, for people who want to help get this bill done, like Senator Feinstein and Senator Sessions, but who might have a few objections.

Senator SESSIONS. The only thing I would say to our witnesses, Mr. Dow and Mr. Donohue, we should not be here today. You probably know the history. Senator Feinstein does. Since I came here 15 years ago, we have been talking about a biometric entry-exit

system that works. That could have been done years ago. It is still not done, and it is one of the big irritants and has slowed down some of the things you would like to see accomplished.

Chairman SCHUMER. I would agree with you, but I would say we have got to pay for it. It is expensive. It works, but it is expensive. We will get the money back in terms of tourism and everything else.

Mr. DONOHUE. It will bring a lot more travelers. They will leave a lot more money. They will pay a lot more taxes, and then we can afford the system.

Chairman SCHUMER. I believe in a biometric system strongly. It is just you cannot ask for one and then not pay for it. That is why we are here for 15 years. And we get the money back, but, you know, the way our budgeting system works, unfortunately, all the increase in income tax, sales tax, and all those other taxes, which would accrue to the Federal Government and to the States, is never calculated when we do things like this. And it is one of the reasons we, unfortunately, look at things too short term.

Having said that, this hearing was a really good hearing. I agree with Senator Sessions and Senator Klobuchar. It has helped us narrow our differences. And it is my hope that we could move our bill rather quickly, maybe in time for the summer tourism season. I need not tell you how much New York benefits from tourism, and we are booming even with these problems because many of the visa waiver people visit New York, being European. Our tourism industry is booming. We have had a record number of tourists this year. The foreign tourists spend more money than the Americans, you know, the people from other States, and it is really important to our economy.

One other point I would make: It creates jobs particularly at the lower levels. It is the ladders up when people work in hotels or drive the cabs or anything else that gives people the kind of jobs we are really looking for where we have had the highest unemployment. So moving this is really, I think, a national imperative, and I will do everything I can to do it.

I thank Senator Sessions, I thank Senator Klobuchar from Minnesota and the Mall of America, and I thank our witnesses.

Mr. DONOHUE. Thank you very much.

Ms. GAMBLER. Thank you.

[Whereupon, at 11:27 a.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

UPDATED Witness List

Hearing before the  
Senate Committee on the Judiciary  
Subcommittee on Immigration, Refugees and Border Security

On

“The Economic Imperative for Promoting International Travel to the United States”

Tuesday, March 27, 2012  
Dirksen Senate Office Building, Room 226  
10:00 a.m.

### Panel I

The Honorable Barbara A. Mikulski  
United States Senator  
State of Maryland

### Panel II

Thomas J. Donohue  
President and Chief Executive Officer  
United States Chamber of Commerce  
Washington, DC

Roger J. Dow  
President and Chief Executive Officer  
United States Travel Association  
Washington, DC

Rebecca Gambler  
Director, Homeland Security and Justice  
Government Accountability Office  
Washington, DC

PREPARED STATEMENT OF HON. JEFF SESSIONS

**Senator Jeff Sessions  
Opening Statement  
Subcommittee on Immigration, Refugees and Border Security  
“The Economic Imperative for Promoting International Travel to the  
United States”  
March 27, 2012**

Senator Schumer, thank you for chairing this hearing on an issue that is significant to both the economic health and national security of our country. I would like to welcome all of our witnesses. Senator Mikulski, thank you for taking the time this morning to share your testimony with the Subcommittee. I know this issue is as important to you as it is to me and I look forward to hearing your testimony.

For over 25 years, the Visa Waiver Program has facilitated the admission of business and tourist visitors to our country. The Department of Commerce recently reported that more foreign tourists than ever came to the United States last year. These visitors spend money while

they are here, contributing to our economy and creating jobs for the American people. Understandably, that is why the Program enjoys support from both the Chamber of Commerce and the Travel Association.

This program is important and, in general, achieves desirable results. However, those results must not come at the expense of the rule of law or our national security. We can make the Program more expeditious and more effective. It is not working well; and, it can and must be improved.

Citizens of countries participating in the Visa Waiver program enjoy the privilege of easy entry into the United States. If those countries want to continue to enjoy that privilege, their citizens must comply with our law, which requires them to exit the United States at a designated time. That privilege does not allow someone from a Visa

Waiver country to stay here past 90 days, while others comply with the law and return home. Our system ought to be well run and simple and admit those who intend to abide by our laws; it should also identify those who disobey our laws by staying past their authorized period of admission and remove them from the country.

Additionally, no result is desirable if it comes at a cost to our national security. The safety of the American people comes first. Because participants in the Program are not required to apply for a visa, terrorists and criminals believe that utilizing the Program will allow them to avoid scrutiny and enter the country unnoticed. It is well-known that terrorists have entered the country through the Visa Waiver Program, including Zacarias Moussaoui, one of the conspirators behind the 9/11 attacks, Richard Reid, the 'shoe bomber' who attempted to light explosives during a

flight from France to the U.S., and Ahmed Ajaj, an organizer of the 1993 World Trade Center bombing.

So, if we are going to operate this program safely there must be protections in place to ensure that the individuals using the Program do not pose a threat to our national security, and that they will exit the country when their authorized period of stay is over.

Our first line of defense, at the front end, is the criteria for designation of program countries. These requirements are designed to ensure the integrity of the program, and should not be altered without serious consideration.

Designated countries must, among other things, have a low visa refusal rate, include biometric identifiers on their passports, accept the repatriation of their citizens that are deported from the U.S., and enter into a number of

agreements with the U.S., including an agreement to share information about theft and loss of passports.

Each of these requirements addresses specific threats that must be avoided when designating a program country. For example, the requirement that countries agree to share information concerning passport theft and loss is designed to address the incentives for fraud involving passports from visa waiver countries. In 2006, the GAO noted that passports from designated countries are prized travel documents among those attempting to illegally enter the country, and that theft of such passports compromises national security.

Yet, in December, an official from the GAO testified before the House that only half of the 36 designated countries have fully complied with the information sharing requirements of the law. This is totally unacceptable, and

I would like to see it addressed before we consider expanding the program.

The criteria that each program country must meet are not arbitrary or unnecessary. Each is important. Aliens that use the Visa Waiver Program are not inspected by any government official until they are already present at a U.S. port of entry. They have relaxed documentary requirements and are not subject to an in-person interview by a consular official, as are most visitors. For this reason, we must have high standards for designating program countries; and, those standards must be met in every instance.

There is a second, equally important security issue that is involved here, and that is the indisputable need for a fully operational biometric entry and exit system, which will facilitate the identification and apprehension of aliens

who overstay their period of admission. Certainly some pose a substantial threat to national security. Over 36 individuals who overstayed their visas have been convicted of terrorism-related charges since 2001. Amine el-Khalifi, the individual who attempted to bomb the U.S. Capitol in February, was present in the country on an expired visa.

I have heard many excuses concerning the failure to implement a biometric exit system. Today, we have an entry system at over 300 ports, but the entry system does not do us much good if we cannot determine whether individuals entering the country actually leave. Recently, the Department of Homeland Security announced that it would be presenting a plan to get this system to 100% completion. I look forward to the details of that plan. Until then, I have serious doubts about expanding this Program.

With that in mind, I hope Chairman Schumer and my colleagues in the Senate will ensure that the Visa Waiver Program is operated in a way that will promote economic growth, avoid jeopardizing the safety of American citizens, and work smoothly without delays. I would like to thank all of the witnesses again for being here today, and I look forward to hearing your testimony.

## PREPARED STATEMENT OF HON. MIKE LEE

**Statement for the Record****Senator Mike Lee****The Economic Imperative for Promoting International Travel to the United States****March 27, 2012**

As our nation's economy continues to take slow steps towards a full recovery, we must explore every option for new revenue streams. With a few simple changes to our visa policies, international tourism can become an attractive source of increased revenue, which will aid in a speedy economic recovery and result in the creation of millions of jobs.

As this hearing will surely demonstrate, the need for changes to our visa policies is clear. Every day that we continue to exclude tourists from our local sites and businesses, we miss out on millions of dollars of potential revenue. Citizens of foreign countries have the financial ability and the desire to vacation in the U.S., but our policies prevent these people from investing in our economy.

The Jobs Originated through Launching Travel (JOLT) Act attempts to ease the process by which visas may be obtained. The validity period of certain visas is increased, allowing a greater number of visits to the U.S. by those who have been screened and approved, avoiding the hassle of the complicated process of frequent visa renewal. The Act also permits the State Department to charge a fee for processing visas on an expedited basis, much like U.S. citizens can pay to have passports approved more quickly.

In addition to expediting visa processing, the Act also encourages visitors to come during certain times of year and during a certain time of life. The Act authorizes the State Department to lower visa application fees for selected countries during off-peak seasons, creating an incentive for travel all-year round. Also, retiring Canadians are encouraged to spend their time and money here by purchasing a home in the U.S.

Utah has been the destination chosen by millions in search of picturesque landscapes or faith-related tours. The importance of international tourism to the economy of our great state cannot be overemphasized. By easing the process by which visas can be obtained and by creating incentives to come to the U.S., the JOLT Act aims to increase revenues and create jobs in Utah and throughout the United States.

## PREPARED STATEMENTS OF WITNESSES

1

**Hearing before the**  
**Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security**  
**“The Economic Imperative for Promoting International Travel to the United States”**

Tuesday, March 27, 2012

Testimony of Senator Barbara A. Mikulski

I would like to thank Chairman Schumer and Ranking Member Cornyn for holding this important hearing. Tourism creates American jobs and the Senate needs to look at how to allow more tourists to visit the United States while continuing to protect our borders.

I'm here today to discuss section Six of the JOLT Act, which contains language of a bill I introduced with Senator Kirk earlier this year named the Visa Waiver Program Enhanced Security and Reform Act (S. 2046.)

The Visa Waiver Program (VWP) was created in 1986 and the last significant reform of the program was in 2007. The program has promoted tourism but it is first and foremost a national security tool and the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) made the Visa Waiver Program dramatically more secure. However, it has been more than four years since Congress considered that legislation and it is time to revisit, refresh and reform the Visa Waiver Program

The Visa Waiver Program Enhanced Security and Reform Act reforms the Visa Waiver Program in three major ways:

First, it makes overstay rates a requirement for eligibility in the Visa Waiver Program. If more than three percent of visitors from a country overstay their visas, that country isn't eligible. No exceptions.

In the past, DHS has been unable to provide overstay numbers to Congress. If this bill is passed, that will be forced to change as the Secretary of Homeland Security will have to be able to verify the overstay rate before expanding the VWP program.

Second, we create a probation system that sends the message: Get it right or get out. P.L. 110-53 required VWP countries to share information from three types of databases, including information on serious criminals, terrorism suspects and lost and stolen passports.

This legislation would require the Secretary to place a country on probation if she found a country was not in compliance with these agreements. A country on probation would have a year to fix the problems or face expulsion from the program.

We want to expand tourism to America, but we have a responsibility to keep thugs and terrorists out. This bill does both.

Third, the legislation changes the way the visa rejection rate is calculated. Currently, a country's rejection rate is based on the number of applications that are rejected. Instead, this bill would calculate the rate by the number of people rejected.

The rejection rate is a metric to broadly determine if individuals from a certain country represent a significant security or overstay risk to the United States. To get a clearer picture of the risk represented by a specific country, we should look at the number of its citizens rejected for visas, not the number of times risky individuals repeatedly submitted an application.

Having made these security improvements to the program, the Visa Waiver Program Enhanced Security and Reform act returns the authority to the Secretary of Homeland Security to waive in countries that meet the previously stated requirements and have less than a ten percent visa rejection rate.

It is important to note that meeting these metrics only makes a country eligible for the program, it does not guarantee entrance into the Visa Waiver Program. The Secretary of Homeland Security must determine that security risk mitigation measures are sufficient to not compromise the security interests of the U.S. before any country can be added to the Visa Waiver Program.

Senator Feinstein, my friend and a member of this subcommittee has fought tenaciously to make the visa waiver program more secure and much of the improvement in the last decade is the direct result of her determined focus.

Through the Electronic System for Travel Authority (ESTA), we now screen visitors from visa waiver countries before they show up at our border. This legislation requires DHS to study the security risks presented by the small group of travelers who fail to fill out an ESTA before traveling to the United States. I want to thank Senator Feinstein for her work to strengthen this program and my bill and to say I greatly appreciate her support of the Visa Waiver Program Enhanced Security and Reform Act.

While we must use VWP to protect our borders and our country, we should not punish close allies. Unfortunately, that is the reality with our close friend Poland.

Poland has long been a friend to the United States- sending two of its finest heroes, Kosciusko and Pulaski, to fight in the Revolutionary war. Now, Polish citizens fight and die alongside Americans in Afghanistan but cannot visit the U.S. without a visa.

I'm so proud of modern nation Poland has become: A strong nation that stands with the U.S. in the world. A confident nation charting its own economic path. A secure nation and a vital member of the NATO alliance

It's time we allowed them to become a member of the visa waiver program. This legislation fulfills the promise of both the Bush and Obama administrations by making Poland eligible for the visa waiver program. I am committed to getting legislation to the President's desk before the NATO summit in Chicago.

While I have talked mostly about national security and foreign policy, the VWP Enhanced Security and Reform Act is also a jobs bill.

More than 16 million tourists visit from program countries each year, spending \$51 billion in the United States and supporting more than half a million jobs.

When we can securely expand the VWP, it provides a boost to our economy. The last time the VWP expanded, South Koreans gained the ability to travel to America without a visa. In the year following their inclusion, there

was a 49 percent increase in South Korean visitors to the U.S., which resulted in \$789 million in new spending and supported 4,800 new jobs.

If Poland gained entry to VWP and saw a similar increase, the additional visitors to the United States would create \$181 million in new spending and support 1,500 new jobs.

Expanding the visa waiver program is good for American business and good for the economy.

I have worked closely with Senator Kirk on this legislation. Senator Kirk is a naval intelligence officer and has served in Afghanistan. He understands the threats we face and is committed to protecting America. This legislation remains true to that commitment by strengthening our borders while boosting our economy.

Though he cannot be here today, I look forward to his return.

I thank the committee for its time and for its consideration of this important legislation.



100 Years Standing Up for American Enterprise  
**U.S. CHAMBER OF COMMERCE**

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# Statement of the U.S. Chamber of Commerce

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**ON: The Economic Imperative for Promoting International Travel to  
the United States**

**TO: Subcommittee on Immigration, Refugees and Border Security,  
United States Senate Committee on the Judiciary**

**From: Thomas J. Donohue, President and CEO**

**DATE: March 27, 2012**

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The Chamber's mission is to advance human progress through an economic,  
political and social system based on individual freedom,  
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

**The Economic Imperative for Promoting International  
Travel to the United States**

**Testimony of  
Thomas J. Donohue  
President and CEO  
U.S. Chamber of Commerce**

**before the**

**Subcommittee on Immigration, Refugees and Border Security,  
United States Senate Committee on the Judiciary**

**March 27, 2012**

**Introduction**

Chairman Schumer, Ranking Member Cornyn, and distinguished Members of the Subcommittee on Immigration, Refugees and Border Security: thank you for the opportunity to be here today to discuss the critical need for reforms that could increase the number of international business and leisure travelers who visit our country each year and create new American jobs.

