



## **Statement for the Record**

### **U.S. Senate Homeland Security & Governmental Affairs Committee**

#### **"Roundtable-Securing the Border: Biometric Entry and Exit at our Ports of Entry"**

**April 28, 2015**

Founded in 1982, the National Immigration Forum (Forum) works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

In late 2012, the Forum launched the initiative now called New American Workforce (NAW), which works with businesses to assist their eligible immigrant employees with the citizenship process so they become full participants in the workplace, community and economy. Through NAW, the Forum has partnered with more than 100 businesses across the United States to help their workforces navigate the naturalization process.

The National Immigration Forum also works with business leaders through our work with the Bibles, Badges and Business for Immigration Reform (BBB) for Immigration Reform. BBB is a network of conservative faith, law enforcement and business leadership that has come together to achieve the goal of broad immigration reform. Targeting key states through a combination of field events, media coverage and direct advocacy BBB and its partners have had more than 700 meetings with Members of Congress and their staffs and held more than 500 events in key congressional districts across 40 states in the past two years.

Our business partners in both BBB and NAW are clear that they need a better immigration system to help meet their labor needs. Filling these needs are critical to ensuring that America's economy thrives and is globally competitive. The Forum's relationships with businesses and individuals outside of the Beltway helps inform our views on the future flow of immigrants, demonstrating that our country needs an immigration system that accounts for the future labor needs of employers.

#### **Introduction**

The National Immigration Forum (the Forum) thanks the Committee for the opportunity to provide its views on this hearing to discuss the matter of biometric entry-exit at our nation's ports of entry. Since first mandating a biometric entry/exit system in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress has repeatedly tasked the



Department of Homeland Security (DHS) and its predecessor agencies with creating such a system for all ports of entry (POEs) to the United States.<sup>1</sup> After nearly two decades and several additional congressional mandates to implement biometric entry-exit system, DHS has yet to completely implement such a system. Implementing biometric entry-exit poses a variety of challenges which will be discussed and that is why we urge the members of the Committee not to lose focus on the on-going need to fix our broken immigration system through broad reform that includes a path to eventual citizenship.

### History of Biometric Entry Exit

In 1996 Congress passes IIRIRA which mandated biometric entry-exit be implemented by 1998, however that deadline passed without any action. Pressure for a working biometric system mounted after the September 11<sup>th</sup> attacks, and both the 2001 USA Patriot Act and 2004 Intelligence Reform and Terrorism Prevention Act (which was greatly influenced by the 9/11 Commission) included provisions for biometric exit pilot programs. The latter required the collection of biometric exit data for all individuals who were not U.S. citizens and lawful permanent residents. Post-September 11<sup>th</sup> bills emphasized the advantages of tracking terrorists that biometric exit provides in part because five of the terrorists in the 9/11 attacks had overstayed their visas.<sup>2</sup>

The 2004 Intelligence Reform and Terrorism Prevention Act incorporated the previous legislation into a clearer framework. The law required the DHS Secretary to submit a report to Congress by mid-2005 that included a description of the current deficiencies of the entry-exit system, an assessment of current entry-exit effectiveness, a rough timeline for biometric entry-exit implementation, and cost estimates for implementing the biometric entry-exit system. Within two years of December 17, 2004, the DHS Secretary was required to integrate all databases and data systems maintained by DHS, the Department of Justice, and the Department of State that contain information on “aliens.”<sup>3</sup> The legislation also required that DHS develop training mechanisms and procedures to guide implementation.

The entry program, implemented in 2004 and fully operational since 2006, uses a combination of biometric and biographic information to verify travelers’ identities and provide access into the country. At land POEs, most Mexican, Canadian and American citizens need not submit biometric information to Customs and Border Protection (CBP) to gain entry.<sup>4</sup> Most foreign

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<sup>1</sup> 8 U.S.C. § 1365(b)

<sup>2</sup> U.S. Government Accountability Office. “Overstay Enforcement: Additional Actions Needed to Assess DHS’s Data and Improve Planning for a Biometric Air Exit Program.” July 2013. P. 2. See note 2.

<sup>3</sup> 50 U.S.C. 404o

<sup>4</sup> U.S. Government Accountability Office. “Border Security: US-VISIT program Faces Strategic Operations, and Technological Challenges at Land Ports of Entry.” December 2006. P. 2. Available at <http://www.gao.gov/assets/260/254247.pdf>



nationals, including those using the Visa Waiver Program, are directed to a secondary inspection area where they submit to a digital photograph and digital scans of their index fingers. CBP officers then enter this information into the US-VISIT database, and check the traveler's biometric information against DHS databases of terrorists and criminals.<sup>5</sup>

Air and sea POEs operate a bit differently. Most foreign nationals submit passenger manifests prior to traveling; this helps CBP agents identify biometric data already present in DHS databases, as well as isolate passengers who should be scrutinized more closely. <sup>6</sup> From 2004 to 2007, US-VISIT tested biometric exit at 14 air and sea POEs to evaluate the viability of self-service kiosk, mobile device, and the combination of both. The pilot program design did not include negative repercussions for travelers who did not participate. No incentive to participate lowered the rate of compliance among travelers, which limited the usability of the pilot's results.<sup>7</sup>

Over the years DHS has attempted to implement various additional pilot programs but to no avail. In the last Congress when the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, which would have required biometric entry-exit be phased in at all land and sea ports of entry and developing a pilot project for land ports of entry. However, currently there are still various challenges that face the Department of Homeland Security when it comes to implementing biometric entry-exit at all ports of entry.

