

**SMOOTH SAILING OR AN IMPENDING WRECK?
THE IMPACT OF NEW VISA AND PASSPORT
REQUIREMENTS ON FOREIGN TRAVEL TO THE
UNITED STATES**

HEARING
BEFORE THE
**COMMITTEE ON
GOVERNMENT REFORM**
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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REQUIREMENTS ON FOREIGN TRAVEL TO
THE UNITED STATES**

THURSDAY, JULY 10, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis (chairman of the committee) presiding.

Present: Representatives Tom Davis of Virginia, Ose, Lewis of Kentucky, Platts, Deal, Miller of Michigan, Waxman, Maloney, Kucinich, Clay, Watson, Van Hollen, Sanchez, Ruppertsberger, Norton, and Bell.

Staff present: Peter Sirh, staff director; Melissa Wojciak, deputy staff director; Keith Ausbrook, chief counsel; Ellen Brown, legislative director and senior policy counsel; Robert Borden, counsel/parliamentarian; David Marin, director of communications; Scott Kopple, deputy director of communications; John Cuaderes, Mason Alinger, and Victoria Proctor, professional staff members; David Young, counsel; Teresa Austin, chief clerk; Joshua E. Gillespie, deputy clerk; Shalley Kim, legislative assistant; Corinne Zaccagnini, chief information officer; Brien Beattie, staff assistant; Phil Barnett, minority chief counsel; Michael Yeager, minority deputy chief counsel; Karen Lightfoot, minority communications director/senior policy advisor; Earley Green, minority chief clerk; Jean Gosa, minority assistant clerk; and Cecelia Morton, minority office manager.

Chairman TOM DAVIS. Good morning. We expect a journal vote around 10:15, so I'm going to get going with my opening statement.

A quorum being present, the Committee on Government Reform will come to order. I want to welcome everyone to today's hearing on the government's management of security requirements for foreign visitors seeking entry to this country. The issue of visa delays should come as no surprise to most members. Next to issues concerning Social Security, visa problems tend to be the most requested issue when it comes to casework within our districts.

The committee continues to be concerned that flawed implementation of current and looming security requirements may needlessly delay or deny entry of foreign travelers to our country for business or tourism. We all agree that homeland security is our top priority and, as a result of September 11, we need to closely scrutinize visi-

tors to our country. Today the committee will examine the entry process for visitors to see if there are ways that, without sacrificing security, we can mitigate delays that impede legitimate business and tourist travel.

Prior to the September 11 attacks, the State Department's visa operations focused primarily on screening applicants to determine whether they intended to work or reside illegally in the United States. Consular officers were encouraged to facilitate legitimate travel and overseas consular sections were given substantial discretion in determining the level of scrutiny applied to visa applications.

Since September 11, the U.S. Government has introduced some changes to strengthen the security of visa issuance. For example, the State Department has increased the types of security checks it conducts on applicants and the number of agencies involved with those checks. Consular officers are also conducting longer applicant interviews and more of them. Along with these additional precautions, however, come delays that have seriously affected American businesses and our tourism industry.

Longstanding business relationships are being disrupted because legitimate travelers attempting to travel to the United States cannot obtain visas. Opportunities for new business relationships and normal business practices are being blocked and personnel transfers within some U.S. corporations are being delayed. In addition, U.S.-based foreign employees visiting family or traveling who need to renew visas or change them to reflect new status are being significantly delayed in their efforts to return to work.

If current delays weren't enough, we understand that additional delays are expected. On August 1, the State Department will implement new regulations that will further reduce the instances in which consular interviews can be waived for visa applications. This is expected to change interview rates from 10 percent of visa applicants in some locations to close to 90 percent of applicants. A cable sent in May of this year from Secretary Powell to all diplomatic and consular posts states that the Bureau of Consular Affairs expects and accepts that many posts will face processing backlogs for the indefinite future. Posts are required to use existing resources for the interview increase and are not permitted to use overtime.