With more than 20 million Americans unemployed, underemployed, or having given up looking for jobs, the Chamber's top priority is clearing government impediments and helping the private sector grow the economy and create millions of new jobs without raising taxes or increasing the deficit. The travel and tourism sector is a clear example where relatively easy fixes can bring forth real results.

Over the last year, the Chamber, in collaboration with our colleagues at the U.S. Travel Association and other partners representing the travel industry and the broader business community, has been working to restore the U.S. share of the global overseas travel market to its 2000 level of 17 percent.<sup>1</sup> This could result in the creation of 1.3 million new jobs.<sup>2</sup>

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<sup>1</sup> U.S. Travel Association, *Ready For Takeoff: A Plan to Create 1.3 Million U.S. Jobs by Welcoming Millions of International Travelers* Executive Summary (May 12, 2011), available at <http://www.smartervisapolicy.org/site/documents/VisaReport.pdf>.

<sup>2</sup> *Ibid.*

The travel and tourism industry is a small business-centered sector that employs 7.4 million Americans and generates more than \$700 billion<sup>3</sup> in revenue but it has been held back by self-imposed, bureaucratic barriers that deter additional international travelers.

The Chamber believes that securing the nation is a top priority and has advocated that Congress and the Administration take actions and set policies that make our borders more secure. We are confident the U.S. government can achieve enhanced security goals while at the same time facilitating legitimate international travel to the United States.

### Improving the Visa Process

In 2000, the U.S. captured 17 percent of the global overseas travel market but over the last decade, we have seen a significant drop and in 2010, we only captured 12.4 percent of that same market.<sup>4</sup>

The tragic terrorist attacks on September 11, 2001 forced the U.S. government to implement some fundamental changes in the way that it screens potential visitors. While there is no question that appropriate safeguards are critical to ensuring our nation's security, the Chamber believes that considerations to protect the flow of trade and travel are also essential to ensuring our nation's economic security.<sup>5</sup>

Since September 11, 2001, we have seen clear examples where our visa application system has not been able to meet the demand of potential visitors. An example of this can be seen when looking at the wait times for in-person interviews at U.S. consulates in Brazil and China in 2011. In August of 2011 delays in Brazil averaged 113 days, while in June of 2011 delays in China averaged 48 days. It is not hard to see how a two to three month wait for an appointment can serve as a deterrent to potential travelers.

The Chamber would like to acknowledge the significant efforts that the State Department and the Administration have undertaken in the last few months to help address these wait times. By adding 100 visa adjudicators and extending hours at some posts to process more visa applications in Brazil and China, wait times have been dramatically reduced and now average 5 days in China and 18 days in Brazil. We

<sup>3</sup> U.S. Travel, Power of Travel Fact Sheet, *available* <http://www.poweroftravel.org/>.

<sup>4</sup> U.S. Travel Association *Supra* note 1, at Executive Summary.

<sup>5</sup> "The primary mission of the Department is to—(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland." Title 1, Section 101 of the Homeland Security Act of 2002, Public Law 107–296 (November 25, 2002), *available at* [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)

are also encouraged by the initiatives provided in Executive Order 13597, which would increase non-immigrant visa processing capacity in China and Brazil by 40% in 2012, ensure that 80% of non-immigrant visa applicants are interviewed within three weeks of receipt of application, increase efforts to expand the Visa Waiver Program, and expand reciprocal trusted travel programs for expedited travel (such as the Global Entry program). We hope these actions will serve as a catalyst for greater improvements in facilitating travel to the United States.

Further, visa applicants often spend a great amount of money and time traveling to consulates in large countries like Brazil and China. Currently, these countries have between four and five consular posts dedicated to processing visas. As a result, potential visitors living outside of the cities where consulates are located often have to travel hundreds of miles to obtain an interview. The Chamber urges the State Department to explore mobile interview processing units and visa videoconferencing interviews to provide greater access to visas in China and Brazil.

While we support efforts undertaken so far, it is necessary to emphasize that outbound travel from Brazil and China is expected to increase by 38 percent and 151 percent respectively by 2020.<sup>6</sup> Now is the time to make the necessary changes to ensure that we are not having this same conversation in 18 months. The Jobs Originated through Launching Travel Act (JOLT Act) is a critical step in this process.

#### **Impact on Business Beyond Tourism**

Before I discuss the specifics of the JOLT Act, I want to take a moment to emphasize the impact that these issues have on the needs of the B-1 business traveler. Often when we discuss these barriers to international travel many assume that we are only discussing problems in visa processing for the B-2 leisure traveler, however these issues have a great impact on the B-1 business visitor and American companies. America's trade relationships and economic goals depend a great deal on the ability of foreign customers (and potential ones) to travel to the United States to visit our manufacturing operations, inspect products and services they are considering purchasing, negotiate contracts, and attend trade shows. Additionally, many of our member companies are global in nature and depend on the ability to bring key personnel to the U.S. from their overseas locations to attend meetings, receive training, integrate project work, and interface with U.S. business partners. Technology has been an incredible tool for global commerce, but face-to-face business interactions in the United States are an essential part of American companies' ability to function and compete in a global economy.

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<sup>6</sup> U.S. Travel Association, *supra* note 1, at 17.

The President's Export Council highlighted this very issue in a letter to President Obama on March 11, 2011, which states:

“Efficiently transporting and relocating talent around the world are critical to the survival of U.S. businesses in a world characterized by just-in-time global supply chains and immediate customer and supplier demands. Many American companies utilize business-related visas to facilitate the entry of suppliers, customers, foreign employees, business partners, prospective investors, and conference and trade show participants.

A series of changes in the visa process following 9/11 have added time and uncertainty to the application process and made it more difficult for global companies to grow their business. These policies include increased security checks of certain visa applicants, the collection of biometric data to secure a visa, and the institution of mandatory in-person interviews for most visa applicants. A survey released in 2004 calculated direct and indirect losses to business of over \$30 billion due to visa restrictions. We believe those losses have continued in the intervening period. These policies are costing U.S. jobs by encouraging trade shows to locate meetings abroad and for centers of global research and collaboration to be built offshore.”<sup>7</sup>

For a company that manufactures large machinery, their ability to bring customers to the U.S. is critical. A customer wants to tour the factory, examine the product inside and out, and meet the team that is responsible for production.

We also need to make sure that we can provide service after the sale. Many companies encourage their clients to travel to the U.S. to participate in training programs on their products, but if they cannot get these travelers here in a timely manner, they will have no choice but to relocate their training facilities to other countries.

It is also important to remember that while many of our companies are headquartered in the U.S., most of them are global in nature and have personnel all over the world. Delays in visa processing impact our companies' business objectives by causing managers and professional employees to miss critical meetings and training sessions scheduled in the U.S.

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<sup>7</sup> Letter to the President from the President's Export Council (March 11, 2011), available at [http://trade.gov/pec/docs/PEC\\_Business\\_Visas\\_031111.pdf](http://trade.gov/pec/docs/PEC_Business_Visas_031111.pdf).

When companies decide that they need to meet with their clients, business partners, or foreign staff, they certainly do not have the luxury of planning their trips months in advance to accommodate our visa process. For our companies to stay competitive, we need to make sure that our government is not standing in the way.

Further, delays in visa processing have dire economic consequences upon the trade show industry according to Stephen Hacker, President of the International Association of Exhibitors and Events.<sup>8</sup> In late 2010 the International Association of Exhibitors and Events commissioned the research firm Oxford Economics and found that visa issues prevented 116,000 international visitors from attending U.S. exhibitions. This included 78,400 buyers and 37,900 international exhibitors.<sup>9</sup> These buyers want to come to the United States to purchase farm and construction heavy machinery costing thousands, and in many cases, millions of dollars apiece; they need aerospace components, automobile parts, technology and U.S. service industry know-how. However, today they are buying what they need in other nations as a result of our visa policies and processing delays.

#### **Access to Visas: The JOLT Act**

Since September 11, 2001, the Chamber has offered up a number of suggestions and process improvements we feel could support our objectives without compromising security initiatives and also facilitate business and leisure travel to the United States in support of international commerce.

Even as we welcome the progress of the Administration, the Chamber shares the view along with others in the travel industry, that there remain a number of aspects of B-1/B-2 (business and leisure) visa policy that require further improvements to ensure that the visa application, interview, and review processes are not burdensome to American business and our economy going forward.

The Chamber feels that the JOLT Act would encourage these improvements at the consular level and, as a result, increase international travel to the U.S. The JOLT Act would improve visa processing and expand international travel by:

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<sup>8</sup> Testimony of Stephen Hacker, President of the International Association of Exhibitors and Events before the Senate Committee on Appropriations Subcommittee on Homeland Security Hearing on Challenges for U.S. Air Travel P3 (March 21, 2012), available at <http://www.appropriations.senate.gov/ht-homeland-security.cfm?method=hearings.view&id=5d1a6fad-d4f6-4cc9-8b77-5a5826baa298>

<sup>9</sup> Ibid.

- Modifying agreements with certain countries on a nonreciprocal basis to allow for extended visa validity periods which would reduce the number of times that visitors must renew their visas.
- Providing an option to expedite the processing of B-1 and B-2 business and visitor visas at premium cost. Just as the State Department charges an extra fee to expedite the processing of a U.S. passport, this bill would encourage the State Department to create a pilot program that charges an extra fee to expedite the processing of B-1/B-2 visas. This provision would ensure that applicants requesting premium processing for such visas are interviewed and their visa applications are adjudicated not later than 3 business days after the date of the applicant's request for a visa appointment, absent compelling security concerns. Expedited processing would enable companies to more efficiently move their personnel and clients into the United States to meet business demands.
- Enabling the State Department to create a pilot program to incentivize visitors to submit applications during low-peak seasons. Visa interview wait times typically lengthen during the summer months and around holidays so this bill gives the State Department the flexibility to lower visa application fees for B-1 and B-2 visas during off-peak seasons which will encourage travelers with greater flexibility to apply for visas when demand is lower.
- Establishing a visa processing standard. This bill would mandate the State Department to conduct visa interviews and review applications not later than 15 days after the date on which an applicant requests an appointment. Beginning one year after its enactment, this legislation would require the State Department to move to a 10 day processing standard for all nonimmigrant visas. However, this bill would allow additional processing time for applications subject to security-related checks and clearance. A visa processing standard would provide international travelers more predictability regarding the U.S. visa application process. Additionally, we believe that this enhanced processing standard would provide the State Department sufficient time to adequately interview and review a routine nonimmigrant visa application.
- Encouraging the State Department to use nonimmigrant visa application fees to hire a sufficient number of foreign service officers and limited non-career appointment consular officers to continuously meet and maintain the processing standard. The State Department has already added limited non-career appointment consular officers to countries with long visa wait times such as Brazil and China; however, travelers to the U.S. from these countries

are primed to grow exponentially in the next few years and this legislation would ensure that the State Department plans accordingly so that it can continue to meet the growing demand.

- Expanding the Visa Waiver Program (VWP). The VWP currently offers visa-free travel to 36 partnering countries. A number of additional countries, including Poland and Taiwan, have indicated an interest in joining the program. Additionally, the Chamber believes that Brazil, Chile, and Argentina would be strong candidates for participation. The JOLT Act would allow the Secretary of Homeland Security to designate additional program countries after they have successfully met the necessary security requirements, while also updating the program's eligibility requirements. Expansion of the VWP is the most economically significant step that the U.S. government can take to improve the performance and competitiveness of the visa processing system while maintaining national security. VWP travelers are one of the largest sources of inbound overseas travel to the United States. According to the Department of Commerce, 65 percent of all overseas visitors to the U.S. in 2010 traveled under the VWP.<sup>10</sup> While in the U.S., these visitors spent more than \$61 billion, which supported 433,000 American jobs and generated \$9 billion in government tax revenues.<sup>11</sup> Prior to acceptance into the program, participating countries in the VWP must agree to adopt strict security measures, strong travel document standards, and enhanced information sharing agreements with the United States which makes our nation significantly more secure.

### **Conclusion**

Today we are talking about jobs. We are talking about a way in which we can strengthen our economy just by encouraging more travelers to visit the U.S.

The Chamber believes that the JOLT Act could accomplish many of the goals that would allow the U.S. to recapture its share of the global travel market and will help get Americans back to work. This bill could constitute a sound foundation toward expanding overseas travel to the United States while maintaining national security. We stand ready to work with the Chairman, Members of the Subcommittee, and the rest of Congress to move forward on these important reforms.

The U.S. is the greatest travel destination in the world. Every family that chooses to vacation in our country and every business person that travels here to

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<sup>10</sup> U.S. Travel Association, *supra* note 1, at 43.

<sup>11</sup> *Ibid.*

conduct their business can see that. To bring more international travelers to the United States we need to put the welcome mat back out. That means vigorously promoting what America has to offer and reducing the “hassle factor” of visiting the United States without compromising security. The JOLT Act is a step in the right direction and the U.S. Chamber of Commerce supports its passage.



**TESTIMONY FOR THE RECORD**

**OF**

**ROGER DOW, PRESIDENT AND CEO OF THE U.S. TRAVEL ASSOCIATION**

**ON**

**"THE ECONOMIC IMPERATIVE FOR PROMOTING INTERNATIONAL TRAVEL  
TO THE UNITED STATES"**

**BEFORE THE**

**SENATE JUDICIARY SUBCOMMITTEE ON  
IMMIGRATION, REFUGEES AND BORDER SECURITY**

**MARCH 27, 2012**

**U.S. TRAVEL ASSOCIATION**  
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Chairman Schumer, Ranking Member Cornyn and Members of the Subcommittee: I am pleased to offer testimony on behalf of the U.S. Travel Association (U.S. Travel), the national, non-profit organization representing all sectors of America's travel industry. U.S. Travel's mission is to increase travel to and within the United States. On behalf of our industry, I commend you for today's hearing about the economic imperative for promoting international travel to our shores. Last year, the \$759 billion travel industry generated \$1.8 trillion in total economic output and has the potential to grow – and to grow fast.

Travel generates good, domestic jobs that cannot be outsourced. In 2010, the travel industry supported 14.1 million jobs and was among the top 10 employers in 48 U.S. states and the District of Columbia. For example, travel directly employs more than 411,000 New Yorkers, contributes \$48.2 billion annually to the New York economy and generates \$9.4 billion in state and local tax revenue. Similarly, travel directly employs more than 510,000 Texans, contributes more than \$47 billion to the Texas economy and generates nearly \$8 billion in tax receipts. In every region of America, travel helps pay the salaries of police, firefighters and teachers without creating much new demand for those public services.