#### Issues with a Biometric System:

In a September 2013 hearing entitled "Fulfilling A Key 9/11 Commission Recommendation: Implementing Biometric Exit," DHS officials testified that DHS had successfully implemented a biometric entry program, but that substantial obstacles remained to planning or implementing a biometric exit system.<sup>8</sup> All ports of entry contend with infrastructure problems, since they were designed to facilitate safe entry data collection rather than exit data. Beyond this similarity, land POEs face different issues than sea or air ports. Land POEs already contend with traffic congestion, lack of space and extensive processing times; these issues would become considerably more difficult if a biometric exit system were enforced. According to the Houston Chronicle, wait times at ports of entry at the southern border can take over five hours at peak times, and

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<sup>5</sup> Ibid at p. 3.

<sup>6</sup> Ibid at p. 3.

<sup>7</sup> Comments of the Air Transport Association of America, Inc. In the matter of the Proposed US-VISIT Exit system notice of proposed rule making. 73 Fed. Reg. 22065. April 24, 2008. P. 22. Available at [http://www.airlines.org/Documents/agency\\_6-23-08.pdf](http://www.airlines.org/Documents/agency_6-23-08.pdf)

<sup>8</sup> U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Border and Maritime, Hearing. "Fulfilling a Key 9/11 Commission Recommendation: Implementing Biometric Exit" September 25, 2013. Testimony of David F. Heyman, John P. Wagner, John P. Woods. September 25, 2013. P. 3, 8.. See note 5 above.



Bloomberg estimates the average wait is just over an hour at all times.<sup>9</sup> These issues as well as the difficulty of adapting the exit system to both urban and rural environments call into question whether a biometric exit system at land POEs would be cost-effective. Bloomberg Government analysts estimate that impediment to cross-border trade could cost the economy billions of dollars.<sup>10</sup>

Additional problems detailed in GAO reports on biometric land exit include the difficulty of adding new infrastructure to aging facilities and the lack of adequate personnel. Considering the cost and difficulty of implementing biometric exit to land POEs and the fact that the majority (64%) of all overstays come by air, DHS strategy emphasizes air and sea ports.<sup>11</sup> DHS defended its decision to focus biometric exit implementation at air and sea POEs by citing traffic issues, high costs, and inadequate infrastructure at land POEs.<sup>12</sup>

Considerable challenges exist to air and sea POEs as well, however. The main obstacle is the opposition of the airline and airport carriers, who have concerns about the cost of implementing a biometric exit strategy and also fear the effects on their operations. During the comment period after DHS issued a notice of proposed rulemaking requiring air and sea carriers to implement biometric air exit, the Air Transport Association of America (ATAA) issued a document outlining their opposition to the rule. They said DHS' own regulatory impact analysis indicated a biometric air exit system would cost three times more than it would bring in benefits (\$3.5 billion versus \$1.09 billion), that the industry already suffered from increased gas prices and could not handle the \$3 billion cost of implementing the biometric exit system, and that the rule represented a reversal of the industry's movement toward pre-flight check-in and general ease of air travel.<sup>13</sup> Finally the ATAA document argued that Congress had mandated DHS to create biometric exit system and passing the responsibility over to the airline industry was unlawful.<sup>14</sup>

Besides airline opposition, in 2010 DHS named two other issues impeding a successful biometric air exit system: challenges to data collection, including identifying the party responsible for collecting the data, and the disruption of the flow of passengers. A 2012 DHS report concluded

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<sup>9</sup> Transportation management system company, "US-Mexico border delays impact carriers' regional distribution activities" available at, <http://appian.tmwsystems.com/industry-news/us-mexico-border-delays-impact-carriers-regional-distribution-activities>.

<sup>10</sup> Bipartisan Policy Center. "Entry-Exit System: Progress, Challenges, and Outlook. May 2014. P. 8. Available at <http://bipartisanpolicy.org/sites/default/files/BPC%20Immigration%20Entry-Exit%20System%20Progress%2C%20Challenges%2C%20and%20Outlook.pdf>

<sup>11</sup> U.S. Government Accountability Office. "Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program." July 2013. P. 23. See note 2 above.

<sup>12</sup> Comments of the Air Transport Association of America, Inc. In the matter of the Proposed US-VISIT Exit system notice of proposed rule making. 73 Fed. Reg. 22065. April 24, 2008. See note 17 above.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.



that changes in technology could make screening passengers easier, citing online check in and other digital developments. However, the report argues integrating biometric technology with older airline and airport technology still presents a substantial challenge. Overall the DHS report expressed concerns regarding the cost-effectiveness and added value of a biometric air exit system.<sup>15</sup>

Conclusion:

It has been 19 years since Congress passed IIRIRA and DHS has been unable to implement a biometric entry-exit system at ports of entry. Implementing a biometric exit system potentially requires billions of dollars in infrastructure improvements and unprecedented cooperation from private sector actors whose interests do not necessarily align with putting such a system in place. DHS needs to a truly study the viability of an entry-exit system as well as asses the costs required. Therefore, we recommend DHS implement pilot projects at air, land and sea ports of entry in order to ascertain the true feasibility and costs associated with implementing a biometric entry-exit system at all ports of entry and report their findings to Congress.

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<sup>15</sup> U.S. Government Accountability Office. "Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program." July 2013. P. 27-28. See note 2 above.