Increasing international travel in the United States is effective economic stimulus – and it doesn't cost taxpayers a dime. When tourists travel to and within the United States, they inject new money into the U.S. economy by staying in U.S. hotels, eating at U.S. restaurants, spending in U.S. stores, and visiting U.S. attractions. The resulting revenues are breathtaking; the average Chinese visitor spends upwards of \$6000 per trip. Moreover, overseas business travelers attend dozens of international conferences and trade shows in the U.S., and engage in face-to-face negotiations that yield sales of U.S. commercial goods and services.

Spending by international travelers is a significant U.S. export that contributes positively to America's trade balance – and could do much better. Larry Summers, former director of the National Economic Council, observed recently that “the easiest way to increase exports and close the trade gap is by increasing international travel to the United States.”

But we have not taken the modest steps to realize that enormous potential. The years from 2001 through 2010 were a lost decade for America's travel industry and the U.S. economy. While global international travel soared, America failed to keep pace. Unlike for other exports, the barriers to travel are primarily self-imposed. There are no trade agreements to be negotiated or tariffs to reduce with other countries. The principal barriers to increased travel to and within the United States are the inefficiencies, uncertainties and delays that characterize our visa and entry process.

The opportunity costs of this slippage are staggering. If America had kept pace with the growth in global long-haul international travel between 2000 and 2010, 78 million more travelers would have visited the United States, adding a total of \$606 billion to the U.S. economy that could support more than 467,000 additional U.S. jobs annually over these years.

Looking ahead, international arrivals around the globe are projected to grow 36 percent between 2010 and 2020, resulting in \$2.2 trillion in direct travel spending and 62 million jobs. Over the same period, international travel revenue as a share of global GDP is forecast to increase by ten percent. This presents enormous opportunities. Unlike many other nations, the U.S. has not embraced that opportunity. Instead, we have left that potential revenue on the table.

In May 2011, the U.S. Travel Association released a comprehensive report attributing our lost market share in part to chronic inefficiencies in the U.S. visa system. Our report further documented that these self-imposed trade barriers were particularly stifling visitation from key high-growth and high-spend markets such as Brazil, China and India.

Given this history, it is important to note that real progress has since been made by the U.S. Department of State to increase its capacity to process visa applicants, especially in Brazil and China. Recent initiatives include adding visa adjudicators, extending post hours, expanding facilities or opening new ones, permitting interview waivers where appropriate, and deploying temporary duty officers to manage seasonal spikes in demand. Taken together, these steps will go a long way to reducing the confusion and delay that has plagued the visa process, particularly in countries with high demand for U.S. travel.

Furthermore, we applaud the President for issuing Executive Order 13597 which tasked a new interagency Task Force on Travel and Competitiveness with developing a federal strategy for jump-starting international travel to the United States. In addition to long-range plans, the Executive Order required accelerated steps to generate positive economic impact in 2012; that initial short-term plan is due next month.

In the meantime, there is also a clear role for Congress to help encourage legitimate international travel. In that context, we appreciate your leadership in holding today's hearing and enthusiastically endorse the Jobs Originated through Launching Travel Act, which we believe would address some of the most pressing barriers to inbound business and leisure travel to the United States. The JOLT Act proposes a number of sensible reforms -- such as premium processing fees, incentives for applying during low-demand periods, longer visa validity periods -- to streamline and expedite the visa process. Today I would like to focus on two particularly important provisions of the legislation: the upgraded visa processing standard and reform of the Visa Waiver Program.

#### **Visa Processing Standard**

If the United States regains the 17 percent global travel market share we once held -- and especially if we can match the market power our Western European competitors currently enjoy in the thriving Brazilian, Chinese and Indian travel markets -- it will be because we overcome the current problems in our visa process.

Toward that end, one particular provision of the JOLT Act is absolutely critical: codification of a two-week visa processing standard. Longstanding State Department policy has required visas to be processed within 30 days but historically this policy has been unevenly applied. As a result, overseas applicants for U.S. visas have often faced daunting wait times, sometimes exceeding 100 days. The foreign press has had a field day, literally at our expense, by retelling visa processing horror stories of foreign musicians unable to perform in the U.S., overseas families missing weddings here, and U.S.-based international conferences -- from consumer electronics to thoracic surgeons -- that can no longer count on overseas participation.

These extended delays do nothing to enhance our security. It is not until the visa applicant reaches the front of that line that U.S. security safeguards become relevant. The delay serves only to discourage prospective visitors from choosing the United States as their preferred destination.

This problem was addressed in the President's recent Executive Order, which committed the State Department to processing 80 percent of all non-immigrant visas within 15 days. We are very pleased that the JOLT Act would extend and codify this standard. Upon enactment, the legislation would require scheduling of the visa interview, the key element of the process, within 15 days; and a year later, the bill would require an interview to be held within 10 days. In our view, this is precisely the right approach; it sends a clear message that we remain serious about security safeguards but also seek to encourage and welcome legitimate visitors.

There are other proposals, from new performance metrics to videoconference technology for interviews, that we believe would help reduce the unproductive backlog that discourages potential overseas visitors to the U.S. and instead sends them to competing global destinations. It is our hope that such changes – or even pilot projects to test the effectiveness of such approaches – will be incorporated into the national travel competitiveness strategy required under the recent Executive Order.

#### **Visa Waiver Program**

With one economical step, we could help stimulate the economy while also making the United States and its partners more secure. That is why we are also so supportive of the provision of the JOLT Act that would lead to expansion of the Visa Waiver Program (VWP) which is critical to both our national security and our economic health.

VWP countries are already the largest source of inbound travel to the United States. In 2010, over 17 million visitors to the U.S. – nearly two-thirds of all overseas visitors – arrived through the VWP. While here, they spent more than \$61 billion, supporting 433,000 American jobs along with \$12 billion in payroll, and generating \$9 billion in government tax revenues.

We strongly support the objective in the President's recent Executive Order to accelerate efforts to expand the VWP. We are pleased that the Administration has nominated Taiwan for VWP status. We also believe the Departments of State and Homeland Security should immediately begin bilateral "roadmap" negotiations with countries willing to meet the program's strict security criteria.

Every potential new VWP visitor from Brazil, Poland and other key markets constitutes a walking economic stimulus package. Many have the desire and means to travel to the United States, for business or pleasure. It is just a question of whether our entry process is viewed as welcoming or discouraging, compared with competing destinations around the globe.

Recently, the U.S. Travel Association studied the economic impact of including 11 potential candidates for VWP status: Argentina, Brazil, Bulgaria, Chile, Croatia, Israel, Panama, Poland, Romania, Taiwan and Uruguay. Last year, three million visitors from these countries spent \$14 billion in the United States, directly supporting 104,300 jobs in the American travel industry. In the first year of participation in the VWP, the growth rate of visitation from these countries would nearly double. If that first year were 2012, VWP status would generate an additional 482,000 arrivals and \$5.1 billion more in total revenue. VWP eligibility would quickly drive up arrivals from these 11 nations to four million visitors with an overall economic impact exceeding \$41 billion, supporting 256,000 American jobs. The 32,200 additional U.S. jobs created this year would be eight times more than employment at the largest auto assembly plant in Michigan.

The economic stimulus of VWP expansion is made dramatically more attractive because the VWP is fundamentally a national security program. Congress re-shaped the VWP in 2007 so that it significantly enhances U.S. security. Reflecting the security-enhancing nature of the program, Homeland Security Secretary Napolitano, cited VWP expansion as an example of “efforts to guard against terrorism while enhancing legal travel and trade.” This view is non-partisan: former Homeland Secretary Chertoff characterized the VWP as “a 21st century solution to the problem of managing to keep terrorists out of the United States.

To qualify, VWP countries must adopt stringent security measures, strong travel document standards, and strict information sharing agreements with the U.S. VWP countries must issue International Civil Aviation Organization-compliant electronic passports; report information on all lost and stolen passports to the United States through INTERPOL; and share information on travelers who may pose a terrorist or criminal threat to the U.S. As a result, our government is able to supplement our watch-list database with information from the travelers’ home governments. In addition, each VWP traveler is pre-screened before boarding a flight to the U.S. via the Electronic System for Travel Authorization. In addition, VWP countries must accept return of their criminal aliens, which enhances our public safety. These requirements enable us to better detect, apprehend and limit the movement of terrorists, criminals and other dangerous travelers – and to shift limited visa screening resources to higher risk countries.

That is why we strongly support the objective of the JOLT Act to update the criteria for inclusion of additional VWP countries, with the intent to accelerate VWP expansion. In particular, we applaud the bill’s provision to require an overstay rate of less than 3 percent as a key threshold eligibility criteria; and to restore the authority for the Secretary of Homeland Security to recommend nomination of a new VWP nation if it has visa refusal rates under 10 percent.

The Visa Waiver Program is already critical to homeland security and to international travel security. These reforms will ensure that VWP also helps jump-start our domestic economy.

### **Conclusion**

The global travel market is booming, for both tourism and business travel. As demand rises, especially in key emerging markets, prospective travelers have choices about their global destinations. Interest in visiting the United States remains strong. But potential visitors are discouraged by real and perceived hassles in our visa process that could be eliminated without compromising security.

If the U.S. recaptures our historic share of worldwide overseas travel by 2015 and maintained that share through 2020, it will add nearly \$100 billion to the economy over the next decade and create nearly 700,000 more U.S. jobs. The stakes are high for every American business seeking to host meetings with international customers, for dozens of international trade shows each year whose foreign clients need to enter the U.S. on a deadline, and for tens of thousands of U.S. workers and businesses dependent on a vibrant inbound travel market.

Also at issue is the global image of the United States. As we all know, the most effective ambassadors of American values are ordinary Americans. Overseas visitors form life-long

impressions of American society based on their visits to destinations, large and small, across America. From our national parks to our ballparks to our theme parks, these visitors see the best of the United States. The more they know us, the better they like us – and the likelier they are to return again

Accordingly, we appreciate your ongoing interest in an efficient and secure entry process and will continue to work closely with you to welcome many more leisure and business visitors to the United States.

United States Government Accountability Office

**GAO**

Testimony  
Before the Subcommittee on Immigration,  
Refugees, and Border Security, Committee  
on the Judiciary, U.S. Senate

For Release on Delivery  
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## VISA WAIVER PROGRAM

### Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement

Statement of Rebecca Gambler, Acting Director  
Homeland Security and Justice

and

Michael J. Courts, Acting Director  
International Affairs and Trade





Highlights of GAO-12-599T, a testimony before the Subcommittee on Immigration, Refugees, and Border Security, Committee on the Judiciary, U.S. Senate

### Why GAO Did This Study

DHS manages the Visa Waiver Program, which allows nationals from 36 countries to apply for admission to the United States as temporary visitors for business or pleasure without a visa. From fiscal years 2005 through 2010, over 98 million visitors were admitted to the United States under the Visa Waiver Program. During that time period, the Department of State issued more than 36 million nonimmigrant visas for temporary travel to the country. DHS is also responsible for investigating overstays—unauthorized immigrants who entered the country legally on a temporary basis but then overstayed their authorized periods of admission. The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) required DHS, in consultation with the Department of State, to take steps to enhance the security of the program. This testimony is based on GAO products issued in September 2008; April, May, and December 2011; and selected updates from DHS as of March 2012 on the status of DHS's efforts to implement the 9/11 Act requirements and to address prior GAO recommendations. As requested, it addresses the following issues: (1) challenges in the Visa Waiver Program, and (2) overstay enforcement efforts.

### What GAO Recommends

GAO made recommendations in prior reports for DHS to, among other things, strengthen plans to address certain risks of the Visa Waiver Program and for overstay enforcement efforts. DHS generally concurred with these recommendations and has actions planned or underway to address them.

View GAO-12-599T or key components. For more information, contact Rebecca Gambler at (202) 512-6912 or [gambler@gao.gov](mailto:gambler@gao.gov).

March 27, 2012

## VISA WAIVER PROGRAM

### Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement

### What GAO Found

GAO has reported on actions that the Department of Homeland Security (DHS) has taken to improve the security of the Visa Waiver Program; but, additional risks remain. In May 2011, GAO reported that DHS implemented the Electronic System for Travel Authorization (ESTA), required by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), and took steps to minimize the burden associated with this requirement. DHS requires Visa Waiver Program travelers to submit biographical information and answers to eligibility questions through ESTA prior to travel. DHS made efforts to minimize the burden imposed by this requirement. For example, although travelers formerly filled out a Visa Waiver Program application form for each journey to the United States, ESTA approval is generally valid for 2 years. However, GAO reported that DHS had not fully evaluated security risks related to the small percentage of travelers without verified ESTA approval. In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of Visa Waiver Program passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the program without verified ESTA approval. In May 2011, GAO reported that DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program and recommended that it establish timeframes for regular review. DHS concurred and has since established procedures to review a sample of noncompliant passengers on a quarterly basis. Further, per the 9/11 Act, DHS requires Visa Waiver Program countries to enter into three information-sharing agreements with the United States; however, DHS reported that only about half of the 36 countries have fully complied with this requirement as of March 2012, and many of the signed agreements have not been implemented. DHS, with its interagency partners, established a compliance schedule to finalize these agreements by June 2012. Also, DHS and its interagency partners have developed measures short of termination that could be applied on a case-by-case basis to countries not meeting their compliance date.

In April 2011, GAO reported that federal agencies take actions against a small portion of overstays, but improving planning could strengthen overstay enforcement. Immigration and Customs Enforcement's (ICE) Counterterrorism and Criminal Exploitation Unit (CTCEU) is responsible for overstay enforcement. CTCEU arrests a small portion of the estimated 4 to 5.5 million overstays in the United States because of, among other things, competing priorities, but ICE expressed an intention to augment its overstay enforcement resources. From fiscal years 2006 through 2010, ICE reported devoting about 3 percent of its total field office investigative hours to CTCEU overstay investigations. ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which apprehends and removes aliens subject to removal from the United States. In April 2011, GAO recommended that developing a time frame for assessing needed resources ICE could strengthen ICE's planning efforts. DHS concurred and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.

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Chairman Schumer, Ranking Member Cornyn, and Members of the Subcommittee:

I am pleased to be here today to discuss the Visa Waiver Program, which allows nationals from 36 countries to apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consular office abroad.<sup>1</sup> This statement also addresses activities to identify and take enforcement against overstays—individuals who were admitted to the United States legally on a temporary basis—either with a visa, or in some cases, as a visitor who was allowed to enter without a visa such as under the Visa Waiver Program—but then overstayed their authorized periods of admission.<sup>2</sup> From fiscal years 2005 through 2010, more than 98 million visitors were admitted to the United States under the Visa Waiver Program. During this same time period, the Department of State issued more than 36 million nonimmigrant visas for business travel, pleasure, tourism, medical treatment, or for foreign and cultural exchange student programs, among other things.<sup>3</sup> In addition, the

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<sup>1</sup>To qualify for the Visa Waiver Program, a country must meet various requirements, such as entering into an agreement with the United States to report lost or stolen passports within a strict time limit and in a manner specified in the agreement. Currently, 36 countries participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. Visitors who are also allowed to seek admission without a visa include citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) under certain circumstances.

<sup>2</sup>In-country overstays refer to nonimmigrants who have exceeded their authorized periods of admission and remain in the United States without lawful status, while out-of-country overstays refer to individuals who have departed the United States but who, on the basis of arrival and departure information, stayed beyond their authorized periods of admission.

<sup>3</sup>Temporary visitors to the United States generally are referred to as "nonimmigrants." For a listing and descriptions of nonimmigrant categories, see 8 U.S.C. § 1101(a)(15); see also 8 C.F.R. § 214.1(a)(1)-(2). Generally, nonimmigrants wishing to visit the United States gain permission to apply for admission to the country through one of two ways. First, those eligible for the Visa Waiver Program apply online to establish eligibility to travel under the program prior to departing for the United States (unless they are seeking admission at a land port of entry, in which case eligibility is established at the time of application for admission). Second, those not eligible for the Visa Waiver Program and not otherwise exempt from the visa requirement must visit the U.S. consular office to obtain a visa. Upon arriving at a port of entry, nonimmigrants must undergo inspection by U.S. Customs and Border Protection officers, who determine whether or not they may be admitted into the United States.

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most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays.<sup>4</sup>

The Visa Waiver Program was established in 1986 to promote the effective use of government resources and facilitate international travel without jeopardizing U.S. security.<sup>5</sup> We have reported that the program was designed to boost international business and tourism, and allow the Department of State to shift its consular resources to posts with higher-risk visa applicants.<sup>6</sup> However, we have also reported that the program has inherent risks.<sup>7</sup> The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) called for DHS, which implements the Visa Waiver Program, to take steps to enhance its security.<sup>8</sup> Among the mandated changes were (1) the implementation of an electronic system for travel authorization designed to determine in advance of travel the eligibility of Visa Waiver Program applicants to travel to the United States under the program, (2) a requirement that all Visa Waiver Program countries enter into agreements to share information with the United States on whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States, and (3) a requirement that all Visa Waiver Program countries enter into agreements with the United States to report or make available lost and stolen passport data to the United States. Prior to these changes, the Enhanced Border Security and Visa Entry Reform Act of 2002 mandated that DHS evaluate and report on the security risks posed by

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<sup>4</sup>Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

<sup>5</sup>The Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 100 Stat. 3359) created the Visa Waiver Program as a pilot in 1986. It became a permanent program in 2000 under the Visa Waiver Permanent Program Act (Pub. L. No. 106-396, 114 Stat. 1637 (2000)).

<sup>6</sup>GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, GAO-08-967 (Washington, D.C.: Sept. 15, 2008).

<sup>7</sup>GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, GAO-06-854 (Washington, D.C.: July 28, 2006).

<sup>8</sup>Pub. L. No. 110-53, § 711(d), 121 Stat. 266, 341-45.

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each Visa Waiver Program country's participation in the program at least once every 2 years.<sup>9</sup>

DHS has certain responsibilities for implementing the Visa Waiver Program, as well as for overstay enforcement efforts. Overall, DHS is responsible for establishing visa policy, including policy for the Visa Waiver Program. Within DHS, U.S. Customs and Border Protection (CBP) is tasked with, among other duties, inspecting all people applying for entry to the United States to determine their admissibility to the country and screening Visa Waiver Program applicants to determine their eligibility to travel to the United States under the program. DHS's U.S. Immigration and Customs Enforcement (ICE) is the lead agency responsible for enforcing immigration law in the interior of the United States and is primarily responsible for overstay enforcement. Within ICE, the Counterterrorism and Criminal Exploitation Unit (CTCEU) is primarily responsible for overstay investigations, including investigations of Visa Waiver Program participants who overstay their authorized periods of admission. Further, the Department of State is responsible for adjudicating visas for foreign nationals seeking admission to the United States.

Since September 11, 2001, GAO has published 5 reports on the Visa Waiver Program. The reports have examined, for example, DHS's assessment of security risks associated with the program and proposed changes to the program. As requested, my testimony will cover the following key issues: (1) challenges and weaknesses in the Visa Waiver Program; and (2) efforts to take enforcement action against overstays and reported results. This testimony is based on our prior reports on the Visa Waiver Program, and overstay enforcement efforts published in September 2008 and May 2011, and April 2011, respectively.<sup>10</sup> It is also based on our December 2011 testimony on these issues.<sup>11</sup> For these

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<sup>9</sup> Pub. L. No. 107-173, § 307(a), 116 Stat. 543, 556.

<sup>10</sup> GAO-08-967; GAO, *Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks*, GAO-11-335 (Washington, D.C.: May 5, 2011); and *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs*, GAO-11-411 (Washington, D.C.: Apr. 15, 2011).

<sup>11</sup> GAO, *Visa Waiver Program: Additional Actions Needed to Address Risks and Strengthen Overstay Enforcement*, GAO-12-287T (Washington, D.C.: Dec. 7, 2011).

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reports, we examined program documentation, such as standard operating procedures, guidance for investigations, and implementation plans. We also interviewed DHS and Department of State officials. Additional details on the scope and methodology are available in our published reports. In addition, this statement contains updates to selected information from these reports on, for example, the number of signed information-sharing agreements. For these updates, we examined documentation from DHS as of March 2012. All of our work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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### Further Steps Are Needed to Mitigate Risks in the Visa Waiver Program

In May 2011, we reported that DHS implemented the Electronic System for Travel Authorization (ESTA) to meet a statutory requirement intended to enhance Visa Waiver Program security and took steps to minimize the burden on travelers to the United States added by the new requirement.<sup>12</sup> However, DHS had not fully evaluated security risks related to the small percentage of Visa Waiver Program travelers without verified ESTA approval. DHS developed ESTA to collect passenger data and complete security checks on the data before passengers board a U.S. bound carrier. DHS requires applicants for Visa Waiver Program travel to submit biographical information and answers to eligibility questions through ESTA prior to travel. Travelers whose ESTA applications are denied must apply for a U.S. visa for travel to the United States. In developing and implementing ESTA, DHS took several steps to minimize the burden associated with ESTA use. For example, ESTA reduced the requirement that passengers provide biographical information to DHS officials from every trip to once every 2 years. In addition, because of ESTA, DHS informed passengers who do not qualify for Visa Waiver Program travel that they need to apply for a visa before they travel to the United States. Moreover, most travel industry officials we interviewed in six Visa Waiver Program countries praised DHS's widespread ESTA outreach efforts,

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<sup>12</sup>See 8 U.S.C. § 1187(h)(3).

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reasonable implementation time frames, and responsiveness to feedback, but expressed dissatisfaction over ESTA fees paid by ESTA applicants.<sup>13</sup>

In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of the Visa Waiver Program passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the Visa Waiver Program without verified ESTA approval. In addition, about 650 of these passengers traveled to the United States with a denied ESTA. As we reported in May 2011, DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program. At the time of our report, DHS officials told us that there was no official agency plan for monitoring and oversight of ESTA. DHS tracked some data on passengers that traveled under the Visa Waiver Program without verified ESTA approval but did not track other data that would help officials know the extent to which noncompliance poses a risk to the program. Without a completed analysis of noncompliance with ESTA requirements, DHS was unable to determine the level of risk that noncompliance poses to Visa Waiver Program security and to identify improvements needed to minimize noncompliance. In addition, without analysis of data on travelers who were admitted to the United States without a visa after being denied by ESTA, DHS could not determine the extent to which ESTA was accurately identifying individuals who should be denied travel under the program. In May 2011, we recommended that DHS establish time frames for the regular review and documentation of cases of Visa Waiver Program passengers traveling to a U.S. port of entry without verified ESTA approval. DHS concurred with our recommendation and has established procedures to review quarterly a sample of noncompliant passengers to evaluate potential security risks associated with the ESTA program.

Further, in May 2011, we reported that to meet certain statutory requirements, DHS requires that Visa Waiver Program countries enter into three information-sharing agreements with the United States; however, only about half of the countries had fully complied with this requirement and many of the signed agreements have not been

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<sup>13</sup>In September 2010, the U.S. government began to charge ESTA applicants a \$14 fee when they applied for ESTA approval, including \$10 for the creation of a corporation to promote travel to the United States and \$4 to fund ESTA operations.

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implemented.<sup>14</sup> The 9/11 Act specifies that each Visa Waiver Program country must enter into agreements with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States and to report lost or stolen passports. DHS, in consultation with other agencies, has determined that Visa Waiver Program countries can satisfy the requirement by entering into the following three bilateral agreements: (1) Homeland Security Presidential Directive (HSPD) 6, (2) Preventing and Combating Serious Crime (PCSC), and (3) Lost and Stolen Passports.<sup>15</sup>

- HSPD-6 agreements establish a procedure between the United States and partner countries to share watchlist information about known or suspected terrorists. As of January 2011, 19 of the 36 Visa Waiver Program countries had signed HSPD-6 agreements, and 13 had begun sharing information according to the signed agreements. Noting that the federal government continues to negotiate HSPD-6 agreements with Visa Waiver Program countries, officials cited concerns regarding privacy and data protection expressed by many Visa Waiver Program countries as reasons for the delayed progress. According to these officials, in some cases, domestic laws of Visa Waiver Program countries limit their ability to commit to sharing some information, thereby complicating and slowing the negotiation process. In March 2012, DHS reported that 24 of the 36 Visa Waiver Program countries have signed HSPD-6 agreements.
- The PCSC agreements establish the framework for law enforcement cooperation by providing each party automated access to the other's criminal databases that contain biographical, biometric, and criminal history data. As of January 2011, 18 of the 36 Visa Waiver Program countries had met the PCSC information-sharing agreement requirement, but the networking modifications and system upgrades required to enable this information sharing to take place have not been completed for any Visa Waiver Program countries. According to officials, DHS is frequently not in a position to influence the speed of PCSC implementation for a number of reasons. For example,

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<sup>14</sup>See 8 U.S.C. § 1187(c)(2)(D), (F).

<sup>15</sup>For the HSPD-6 and PCSC agreements, DHS made the determination in consultation with State and Justice. For the Lost and Stolen Passports agreement, DHS made the determination in consultation with State.

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according to DHS officials, some Visa Waiver Program countries require parliamentary ratification before implementation can begin. Also, U.S. and partner country officials must develop a common information technology architecture to allow queries between databases. DHS reported in March 2012 that the number of Visa Waiver Program countries meeting the PCSC requirement had risen to 23.

- The 9/11 Act requires Visa Waiver Program countries to enter into an agreement with the United States to report, or make available to the United States through Interpol or other means as designated by the Secretary of Homeland Security, information about the theft or loss of passports. As of March 2012, all Visa Waiver Program countries were sharing lost and stolen passport information with the United States, and all of the countries had entered into Lost and Stolen Passport agreements, according to DHS.

DHS, with the support of interagency partners, established a compliance schedule requiring the last of the Visa Waiver Program countries to finalize these agreements by June 2012. Although termination from the Visa Waiver Program is one potential consequence for countries not complying with the information-sharing agreement requirement, U.S. officials have described it as undesirable. DHS, in coordination with the Department of State and the Department of Justice, developed measures short of termination that could be applied to countries not meeting their compliance date. Specifically, DHS helped write a classified strategy document that outlines a contingency plan listing possible measures short of termination from the Visa Waiver Program that may be taken if a country does not meet its specified compliance date for entering into information-sharing agreements. The strategy document provides steps that would need to be taken prior to selecting and implementing one of these measures. According to officials, DHS plans to decide which measures to apply on a case-by-case basis.

In addition, as of May 2011, DHS had not completed half of the most recent biennial reports on Visa Waiver Program countries' security risks in a timely manner. In 2002, the Enhanced Border Security and Visa Entry Reform Act mandated that, at least once every 2 years, DHS evaluate the effect of each country's continued participation in the program on the security, law enforcement, and immigration interests of the United

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States.<sup>16</sup> According to officials, DHS assesses, among other things, counterterrorism capabilities and immigration programs. However, DHS had not completed the latest biennial reports for 18 of the 36 Visa Waiver Program countries in a timely manner, and over half of these reports are more than 1 year overdue. Further, in the case of 2 countries, DHS was unable to demonstrate that it had completed reports in the last 4 years. DHS cited a number of reasons for the reporting delays. For example, DHS officials said that they intentionally delayed report completion because they frequently did not receive mandated intelligence assessments in a timely manner and needed to review these before completing Visa Waiver Program country biennial reports. We noted that DHS had not consistently submitted these reports in a timely matter since the legal requirement was made biennial in 2002, and recommended that DHS take steps to address delays in the biennial country review process so that the mandated country reports can be completed on time. DHS concurred with our recommendation and, in March 2012, reported that the Visa Waiver Program Office had implemented a reporting process and schedule to address delays in completing the biennial reviews and associated reports.

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### Federal Agencies Take Actions against a Small Portion of the Estimated Overstay Population

ICE Investigates Few In-Country Overstays, but Its Efforts Could Benefit from Improved Planning

As we reported in April 2011, ICE CTCEU investigates and arrests a small portion of the estimated in-country overstay population due to, among other things, ICE's competing priorities; however, these efforts could be enhanced by improved planning and performance management. CTCEU, the primary federal entity responsible for taking enforcement action to address in-country overstays, identifies leads for overstay cases; takes steps to verify the accuracy of the leads it identifies by, for example, checking leads against multiple databases; and prioritizes leads to focus on those the unit identifies as being most likely to pose a threat to

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<sup>16</sup>See Pub. L. No. 107-173, § 307(a)(2), 116 Stat. 543, 556.

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national security or public safety. CTCEU then requires field offices to initiate investigations on all priority, high-risk leads it identifies.

According to CTCEU data, as of October 2010, ICE field offices had closed about 34,700 overstay investigations that CTCEU headquarters assigned to them from fiscal year 2004 through 2010.<sup>17</sup> These cases resulted in approximately 8,100 arrests (about 23 percent of the 34,700 investigations), relative to a total estimated overstay population of 4 million to 5.5 million.<sup>18</sup> About 26,700 of those investigations (or 77 percent) resulted in one of three outcomes.<sup>19</sup> In 9,900 investigations, evidence was uncovered indicating that the suspected overstay had departed the United States. In 8,600 investigations, evidence was uncovered indicating that the subject of the investigation was in-status (e.g., the subject filed a timely application with the United States Citizenship and Immigration Services (USCIS) to change his or her status and/or extend his or her authorized period of admission in the United States). Finally, in 8,200 investigations, CTCEU investigators exhausted all investigative leads and could not locate the suspected overstay.<sup>20</sup> Of the approximately 34,700 overstay investigations assigned by CTCEU headquarters that ICE field offices closed from fiscal year 2004 through

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<sup>17</sup>CTCEU also investigates suspected Visa Waiver Program overstays, out-of-status students and violators of the National Security Entry-Exit Registration System, a program that requires certain visitors or nonimmigrants to register with DHS for national security reasons. For the purpose of this discussion, these investigations are referred to collectively as "overstay" investigations. In addition to CTCEU investigative efforts, other ICE programs within Enforcement and Removal Operations may take enforcement action against overstays, though none of these programs solely or directly focus on overstay enforcement. For example, if the Enforcement and Removal Operations Criminal Alien Program identifies a criminal alien who poses a threat to public safety and is also an overstay, the program may detain and remove that criminal alien from the United States.

<sup>18</sup>The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays. Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

<sup>19</sup>Investigations resulting and not resulting in arrest do not total 34,700 due to rounding.

<sup>20</sup>With regard to the second outcome, that the subject is found to be in-status, under certain circumstances, an application for extension or change of status can temporarily prevent a visitor's presence in the United States from being categorized as unauthorized. See Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the [Immigration and Nationality] Act," memorandum, Washington, D.C., May 6, 2009.

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2010, ICE officials attributed the significant portion of overstay cases that resulted in a departure finding, in-status finding, or with all leads being exhausted generally to difficulties associated with locating suspected overstays and the timeliness and completeness of data in DHS's systems used to identify overstays.

Further, ICE reported allocating a small percentage of its resources in terms of investigative work hours to overstay investigations since fiscal year 2006, but the agency expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. Specifically, from fiscal years 2006 through 2010, ICE reported devoting from 3.1 to 3.4 percent of its total field office investigative hours to CTCEU overstay investigations. ICE attributed the small percentage of investigative resources it reported allocating to overstay enforcement efforts primarily to competing enforcement priorities. According to the ICE Assistant Secretary, ICE has resources to remove 400,000 aliens per year, or less than 4 percent of the estimated removable alien population in the United States. In June 2010, the Assistant Secretary stated that ICE must prioritize the use of its resources to ensure that its efforts to remove aliens reflect the agency's highest priorities, namely nonimmigrants, including suspected overstays, who are identified as high risk in terms of being most likely to pose a risk to national security or public safety. As a result, ICE dedicated its limited resources to addressing overstays it identified as most likely to pose a potential threat to national security or public safety and did not generally allocate resources to address suspected overstays that it assessed as non-criminal and low risk. ICE indicated it may allocate more resources to overstay enforcement efforts moving forward, and that it planned to focus primarily on suspected overstays who ICE has identified as high risk or who recently overstayed their authorized periods of admission.

ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which has responsibility for apprehending and removing aliens who do not have lawful immigration status from the United States. However, ERO did not plan to assume this responsibility until ICE assessed the funding and resources doing so would require. ICE had not established a time frame for completing this assessment. We reported in April 2011 that by developing such a time frame and utilizing the assessment findings, as appropriate, ICE could strengthen its planning efforts and be better positioned to hold staff accountable for completing the assessment. We recommended that ICE establish a target time frame for assessing the funding and resources ERO would require in order to

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assume responsibility for civil overstay enforcement and use the results of that assessment. DHS officials agreed with our recommendation and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.

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**More Reliable, Accessible  
Data Could Improve DHS's  
Efforts to Identify and  
Share Information on  
Overstays**

DHS has not yet implemented a comprehensive biometric system to match available information provided by foreign nationals upon their arrival and departure from the United States. In 2002, DHS initiated the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) to develop a comprehensive entry and exit system to collect biometric data from aliens traveling through U.S. ports of entry. In 2004, US-VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States. In August 2007, we reported that while US-VISIT biometric entry capabilities were operating at air, sea, and land ports of entry, exit capabilities were not, and that DHS did not have a comprehensive plan or a complete schedule for biometric exit implementation.<sup>21</sup> Moreover, in November 2009, we reported that DHS had not adopted an integrated approach to scheduling, executing, and tracking the work that needed to be accomplished to deliver a comprehensive exit solution as part of the US-VISIT program. We concluded that, without a master schedule that was integrated and derived in accordance with relevant guidance, DHS could not reliably commit to when and how it would deliver a comprehensive exit solution or adequately monitor and manage its progress toward this end. We recommended that DHS ensure that an integrated master schedule be developed and maintained. DHS concurred and reported, as of July 2011, that the documentation of schedule practices and procedures was ongoing, and that an updated schedule standard, management plan, and management process that are compliant with schedule guidelines were under review.

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<sup>21</sup>The purpose of US-VISIT is to provide biometric (e.g., fingerprint) identification—through the collection, maintenance, and sharing of biometric and selected biographic data—to authorized DHS and other federal agencies. See GAO, *Homeland Security: U.S. Visitor and Immigrant Status Program's Longstanding Lack of Strategic Direction and Management Controls Needs to Be Addressed*, GAO-07-1065 (Washington, D.C.: Aug. 31, 2007).

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In the absence of a comprehensive biometric entry and exit system for identifying and tracking overstays, US-VISIT and CTCEU primarily analyze biographic entry and exit data collected at land, air, and sea ports of entry to identify overstays. In April 2011, we reported that DHS's efforts to identify and report on visa overstays were hindered by unreliable data. Specifically, CBP does not inspect travelers exiting the United States through land ports of entry, including collecting their biometric information, and CBP did not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. Nonimmigrants departing the United States through land ports of entry turn in their forms on their own initiative. According to CBP officials, at some ports of entry, CBP provides a box for nonimmigrants to drop off their forms, while at other ports of entry departing nonimmigrants may park their cars, enter the port of entry facility, and provide their forms to a CBP officer. These forms contain information, such as arrival and departure dates, used by DHS to identify overstays. If the benefits outweigh the costs, a standard mechanism to provide nonimmigrants with a way to turn in their arrival and departure forms could help DHS obtain more complete and reliable departure data for identifying overstays. We recommended that the Commissioner of CBP analyze the costs and benefits of developing a standard mechanism for collecting these forms at land ports of entry, and do so to the extent that benefits outweigh the costs. CBP agreed with our recommendation and in September 2011 stated that it planned to complete a cost-effective independent evaluation of possible solutions and formulate an action plan based on the evaluation for implementation by March 2012.

Further, we previously reported on weaknesses in DHS processes for collecting departure data, and how these weaknesses impact the determination of overstay rates. The 9/11 Act required that DHS certify that a system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports in order for DHS to expand the Visa Waiver Program.<sup>22</sup> In September 2008, we reported that DHS's methodology for comparing arrivals and departures for the purpose of departure verification would not inform overall or country-specific overstay rates because DHS's methodology did not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of

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<sup>22</sup>8 U.S.C. § 1187(c)(8).

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admission.<sup>23</sup> Rather, DHS's methodology started with departure records and matched them to arrival records. As a result, DHS's methodology counted overstays who left the country, but did not identify overstays who have not departed the United States and appear to have no intention of leaving. We recommended that DHS explore cost-effective actions necessary to further improve the reliability of overstay data. DHS concurred and reported that it is taking steps to improve the accuracy and reliability of the overstay data, by efforts such as continuing to audit carrier performance and working with airlines to improve the accuracy and completeness of data collection. Moreover, by statute, DHS is required to submit an annual report to Congress providing numerical estimates of the number of aliens from each country in each nonimmigrant classification who overstayed an authorized period of admission that expired during the fiscal year prior to the year for which the report is made.<sup>24</sup> DHS officials stated that the department has not provided Congress annual overstay estimates regularly since 1994 because officials do not have sufficient confidence in the quality of the department's overstay data—which is maintained and generated by US-VISIT. As a result, DHS officials stated that the department cannot reliably report overstay rates in accordance with the statute.

In addition, in April 2011 we reported that DHS took several steps to provide its component entities and other federal agencies with information to identify and take enforcement action on overstays, including creating biometric and biographic lookouts—or electronic alerts—on the records of overstay subjects that are recorded in databases. However, DHS did not create lookouts for the following two categories of overstays: (1) temporary visitors who were admitted to the United States using nonimmigrant business and pleasure visas and subsequently overstayed by 90 days or less; and (2) suspected in-country overstays who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety. Broadening the scope of electronic lookouts in federal information systems could enhance overstay information sharing. In April 2011, we recommended that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Under Secretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and

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<sup>23</sup>GAO-08-967.

<sup>24</sup>8 U.S.C. § 1376(b).

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Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for these two categories of overstays. Agency officials agreed with our recommendation and have actions under way to address it. For example, agency officials stated that they have met to assess the costs and benefits of creating lookouts for those categories of overstays.

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Chairman Schumer, Ranking Member Cornyn, and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have.

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### **Contacts and Acknowledgments**

For further information regarding this testimony, please contact Rebecca Gambler at (202) 512-6912 or [gablerr@gao.gov](mailto:gablerr@gao.gov) or Michael J. Courts at (202) 512-8980 or [courtsm@gao.gov](mailto:courtsm@gao.gov). In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Kathryn H. Bernet, Assistant Director; Anthony Moran, Assistant Director; Frances Cook; Nanette Barton; and, Wendy Johnson.

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## Related GAO Products

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*Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks.* GAO-11-335. (Washington, D.C., May 5, 2011).

*Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs.* GAO-11-411. (Washington, D.C., April 15, 2011).

*Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks.* GAO-08-967. (Washington, D.C., Sep 15, 2008).

*Border Security: State Department Should Plan for Potentially Significant Staffing and Facilities Shortfalls Caused by Changes in the Visa Waiver Program.* GAO-08-623. (Washington, D.C., May 22, 2008).

*Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program.* GAO-06-854. (Washington, D.C., Jul 28, 2006).

*Overstay Tracking: A Key Component of Homeland Security and a Layered Defense.* GAO-04-82. (Washington, D.C., May 21, 2004).

*Border Security: Implications of Eliminating the Visa Waiver Program.* GAO-03-38. (Washington, D.C., Nov 22, 2002).

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QUESTIONS FOR THOMAS DONOHUE SUBMITTED BY SENATOR DIANNE FEINSTEIN

Senator Dianne Feinstein  
Written Questions to Tom Donohue, U.S. Chamber of Commerce

One section of the JOLT Act that your organizations have endorsed would encourage the State Department to use visa application fees to hire additional staff to process visa applications within a shorter time period.

- *To your knowledge, are the current visa application fees collected by the State Department enough to sufficiently cover the hiring of additional visa adjudicators?*
- *Has the State Department or your organization conducted an assessment to determine if visa processing fees would need to be increased in order for the State Department to hire additional staff?*

QUESTIONS FOR ROGER DOW SUBMITTED BY SENATOR DIANNE FEINSTEIN

Senator Dianne Feinstein  
Written Questions to Roger Dow, U.S. Travel Association

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- *Has the State Department or your organization conducted an assessment to determine if visa processing fees would need to be increased in order for the State Department to hire additional staff?*

QUESTIONS FOR REBECCA GAMBLER SUBMITTED BY SENATOR DIANNE FEINSTEIN

Senator Dianne Feinstein  
Written Questions to Roger Dow, U.S. Travel Association

One section of the JOLT Act that your organizations have endorsed would encourage the State Department to use visa application fees to hire additional staff to process visa applications within a shorter time period.

- *To your knowledge, are the current visa application fees collected by the State Department enough to sufficiently cover the hiring of additional visa adjudicators?*
- *Has the State Department or your organization conducted an assessment to determine if visa processing fees would need to be increased in order for the State Department to hire additional staff?*

Senator Dianne Feinstein  
Written Questions to Rebecca Gambler  
Homeland Security Director, GAO

According to a 2011 GAO report, DHS has produced a compliance schedule that requires all Visa Waiver Program countries to enter into information-sharing agreements by June 2012.

- *Has GAO determined if the Department of Homeland Security is on track to meet this deadline?*
- *If this deadline is not met, what measures should be taken by DHS to ensure a country is in compliance with all Visa Waiver Program requirements?*

According to a 2011 GAO report, in 2010, air and sea carriers verified Electronic System for Travel Authorization (ESTA) approvals for 98 percent of VWP passengers prior to boarding.

GAO found that DHS has not fully analyzed the potential risks posed by the 2 percent of cases where carriers boarded passengers without verifying their ESTA approvals.

- *How has DHS responded to this finding and worked to mitigate this potential security risk?*

A 2011 GAO report found that DHS has not completed half of the most recent biennial reports on each country's participation in the Visa Waiver Program. In 2007, DHS established protocols for the timely completion of these reports. Nevertheless, DHS remains unable to meet report deadlines..

- *What steps should DHS take to comply with the biennial reporting requirement?*

QUESTIONS FOR THOMAS DONOHUE SUBMITTED BY SENATOR MIKE LEE

Questions for the Record

Senator Mike Lee

"The Economic Imperative for Promoting International Travel to the United States"

March 28, 2012

Thomas J. Donohue

1. How are the funds received from application fees to be used?
  - a. To meet the requirements of this bill, more employees must be hired. It is apparent that this requirement will raise costs, yet it will allow the department to review more visa applications for usually higher fees. How will the new revenues compensate for the new costs?

QUESTIONS FOR ROGER DOW SUBMITTED BY SENATOR MIKE LEE

Questions for the Record

Senator Mike Lee

"The Economic Imperative for Promoting International Travel to the United States"

March 28, 2012

Roger J. Dow

1. This bill will bolster the United States' share in the international travel market. I would like to know if there is a direct correlation between international travel and interstate travel - do international tourists or business travelers tend to travel from state to state while they are visiting the United States?
2. Section 2 of the JOLT Act allows the Secretary of State to lengthen the visa validity period.
  - a. Does the average foreign tourist visit the United States frequently enough to find this useful?
  - b. How will this provision affect the funds received from application fees?
    - i. How are these funds to be used?

QUESTIONS FOR REBECCA GAMBLER SUBMITTED BY SENATOR MIKE LEE

Questions for the Record  
Senator Mike Lee  
"The Economic Imperative for Promoting International Travel to the United States"  
March 28, 2012

Rebecca Gambler

1. As I understand, DHS records an address from visa holders and generate lists of those visa holders that do not have a recorded departure.
  - a. From there, what happens to those who overstay their visa?
  - b. What do you believe can be done to create and enforce an efficient exit system?
2. Do you believe a country's visa refusal rate is an adequate indicator of the country's threat to U.S. national security?
3. Will the visa expediting process for B-1 and B-2 visas affect national security?

## QUESTIONS FOR REBECCA GAMBLER SUBMITTED BY SENATOR JEFF SESSIONS

**Senator Jeff Sessions**  
**Questions for the Record**  
**Rebecca Gambler, Government Accountability Office**

1. Can the Department of Homeland Security currently reliably identify aliens who overstay their authorized period of admission?
  - a. Why is it important for the Department of Homeland Security to be able to reliably identify aliens who overstay their authorized period of admission?
  - b. Would a system that collects the biometric information of aliens who exit the country aid the Department of Homeland Security in identifying aliens who overstay their period of admission?
  - c. What obstacles are there to gathering reliable biographic data on aliens as they exit the country?
  - d. What obstacles are there to gathering reliable biometric information on aliens as they exit the country?
  - e. Why would the collection of biometric information from aliens exiting the country provide a more reliable way to identify aliens who overstay their period of admission than the collection of biographic information?
  - f. What would it cost the federal government to implement a system to collect the biometric information of every alien that leaves the country at air and sea ports of entry?
2. It has been estimated that 40% of aliens who enter the country legally overstay their authorized period of admission. It also has been reported that less than 3% of Polish nationals overstay their authorized period of admission. In the absence of a biometric system that records when an alien exits the country, how are these estimates of overstay rates made?
3. Currently, Visa Waiver countries must have a low rate of refusal for all nonimmigrant visa applicants. The law gives the Secretary the authority to waive this requirement, but not until we are capable of recording the entry and exit of 97% of all foreign visitors.
  - a. Why is it important that Visa Waiver countries have a low rate of refusal?
  - b. What are the risks of waiving the refusal rate requirement when there is no system for recording the biometric information of aliens who exit the country?
4. You testified that the Department of Homeland Security is supposed to evaluate the continued participation of each Visa Waiver country with respect to the security, law

enforcement, and immigration interests of the U.S. and report this information to Congress every two years. You also testified that the Department of Homeland Security has not completed half of the most recent biennial reports.

- a. Aside from these biennial reviews, does the Department of Homeland Security use any other mechanism of review to evaluate the Visa Waiver countries' continued participation in the program?
  - b. You testified that the Department of Homeland Security has never consistently made the required biennial reports to Congress. What have been the consequences of the Department's failure to conduct these reviews in a timely manner?
5. One way to effectively determine when a foreign visitor leaves the country is to require each temporary foreign visitor to purchase a card that contains their photograph, biographic information, and fingerprint biometric. The card would also provide visitors with confidence as they travel throughout the country as it would indicate their authorized period of stay. To record their exit from the country, visitors would scan the card at an electronic kiosk operated by the Department of Homeland Security. The kiosk would also record their fingerprint to ensure the person holding the card is the lawful owner. In order to implement this system we would need to develop the cards, the kiosks, and the technology.
- a. Can you estimate the cost of implementing such a system?
  - b. Could such a system pay for itself if an appropriate fee was charged to purchase the card?

QUESTIONS AND ANSWERS

NOTE: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received any communication from Thomas Donohue.

NOTE: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received any communication from Roger Dow.

RESPONSES OF REBECCA GAMBLER TO QUESTIONS SUBMITTED BY SENATORS JEFF  
SESSIONS, MIKE LEE, AND DIANNE FEINSTEIN



April 18, 2012

Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate

Subject: *Visa Waiver Program and Overstays: Responses to Posthearing Questions for the Record*

On March 27, 2012, I testified before the Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security on the Visa Waiver Program and overstay enforcement efforts. This letter responds to questions for the record posed by Senator Sessions, Senator Feinstein, and Senator Lee. The responses are based on work associated with previously issued GAO products.<sup>1</sup> The questions and my responses follow.

**Questions from Senator Sessions**

**1. Can the Department of Homeland Security currently reliably identify aliens who overstay their authorized period of admission?**

In April 2011, we reported that DHS faces challenges in identifying aliens who overstay their authorized periods of admission particularly given that, in the absence of biometric departure data, DHS must rely on biographic information to do so. We reported that DHS's efforts to identify and report on overstays are hindered by unreliable data, such as the incomplete collection of departure data at ports of entry and the lack of mechanisms for assessing the quality of leads that are sent to field offices for investigation.<sup>2</sup> For example, in April 2011, we reported that DHS does not inspect travelers exiting the United States through land ports of entry, including collecting their biometric information, and does not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. Nonimmigrants departing the United States through land ports of entry turn in their forms on their own initiative. If departing nonimmigrants do not take the initiative to turn in their forms, DHS does not have

<sup>1</sup> See GAO, *Visa Waiver Program: Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement*, GAO-12-599T (Washington, D.C. Mar. 27, 2012); *Visa Waiver Program: Additional Actions Needed to Address Risks and Strengthen Overstay Enforcement*, GAO-12-267T (Washington, D.C. Dec. 7, 2011); *Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks*, GAO-11-335 (Washington, D.C. May 5, 2011); *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs*, GAO-11-411 (Washington, D.C. Apr. 15, 2011); *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, GAO-08-967 (Washington, D.C. Sept. 15, 2008).

<sup>2</sup> A port of entry is a location by which individuals and merchandise may seek legal entry into the United States. There are 327 air, sea, and land ports of entry in the United States.

complete information that the nonimmigrants departed the United States, hindering DHS's efforts to determine whether those nonimmigrants were overstays. We recommended that DHS analyze the costs and benefits of developing a standard mechanism for collecting arrival and departure forms at land ports of entry and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs. DHS agreed with our recommendation and in September 2011 stated that it planned to complete a cost-effective independent evaluation of possible solutions and formulate an action plan based on the evaluation.

**a. Why is it important for the Department of Homeland Security to be able to reliably identify aliens who overstay their authorized period of admission?**

In February 2008, we reported that most overstays are likely motivated by economic opportunities to stay in the United States beyond their authorized periods of admission.<sup>3</sup> However, individuals overstaying their authorized periods of admission could pose homeland security concerns. For example, in some instances, overstays have been identified as terrorists or involved in terrorist-related activity, such as 5 of the 19 September 11, 2001, hijackers. In addition, in April 2011, we reported that Department of Homeland Security (DHS) data indicated that of approximately 400 individuals reported by the Department of Justice as convicted in the United States as a result of international terrorism-related investigations conducted from September 2001 through March 2010, approximately 36 were overstays.<sup>4</sup>

Further, it is important for DHS to be able to reliably identify overstays for the Visa Waiver Program. Regarding this program, analyzing data on overstay rates for current and aspiring Visa Waiver Program countries is integral to meeting a statutory requirement for continued eligibility in the Visa Waiver Program. However, we reported in February 2008 that DHS had historically not monitored country overstay rates because of weaknesses in DHS's data. We reported that the inability of the U.S. government to track the status of visitors in the country, identify those who overstay their authorized period of visit, and use these data to compute overstay rates has been a long-standing weakness in DHS's oversight of the Visa Waiver Program. We reported that a system that records departures from U.S. airports (or air exit system), which facilitates the development of reliable overstay rate data, is important to managing potential risks in expanding the Visa Waiver Program.

**b. Would a system that collects the biometric information of aliens who exit the country aid the Department of Homeland Security in identifying aliens who overstay their period of admission?**

DHS faces challenges in identifying overstays due to its general reliance on biographic entry and exit information, rather than biometric information, hindering DHS's efforts to reliably identify overstays. In April 2011, we reported that more reliable, accessible data could improve DHS's efforts to identify and share information on overstays.

<sup>3</sup> GAO, *Visa Waiver Program: Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals*, GAO-08-458T (Washington, D.C.: Feb. 28, 2008).

<sup>4</sup> GAO-11-411.

DHS has not yet implemented a comprehensive biometric system to match available information provided by foreign nationals upon their arrival and departure from the United States, as required by statute. The Immigration and Naturalization Service Data Management Improvement Act of 2000 required implementation of an integrated entry and exit data system for foreign nationals.<sup>5</sup> This act replaced in its entirety a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that had required an automated system to record and then match the departure of every foreign national from the United States to the individual's arrival record.<sup>6</sup> The Immigration and Naturalization Service Data Management Improvement Act instead required an electronic system that would provide access to and integrate foreign national arrival and departure data that are authorized or required to be created or collected under law and are in an electronic format in certain databases, such as those used at ports of entry and consular offices. In 2002, DHS initiated the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) program to develop a comprehensive entry and exit system to collect biometric data from aliens traveling through United States ports of entry. In 2004, US-VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States. The Intelligence Reform and Terrorism Prevention Act of 2004 required the Secretary of Homeland Security to develop a plan to accelerate full implementation of an automated biometric entry and exit data system that matches available information provided by foreign nationals upon their arrival and departure from the United States.<sup>7</sup> In August 2007, we reported that while US-VISIT biometric entry capabilities were operating at air, sea, and land ports of entry, exit capabilities were not, and that DHS did not have a comprehensive plan or a complete schedule for biometric exit implementation.<sup>8</sup>

**c. What obstacles are there to gathering reliable biographic data on aliens as they exit the country?**

In April 2011, we identified challenges faced by DHS in collecting reliable departure data. For example, we found that DHS does not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. Nonimmigrants departing the United States through land ports of entry turn in their forms on their own initiative. According to U.S. Customs and Border Protection (CBP) officials, at some ports of entry, CBP provides a box for nonimmigrants to drop off their forms, while at other ports of entry departing nonimmigrants may park their cars, enter the port of entry facility, and provide their forms to a CBP officer. These forms contain information, such as arrival and departure dates, used by DHS to identify overstays. We recommended that DHS analyze the costs and benefits of developing a standard mechanism for collecting arrival and departure forms at land ports of entry and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs. DHS agreed with our recommendation and in September 2011 stated that it planned to complete a cost-effective independent evaluation of possible solutions and formulate an action plan based on the evaluation.

<sup>5</sup> 8 U.S.C. § 1365a.

<sup>6</sup> Pub. L. No. 104-208, div. C, § 110, 110 Stat. 3009-546, 3009-558 to 59.

<sup>7</sup> 8 U.S.C. § 1365b.

<sup>8</sup> GAO, *Homeland Security: U.S. Visitor and Immigrant Status Program's Longstanding Lack of Strategic Direction and Management Controls Needs to Be Addressed*, GAO-07-1065 (Washington, D.C.: Aug. 31, 2007).

In addition, we reported that CBP has faced difficulties in ensuring the accuracy of departure information collected from air and sea POEs. Specifically, regulations require air and sea carriers to submit electronic passenger departure manifests—containing, among other things, the names and other identifying information of passengers—before the airplane or vessel departs from the United States.<sup>9</sup> The regulations also specify that the carrier collecting the manifest information is responsible for comparing the travel document presented by the passenger with the travel document information it is transmitting to CBP to ensure that the information is correct, the document appears to be valid for travel purposes, and the passenger is the person to whom the document was issued.<sup>10</sup> However, carriers may elect to verify that a passenger matches the travel document he or she presented at a check-in counter prior to the individual entering the boarding area rather than doing so as passengers board the airplanes or vessels, and CBP does not have a process to perform this verification at boarding. CBP officials told us that, as a result, the current system for verifying air and sea departures is vulnerable to fraud.

**d. What obstacles are there to gathering reliable biometric information on aliens as they exit the country?**

Since 2004, we have identified various weaknesses in DHS's efforts to develop and implement a biometric exit capability under the US-VISIT program, hindering DHS's ability to collect reliable biometric information on aliens upon their departure from the United States. Specifically, in August 2007 we reported that DHS did not have a comprehensive plan or a complete schedule for biometric exit implementation. In addition, we reported that DHS continued to propose spending tens of millions of dollars on US-VISIT exit projects that were not well-defined, planned, or justified on the basis of costs, benefits, and risks. Moreover, in November 2009, we reported that DHS had not adopted an integrated approach to scheduling, executing, and tracking the work that needed to be accomplished to deliver a comprehensive exit solution as part of the US-VISIT program. We concluded that, without a master schedule that was integrated and derived in accordance with relevant guidance, DHS could not reliably commit to when and how it would deliver a comprehensive exit solution or adequately monitor and manage its progress toward this end. Since 2004, we have made numerous recommendations to address US-VISIT weaknesses, including that DHS ensure that US-VISIT expenditure plans fully disclose what system capabilities and benefits are to be delivered, by when, and at what cost, as well as how the program is being managed.<sup>11</sup> We also recommended that DHS ensure that an integrated master schedule be developed and maintained. DHS concurred and reported, as of July 2011, that the documentation of schedule practices and procedures was ongoing, and that an updated schedule standard, management plan, and management process that are compliant with schedule guidelines were under review.

<sup>9</sup> 19 C.F.R. §§ 122.75a(b), 4.64(b). Carriers are to submit the electronic departure manifest no later than 60 minutes prior to departure for vessels, and for airplanes, either no later than 30 minutes prior to the securing of the aircraft or no later than the securing of the aircraft, depending on the type of electronic transmission system used.

<sup>10</sup> 19 C.F.R. §§ 122.75a(d), 4.64(d).

<sup>11</sup> GAO, *Homeland Security: Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, GAO-10-13 (Washington, D.C.: Nov. 19, 2009); GAO-07-1065; and *Homeland Security: First Phase of Visitor and Immigration Status Program Operating, but Improvements Needed*, GAO-04-536 (Washington, D.C.: May 11, 2004).

**e. Why would the collection of biometric information from aliens exiting the country provide a more reliable way to identify aliens who overstay their period of admission than the collection of biographic information?**

As we and others have reported, the absence of a biometric exit capability raises questions about what meaningful US-VISIT data are available to DHS components, such as U.S. Immigration and Customs Enforcement (ICE). Without this exit capability, DHS cannot ensure the integrity of the immigration system by identifying and removing those people who have overstayed their original period of admission—a stated goal of US-VISIT. Further, ICE's efforts to ensure the integrity of the immigration system could be degraded if it continues to spend its limited resources on investigating potential visa violators who have already left the country.<sup>12</sup>

Moreover, we reported in April 2011 that as DHS's ability to accurately identify overstays is largely dependent on the quality of the alien arrival and departure data CBP collects, it is important that CBP take steps to ensure these data are as reliable as possible. For example, regarding air ports of entry air carriers transmit visitor manifest information, which is obtained directly from government-issued passports, to CBP through the Advanced Passenger Information System. This system includes air arrival and departure manifest information, such as name, date of birth, travel document issuing country, gender, U.S. destination address, entry date, and departure date. DHS acknowledges that there are weaknesses in the departure data and works with airlines to ensure that the manifest data provided to CBP are reliable. According to DHS, it works with air carriers to try to improve both the timeliness and comprehensiveness of manifest records, and fines carriers that provide incomplete or inaccurate information. However, because the department has not completed the exit portion of the US-VISIT program, at U.S. air ports of entry, there is no corresponding check on the accuracy and completeness of the departure manifest information supplied by the airlines. As a result, the department cannot be certain that visitors listed on airlines' manifest data as departing the country did in fact physically depart. A biometric exit system at air ports of entry could help to address this issue.

**f. What would it cost the federal government to implement a system to collect the biometric information of every alien that leaves the country at air and sea ports of entry?**

We have not assessed the costs associated with implementation of a biometric exit system at air and sea ports of entry. In September 2011 we reported that DHS reports that, through fiscal year 2011, it has been appropriated about \$3.2 billion for US-VISIT. As of July 2011, program officials reported that about \$193 million of the appropriation had been obligated to develop air/sea and land exit solutions since 2002.<sup>13</sup> Further, we have issued a number of reports on DHS's management and planning of the US-VISIT program, including DHS's planning for the development of a biometric exit capability. For example, since 2004, we have made numerous recommendations to address US-VISIT weaknesses, including that DHS ensure that US-VISIT expenditure plans fully disclose what system capabilities and benefits are

<sup>12</sup> GAO, *Homeland Security: Prospects For Biometric US-VISIT Exit Capability Remain Unclear*, GAO-07-1044T (Washington, D.C.: June 28, 2007).

<sup>13</sup> GAO, *Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years After 9/11*, GAO-11-381 (Washington, D.C.: Sept. 7, 2011).

to be delivered, by when, and at what cost, as well as how the program is being managed.<sup>14</sup> DHS has taken action to address these recommendations.

- 2. It has been estimated that 40% of aliens who enter the country legally overstay their authorized period of admission. It also has been reported that less than 3% of Polish nationals overstay their authorized period of admission. In the absence of a biometric system that records when an alien exits the country, how are these estimates of overstay rates made?**

We have not assessed how those overstay rates were determined. However, in April 2011, we reported that in the absence of a comprehensive biometric entry and exit system for identifying and tracking overstays, US-VISIT and U.S. Immigration and Customs Enforcement (ICE) within DHS primarily analyzed biographic entry and exit data collected at land, air, and sea ports of entry to identify overstays and develop rates for specific countries. Specifically, US-VISIT first generates an automated report that identifies nonimmigrants whose period of authorized admission has elapsed but for whom there is no departure record. Then, US-VISIT conducts automated and manual searches of databases for information indicating that any of the remaining suspected overstays have left the country, have been granted an adjustment of status, or have a legitimate reason for staying longer than their authorized periods of admission. However, we reported that DHS does not yet have an accurate way to determine reliable overstay data, or develop overstay rates for those traveling to the United States under the Visa Waiver Program.

- 3. Currently, Visa Waiver countries must have a low rate of refusal for all nonimmigrant visa applicants. The law gives the Secretary the authority to waive this requirement, but not until we are capable of recording the entry and exit of 97% of all foreign visitors.**

- a. Why is it important that Visa Waiver countries have a low rate of refusal?**

We have not evaluated visa refusal rates for Visa Waiver Program countries. Current law specifies that the refusal rate<sup>15</sup> for temporary business and tourism visas be used to determine the eligibility of countries seeking to enter the Visa Waiver Program.<sup>16</sup>

- b. What are the risks of waiving the refusal rate requirement when there is no system for recording the biometric information of aliens who exit the country?**

We have not assessed the risks associated with waiving the visa refusal rate. Members of Congress have considered legislation to raise the refusal rate

<sup>14</sup> GAO-10-13, GAO-07-1065, and GAO-04-536.

<sup>15</sup> The refusal rate refers to the temporary business and tourism visa applications that are denied as a percentage of the total temporary business and tourism visa applications for nationals of that country.

<sup>16</sup> In August 2007, legislation was enacted that allows DHS to consider admitting countries that otherwise meet the program's requirements but that have business and tourism visas refusal rates between 3 percent and 10 percent, if the countries meet certain conditions, such as cooperating with the United States on counterterrorism initiatives. Previously, only countries with refusal rates below 3 percent in the prior fiscal year qualified to be considered for admission. Before DHS could exercise this new authority, the legislation—referred to as the "9/11 Act"—required that the department complete certain actions aimed at enhancing the security of the Visa Waiver Program. See Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 711(c), 121 Stat. 266, 339-40.

requirement from 3 percent to 10 percent under certain conditions. Thus, it could be possible that a greater percentage of travelers who apply to travel under the Visa Waiver Program from countries whose refusal rate is higher than 3 percent would have otherwise been denied a visa. Visa waiver travelers are not subject to the same degree of screening as those with visas because they are not interviewed by a Department of State consular officer before arriving at a U.S. port of entry. Nevertheless, these travelers would need to be approved in advance for travel under the program to the United States via the Electronic System for Travel Authorization (ESTA). Passengers whose ESTA application is denied must then obtain a visa to be permitted to travel to the United States.

- 4. You testified that the Department of Homeland Security is supposed to evaluate the continued participation of each Visa Waiver country with respect to the security, law enforcement, and immigration interests of the U.S. and report this information to Congress every two years. You also testified that the Department of Homeland Security has not completed half of the most recent biennial reports.**

- a. Aside from these biennial reviews, does the Department of Homeland Security use any other mechanism of review to evaluate the Visa Waiver countries' continued participation in the program?**

To fulfill the legal requirements, DHS conducts reviews of Visa Waiver Program countries that examine and document, among other things, counterterrorism and law enforcement capabilities, border control and immigration programs and policies, and security procedures. In conjunction with DHS's reviews, the Director of National Intelligence produces intelligence assessments that DHS reviews prior to finalizing its country biennial reports. If issues of concern are identified during the country review process, DHS drafts an engagement strategy documenting the issues of concern and suggesting recommendations for addressing the issues. According to Visa Waiver Program officials, they also regularly monitor participating countries' efforts to stay informed about any emerging issues that may affect the countries' program status.

- b. You testified that the Department of Homeland Security has never consistently made the required biennial reports to Congress. What have been the consequences of the Department's failure to conduct these reviews in a timely manner?**

Because DHS has not consistently submitted the reports in a timely manner since the legal requirement was imposed in 2002, Congress does not have the assurance that DHS efforts to require program countries to minimize vulnerabilities and its recommendations for continued status in the Visa Waiver Program are based on up-to-date assessments. The legislative mandate requiring Visa Waiver Program country biennial reports provides important information to Congress on security measures in place in visa waiver countries but also on potential vulnerabilities that could affect the countries' future participation in the program.

- 5. One way to effectively determine when a foreign visitor leaves the country is to require each temporary foreign visitor to purchase a card that contains their photograph, biographic information, and fingerprint biometric. The card would also provide visitors with confidence as they travel throughout the country as it would indicate their authorized period of stay. To record their exit from the country, visitors would scan the card at an electronic kiosk operated by the**

**Department of Homeland Security. The kiosk would also record their fingerprint to ensure the person holding the card is the lawful owner. In order to implement this system we would need to develop the cards, the kiosks, and the technology.**

- a. **Can you estimate the cost of implementing such a system?**

We have not conducted work to assess the costs of implementing such a system.

- b. **Could such a system pay for itself if an appropriate fee was charged to purchase the card?**

We have not conducted work to assess whether such a system could pay for itself through fees.

**Questions from Senator Feinstein**

- 1. According to a 2011 GAO report, DHS has produced a compliance schedule that requires all Visa Waiver Program countries to enter into information-sharing agreements by June 2012.**

- a. **Has GAO determined if the Department of Homeland Security is on track to meet this deadline?**

We have not conducted further work to determine if the Department of Homeland Security is on track to meet this deadline. However, DHS reported that only about half of the 36 Visa Waiver Program countries have fully complied with the requirement to enter into information sharing agreements as of March 2012, and many of the signed agreements have not been implemented.

- b. **If this deadline is not met, what measures should be taken by DHS to ensure a country is in compliance with all Visa Waiver Program requirements?**

Although termination from the Visa Waiver Program is one potential consequence for countries not complying with the information-sharing agreement requirement, U.S. officials have described it as undesirable, saying it would significantly impact diplomatic relations and would weaken any informal exchange of information. DHS, in coordination with the Department of State and the Department of Justice, developed a classified strategy document that outlines a contingency plan listing possible measures short of termination from the Visa Waiver Program that may be taken if a country does not meet its specified compliance date for entering into information-sharing agreements. The strategy document provides steps that would need to be taken prior to selecting and implementing one of these measures. According to officials, DHS plans to decide which measures to apply on a case-by-case basis.

- 2. According to a 2011 GAO report, in 2010, air and sea carriers verified Electronic System for Travel Authorization (ESTA) approvals for 98 percent of VWP passengers prior to boarding. GAO found that DHS has not fully analyzed the potential risks posed by the 2 percent of cases where carriers boarded passengers without verifying their ESTA approvals. How has DHS responded to this finding and worked to mitigate this potential security risk?**

In May 2011, GAO recommended that DHS establish time frames for the regular review and documentation of cases of Visa Waiver Program passengers traveling to a U.S. port of entry without verified ESTA approval. DHS concurred with our recommendation and reported that it has established procedures to review quarterly a sample of noncompliant passengers to evaluate potential security risks associated with the ESTA program.

- 3. A 2011 GAO report found that DHS has not completed half of the most recent biennial reports on each country's participation in the Visa Waiver Program. In 2007, DHS established protocols for the timely completion of these reports. Nevertheless, DHS remains unable to meet report deadlines. What steps should DHS take to comply with the biennial reporting requirement?**

In the 2011 report, GAO recommended that the Secretary of Homeland Security take steps to address delays in the biennial country review process so that the mandated country reports can be completed on time. DHS concurred with this recommendation, and its Visa Waiver Program Office has developed a reporting timeline to address delays in completing Visa Waiver Program eligibility reviews and associated reports. The Program Office has also identified a mechanism to inform Congress of potential delays for particular reviews and associated reports.

#### **Questions from Senator Lee**

- 1. As I understand, DHS records an address from visa holders and generate lists of those visa holders that do not have a recorded departure.**

- a. From there, what happens to those who overstay their visa?**

US-VISIT and ICE primarily analyze biographic entry and exit data collected at land, air, and sea ports of entry to identify overstays. Specifically, US-VISIT first generates an automated report that identifies nonimmigrants whose period of authorized admission has elapsed but for whom there is no departure record. Then, US-VISIT conducts automated and manual searches of databases for information indicating that any of the remaining suspected overstays have left the country, have been granted an adjustment of status, or have a legitimate reason for staying longer than their authorized periods of admission. Any leads on potential overstays are passed to ICE for further investigation. ICE prioritizes overstay leads based on various factors that consider the potential risks overstays may pose to national security and public safety, and field offices investigate those leads that ICE identifies as a priority.

- b. What do you believe can be done to create and enforce an efficient exit system?**

In April 2011, we reported on challenges faced by DHS in collecting accurate and reliable departure information from foreign nationals exiting the United States. In particular, we identified challenges associated with the incomplete collection of departure data at ports of entry and the lack of mechanisms for assessing the quality of leads that are sent to field offices for investigation. We recommended that DHS analyze the costs and benefits of developing a standard mechanism for collecting arrival and departure forms at land ports of entry and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs. We also recommended that DHS develop a performance measure for assessing the quality of

leads assigned to ICE field offices for investigations. DHS agreed with our recommendations and has actions underway to address them, such as planning to complete a cost-effective independent evaluation of possible solutions and formulate an action plan based on the evaluation.

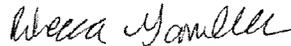
**2. Do you believe a country's visa refusal rate is an adequate indicator of the country's threat to U.S. national security?**

A country's refusal rate refers only to the temporary business and tourism visa applications that are denied as a percentage of the total temporary business and tourism visa applications for nationals of that country. Foreign nationals applying for a visa to visit the United States can be denied a visa for a number of reasons that are specified by statute. For example, the applicant will be denied if he did not overcome the presumption of immigrant intent by sufficiently demonstrating that he had strong ties to his home country that will compel him to leave the United States at the end of his temporary stay. Other bases for denial include fraud, the potential for becoming a public charge, and national security concerns. For a country to qualify to participate in the Visa Waiver Program, having a low refusal rate is only one of several security-related requirements it must meet.

**3. Will the visa expediting process for B-1 and B-2 visas affect national security?**

In January 2012 the President announced a Visa Pilot Program to improve and speed up the visa process for certain categories of travelers. In select circumstances, qualified foreign visitors who were interviewed and thoroughly screened in conjunction with a prior visa application may be able to renew their visas without undergoing another interview. We have not assessed this program.

If you have any questions about this letter or need additional information, please contact me at (202) 512-6912 or [gambler@gao.gov](mailto:gambler@gao.gov).



Rebecca Gambler  
Acting Director, Homeland Security and Justice Issues

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE

JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND BORDER SECURITY

March 27, 2012

TESTIMONY OF JOHN MARTIN

SPECIAL PROJECTS DIRECTOR

FEDERATION FOR AMERICAN IMMIGRATION REFORM

**The Economic Imperative for Promoting International Travel to the United States**

Chairman Schumer, Ranking Member Cornyn, and Members of the Subcommittee, on behalf of the more than 250,000 members and activists of the Federation for American Immigration Reform (FAIR), thank you for this opportunity to share with you our perspective on measures designed to increase the travel of foreigners to the United States.

I am Jack Martin, FAIR's special projects director. FAIR is a national, non-profit, public interest organization working to end illegal immigration, to restore moderate legal immigration, and to reform our immigration laws to bring them into accord with long-term national interests.

FAIR welcomes foreign visitors. We recognize that international travel to the United States is an important contribution to our economy. We also welcome the international friendships and international understanding that may result from international travel.

At the same time, FAIR knows that the issue of international travel must not be looked at in a vacuum. It must be balanced with concerns about national security and illegal immigration.

#### **The Failure to Implement a Biometric Tracking Entry-Exit System Undermines National Security**

In the aftermath of the 9/11 terrorist attacks, the 9/11 Commission told Congress that an important step to improving national security was the implementation a biometric entry-exit system that would allow real-time information on whether nonimmigrants leave when their entry permits expire. This was not a radical departure from past practice. For decades, the government used a paper-based, manual-matching record system for arrivals and departures, but that system became overwhelmed by the volume of travel and the government abandoned it. Then, in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), which directed the government to set up an electronic entry-exit system in response to the international terrorist security threat demonstrated by the first attempt to destroy the World Trade Center in Manhattan in 1993.

Congress responded to the 9/11 Commission recommendations by including provisions in the USA-PATRIOT Act (Sec. 414 of Public Law 107-56) that directed Homeland Security to focus on incorporating biometrics into the entry-exit system required by IIRAIRA. While biometric data is now collected as part of the entry portion of the system, biometric data is still not collected during the exit process.

FAIR recognizes that national security measures taken to prevent international terrorism will never be 100 percent certain. Nonetheless, a balance must be achieved between the advantages of being a country open to international travelers and the need to protect the country from foreign nationals intent on entering the United States to do harm to Americans. In that regard, the recommendation of the 9/11 Commission remains as valid today as when it was first issued. National security depends on having a functioning and reliable biometric system for matching records of the departure of foreign travelers with the record of their arrival, and we do not have that system yet. In the absence of that security measure, it is unrealistic and irresponsible to propose initiatives to increase international travel to the United States. Nor is there a dire need to

implement such initiatives: The Commerce Department just last week reported that a record number of tourists came to the U.S. in 2011 and spent a record amount related to that travel.<sup>1</sup>

Department of Homeland Security senior officials have recently announced that they are on the verge of announcing the establishment of a new entry-exit data system. The limited information released regarding this development suggests that it will be based on the model tracking system established in the wake of the 9/11 attacks for international students (SEVIS) and the Arrival and Departure Information System (ADIS). While SEVIS is a useful system for monitoring long-term visitors, neither it nor ADIS collects and matches biometric data on departing travelers with the data collected when they arrived. As a result, the government has no reliable data on whether foreigners remain illegally after their entry permit has expired. It has no reliable data on how many such persons there are in the country, what type of visa they entered with, from what countries they came, their gender or age or any other characteristic that would assist in detecting a pattern of foreigners in the country who might represent a threat.

#### **Visa Overstayers Contribute Significantly to the Illegal Alien Population**

Visa overstayers constitute a significant portion of the illegal population in the United States. However, estimates of this visa overstay population vary considerably. In 2006, the Pew Hispanic Center estimated that the overstay population was approximately 33 to 45 percent of the illegal alien population.<sup>2</sup> In 2004, the GAO estimated that the overstay population was anywhere from 27 to 57 percent of the illegal alien population.<sup>3</sup>

However, the fact that visa overstayers originally entered the U.S. legally does not change how illegal immigration impacts the American people. Because illegal aliens are prohibited from working in the U.S., they generally either work in the underground economy or with stolen identity documents and for low wages. They often take jobs sought by American workers and depress wages and working conditions in any jobs where significant numbers are employed. As FAIR has documented, illegal immigration constitutes a fiscal drain of about \$113 billion on U.S. taxpayers especially at the state and local level.

The federal government therefore should track aliens who enter the country legally, whether they enter with a visa or without one, a critical component of its strategy to combat illegal immigration. So far, this has not been the case.

#### **The Visa Waiver Program Weakens National Security**

Like the 9/11 Commission, FAIR has long warned that the Visa Waiver Program represents a serious vulnerability as long as there is no reliable biometric entry-exit system. In our view, national security is jeopardized by a system that presumes that all travelers from a participating country are neither a security threat nor likely to overstay their visas. There are numerous

<sup>1</sup> Commerce Department, *U.S. Commerce Department Releases Data Showing Tourism Spending Increased 8.1 percent in 2011, Supporting an Additional 103,000 Tourism-Related Jobs* (Mar. 21, 2012)

<sup>2</sup> Pew Hispanic Center, Fact Sheet: *Modes of Entry for the Unauthorized Migrant Population* (May 22, 2006).

<sup>3</sup> Government Accountability Office, *OVERSTAY TRACKING: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82 (May 2004).

incidents of individuals who have committed terrorist acts or plotted to do so in countries that participate in the Visa Waiver Program. These persons often escape identification by security analysts but are likely to be subjected to rigorous scrutiny if they apply for a visa.

The major weakness of the Visa Waiver Program is that it removes initial screening by a trained U.S. consular officer whose job is to approve visas only for bona fide nonimmigrants. The program instead puts responsibility for the entire screening process on customs and border personnel at U.S. ports of entry under conditions that prevent them from doing anything other than looking for false travel documents or smugglers. While there have been improvements to the screening process since the 9/11 attacks, such as the expansion of biometric data collection, improved intelligence sharing, and the advanced travel notification system for travelers from Visa Waiver countries, these improvements are still insufficient.

In this situation, proposals to further relax the Visa Waiver Program are misguided for two reasons. The idea of increasing the number of countries in the program while there is no reliable way to monitor whether travelers from those countries tend to stay illegally ignores both the greater security threat as well as the likelihood that the number of visa overstayers will rise. Indeed, the reason the government prohibits certain countries from participating in the Visa Waiver Program is that a significant number of visa applicants from those countries have been judged by our consular officers not to be bona fide nonimmigrants.

A common sense question will illuminate whether proposals to expand the Visa Waiver Program make sense. The question is: Does it make more sense to deny a visa applicant who is likely to become an illegal alien before or after arrival in the United States? If the government denies the visa applicant before the applicant enters the United States, it prevents the problem altogether. However, if the government approves the visa and allows that person to travel to the United States and become an illegal alien, it has the problem and expense of enforcing the immigration law by locating, detaining and deporting the alien. It should be clear that the latter approach has significant negative implications for the American people.

#### **Bypassing Security Measures During Visa Processing Increases the Risk of Fraud and Undermines National Security**

Initiatives currently underway to bypass security measures and increase the speed at which visa applications are processed increase the risk of fraud. In January 2012, President Obama issued an executive order that would weaken national security by seeking to waive certain safeguards used to screen foreign nationals coming to the United States.<sup>4</sup> Among other things, the order directed the Secretaries of State and DHS to develop a plan within 60 days that would: (1) increase *nonimmigrant visa* processing in China and Brazil by 40 percent over the coming year; and (2) ensure that 80 percent of *nonimmigrant visa* applicants are interviewed within three weeks of the government receiving their application. In a release issued the same day as the order, the State Department announced that this will be accomplished in part by waiving the long-standing statutory requirement that aliens seeking to renew visas undergo in-person

<sup>4</sup> See President Obama Executive Order, *Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness* (Jan. 19, 2012).

interviews with a consular officer.<sup>5</sup> Because the order applies to all nonimmigrant visas, it will relax the screening process for not only the tens of millions of tourists and business travelers who enter the U.S. each year, but also for hundreds of thousands of guest workers.

#### **Conclusion**

Mr. Chairman, FAIR would like to see an increase in foreign visitors as long as that does not increase the country's vulnerability to international terrorism or encourage violation of our immigration laws. We support making more resources available for the visa issuance process in order to reduce delays in obtaining visas. However, we adamantly oppose eliminating visa screening as the first defense against both security threats and immigration law violators.

We urge the Congress to insist to the Administration that it complete its assigned work to implement a reliable and comprehensive biometric entry-exit system to provide greater security for the American people. Only when that data collection system is operational will it be possible to arrive at an informed judgment as to which characteristics of foreign visitors represent a security or immigration law threat.

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<sup>5</sup> Department of State [Press Release, \*Visa Pilot Program\*](#) (Jan. 19, 2012).



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Prepared Remarks of

Michael W. McCormick

Executive Director and Chief Operating Officer

Global Business Travel Association

United State Senate Committee on Judiciary

Immigration, Refugees and Border Security Subcommittee

**The Economic Imperative for Promoting International Travel to the United States**

April 3, 2012

Mr. Chairman and Members of the Subcommittee:

On behalf of the Global Business Travel Association (GBTA), I appreciate the opportunity to submit these remarks on the economic imperative for promoting international travel to the United States. Your longstanding commitment, along with the commitment of the Subcommittee, to ensuring the nation's security while facilitating international inbound travel has expanded U.S. prominence in the global marketplace. Focused, sensible efforts to further open access to the U.S. will strengthen U.S. competitiveness.

GBTA and its members have a unique interest and perspective as we are the voice of the business travel industry – the nation's road warriors and the companies they represent. GBTA is the leading trade association for the business travel industry, with more than 5,000 members and a network of 30,000 business travel and meetings professionals, as well as travel service providers. Along with its forty local chapters across the nation, GBTA focuses on networking events, education and professional development, news, research and analysis, and advocacy.

We represent a global industry with \$1 trillion in business travel and meetings expenditures annually, with *over \$260 billion spend in the United States in 2011*.

The hearing is particularly timely in view of the recently issued Executive Order 13597 ***Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness***. GBTA fully supports the Administration's focus on the significant economic and cultural value of increased travel. Increasing the nation's share of the overseas travel market will accelerate the economic recovery.

To ensure that American businesses retain their competitive advantage in today's fast-paced global marketplace, the government must create an environment that allows these businesses and their global partners to travel safely, securely and efficiently by air to, from and within the United States.

### **BUSINESS TRAVEL DRIVES ECONOMIC GROWTH AND JOBS**

It is important to facilitate entry into the U.S. and align security concerns with efficient visa policies. The reason is simple: unnecessary, unjustified barriers to travel dampen travel demand and slow economic growth. The trillion dollar travel and tourism industry – leisure and business travel – represents nearly three percent of the Gross Domestic Product (GDP). International travel to the U.S. supports 1.2 million of the nearly 8 million jobs supported by the industry.

The Department of Commerce has long recognized the importance of and the need to increase *business travel to the United States*. The International Trade Administration **Profile of Overseas Travelers to the United States** indicates:

- **nearly 22 percent of all visitors came for business/professional purposes and/or to attend a convention or conference**
- over 88 percent of business visitors stayed in a hotel or motel
- 85 percent of business visitors were "repeat visitors" to the U.S. (average of nine trips in the past five years)
- 49 percent of business visitors used taxis, 32 percent rented cars, 31 percent flew an airline and 15 percent used a company/private car during their visit

Aligning economic growth and aviation security will increase business travel to the U.S., and increase the already significant impact of *business travel domestically*.

- 23 percent of all trips are for business purposes
- 33 percent of all travel spending is for business purposes

By every measure, continued growth in business travel is essential to continued economic recovery. When confident in a growing economy, businesses send their employees on the road to secure even more business and to attend conferences, meetings and trade shows. This increases sales for companies, necessitating the hiring

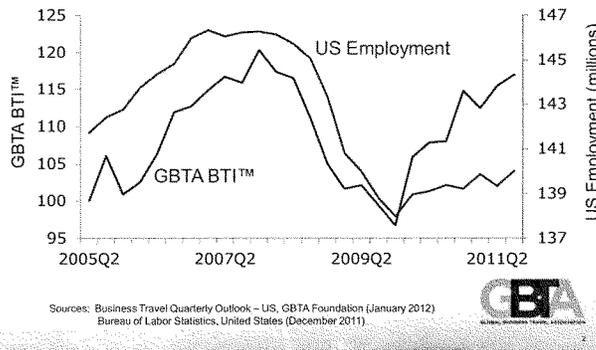
of additional employees to service those sales and additional employees to accommodate the needs of business travelers.

The positive ripple effect throughout the economy not only spurs job growth – it is a leading indicator of U.S. employment:

**GBTA Business Travel Index™ and US Employment<sup>i</sup>**

*Increased Business Travel = Increased Jobs*

**GBTA Business Travel Index™ and US Employment**



Global spending on business travel is on the rebound due to improved international trade. For example, China is now the second largest business travel market and is poised to pass the U.S. as early as 2015. Between 2011 and 2015, business travel spend in China will experience a compound annual growth rate of 11.2 percent, compared to 3.8 percent for America. We must adopt policies to increase business travel for U.S. companies and their global partners. Global business travel maximizes competitive advantages for America, its businesses and the global business travel industry buyers and suppliers.

Proposed visa program initiatives that increase access to the U.S. by business travelers, including expansion of the Visa Waiver Program (VWP) and simplifying/expediting the application process in non-VWP countries, are essential.

## **VISA PROGRAM IMPROVEMENTS**

### **Visa Processing**

Increasingly U.S. businesses operate in the fast-paced global marketplace, growing their customer base to increase sales and networking. Their current and potential business partners around the world often need time-sensitive access to the U.S. to attend meetings, conventions and other events. That means lengthy delays in the application process – from scheduling the interviews to receiving final approval – are real barriers and result in lost business opportunities.

On January 19, 2012, President Obama signed Executive Order 13597 proposing numerous improvements to visa programs and policies. GBTA supports the short-term initiatives, including the Visa Pilot Program to be coordinated by the Departments of State and Homeland Security. Allowing low-risk, qualified individuals to renew their visas without going through additional interviews and streamlining visa processing for those with expired visas and some categories of younger or older first-time applicants makes sense.

GBTA also supports provisions to increase the non-immigrant visa processing capacity in China and Brazil by 40 percent in 2012 and to ensure that 80 percent of non-immigrant visa applicants are interviewed within three weeks of the receipt of their applications. These changes will boost international travel and, in turn, boost the economy. In 2010, travelers from China spent \$6,000 per visit; travelers from Brazil spent \$5000 per visit. Recent staffing increases in both countries have significantly reduced wait times. Further application process improvements and exploration of comparable trusted traveler programs to align with the Global Entry program requirements will increase business travel to the U.S. even more.

Focusing on Brazil, the world's sixth largest economy, GBTA supports participation by Brazil in the VWP. But until this issue is resolved, enhanced efforts to facilitate visa processing are essential. In 2010, visitors from Brazil constituted nearly 5 percent of total overseas arrivals. For the first nine months of 2011, the number of visitors increased 26 percent compared to 2010 – nearly 1.5 million travelers spending over \$7 billion - constituting the fourth largest source of overseas visitors to the United States. Visa process improvements will facilitate even more business trips, meetings and conventions...growing the economy and jobs.

A multifaceted approach to increase international business travel, including visa reforms and other initiatives, works best. An excellent example of a government-industry partnership to encourage business travel to the U.S. is the annual VISIT USA Show hosted by the U.S. Commercial Service (USCS), Department of Commerce. With 2012 events in Brazil, Argentina and other key markets, the event brings the travel/ meetings

industry and government together to advance strategies to increase the inbound U.S. market. For the past twenty years, the U.S. Embassy in Brazil has spearheaded this well-attended, well-recognized event to promote travel to America. GBTA Brazil fully supports these efforts and this event, in particular, to encourage travel and grow commerce between the two nations.

With the anticipated large increase in the number of visa applications in these and other vital markets, increased attention and resources in the next year are essential. The State Department and other impacted agencies must have sufficient funding to operate efficiently or the U.S. economy will pay the price. Moreover, consideration of new, innovative approaches should be on the table.

### **Visa Waiver Program**

The VWP is an unqualified success and has opened the door for countless business opportunities. In fiscal year 2010, nearly 18 million visitors from 36 countries traveled to the U.S. under the program, representing 44 percent of all foreign travelers.

GBTA and its members have long-supported the expansion of the VWP to include additional qualified nations that satisfy all security and safety protocols. We urge:

- Continued consideration of Brazil, China and other key markets for participation.
- If still unresolved, continued attention by the Department of Homeland Security and its agency partners to the issues surrounding Electronic System for Travel Authorization noncompliance and the lack of required information – sharing agreements raised in a recent report by the General Accountability Office. *VISA WAIVER PROGRAM*, Report to the Committee on Homeland Security and Government Affairs, U.S. Senate (May 2011).
- Strong consideration of options for increasing VWP participation described in the recent Congressional Research Service Report for Congress, including use of overstay rates rather than visa refusal rates for determining eligibility. *VISA WAIVER PROGRAM*, CRS Report to Congress, Alison Siskin (December 2, 2011).

GBTA welcomes the Administration's support for legislation pending in Congress to incorporate the visa overstay rate as a qualification for program eligibility. GBTA supports numerous bills to modify current program eligibility requirements to align better with key security concerns, including the *Secure Travel and Counterterrorism Partnership Act*, H.R.959/S.497 and the *Visa Improvements to Stimulate International Tourism to the USA Act*, H.R.3341/S.1746.

### **CONCLUSION**

As the Committee moves forward with its review of ways to expand access to the U.S. consistent with security and safety concerns, GBTA urges serious consideration of visa application process improvements, expansion of the VWP through changes to current program eligibility requirements and, of course, sufficient federal funding for these programs. Investment in these programs is an investment in the nation's economic recovery.

Thank you for your consideration of these comments.

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MARK KIRK  
ILLINOIS

United States Senate

COMMITTEES:  
APPROPRIATIONS  
RANKING, HOUSING & URBAN AFFAIRS  
HEALTH, EDUCATION, LABOR & PENSION  
AGING

March 27, 2012

Senator Barbara Mikulski  
503 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Mikulski:

Please convey my gratitude to Chairman Schumer, Ranking Member Cornyn, and other members of the subcommittee for holding this important hearing today.

The JOLT Act will expand the Visa Waiver Program (VWP) to include some of our strongest allies, such as Poland, and provide a much-needed boost to our economy by increasing tourism to the US. VWP expansion is important to many of my constituents in Illinois and remains one of my top priorities in the Senate. I traveled to Poland three months ago and know how important this issue is for the Polish government and the Polish people.

Please also accept my personal thanks for your longstanding leadership on this issue.

Sincerely,



Mark Kirk  
United States Senator

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