In some countries, the wait time for interview appointments can be several months. For example, one of the consulates in India, a country that is the source of many high-tech companies and employees, has such a large interview backlog that it is no longer accepting appointments for interviews. This means that travelers must spend additional time and money to travel to alternate interview locations. In some countries the toll phone call to set up an interview appointment at the consulate can cost a day's wages or more.

We are here today to understand what steps the State Department is taking to minimize the impact this new requirement will have on business and tourism in the United States.

Committee staff visited U.S. consular operations in Germany and Latvia to see how increased security requirements are being implemented at both large and small missions. The embassies in both Latvia and Germany have already ramped up interview operations

to require interviews for over 80 percent of visa applicants. The embassy in Berlin uses an appointment system that provides applicants an interview appointment within two business days of the date of request. The embassy in Latvia has set aside 1 day of the week for interviews for applicants identified by the local chapter of the American Chamber of Commerce as priority applicants. This scheduling accommodation will save time for business travelers who need to obtain a visa quickly.

Another example of an innovative idea that minimizes delays is the way the embassy in Latvia permits maritime sailors who register through a central crewing agency to be granted visas safely without interviews. The embassy believes this method allows for a secure way to streamline the visa process for what amounts to nearly a quarter of the total visa applicants in Latvia.

Under the impending State Department interview requirements, such a procedure may require a waiver. The committee hopes that the State Department will consider reasonable alternate processes that will expedite processes without jeopardizing security.

Another expected source of delays begins in October of this year when the USA PATRIOT Act requires visitors to the United States to use machine-readable passports to enter the country. Although government sources report that many countries are in fact producing machine-readable passports, travelers may not actually possess them. Travelers who attempt to enter the country without a machine-readable passport will be required to either apply for a visa to enter the United States or to apply for a new passport. I am interested in hearing from our panels today about how this new requirement is being publicized both here and abroad, what policies are in place for any waivers, and what the airlines are expected to do when would-be travelers are unable to present machine readable passports.

I hope that by the end of the hearing today, the committee will have a good picture of the important security measures the State Department, the Department of Homeland Security, and the Federal Bureau of Investigation are taking to protect the homeland from foreign visitors who would do us harm. But I also hope that we can learn about ways in which potential damage to American business and tourism can be avoided or mitigated.

We have assembled an impressive group of witnesses to help us understand the current and expected problems pertaining to business travel and what actions are being taken to prevent or mitigate delays. We will hear from the Department of State, the Department of Homeland Security, and the Federal Bureau of Investigation. We will also receive input from the private sector, including the U.S. Chamber, the Travel Industry Association of America, and the law firm of Fragomen, Del Rey, Bernsen & Loewy.

I want to thank all of our witnesses for appearing before the committee, and I look forward to their testimony.

[The prepared statement of Chairman Tom Davis follows:]

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Opening Statement
Chairman Tom Davis
Committee on Government Reform
“Smooth Sailing or an Impending Wreck?”
The Impact of New Visa and Passport Requirements on Foreign Travel to the United States”

July 10, 2003

I would like to welcome everyone to today’s hearing on the government’s management of security requirements for foreign visitors seeking entry to this country. The issue of visa delays should come as no surprise to most members. Next to issues concerning Social Security, visa problems tend to be the most requested issue when it comes to casework within our districts.

The Committee continues to be concerned that flawed implementation of current and looming security requirements may needlessly delay or deny entry of foreign travelers to our country for business or tourism. We all agree that homeland security is our top priority, and that as a result of September 11, we need to closely scrutinize visitors to our country. Today, the Committee will examine the entry process for visitors to see if there are ways that, without sacrificing security, we can mitigate delays that impede legitimate business and tourist travel.

Prior to the September 11 attacks, the State Department’s visa operations focused primarily on screening applicants to determine whether they intended to work or reside illegally in the United States. Consular officers were encouraged to facilitate legitimate travel, and overseas consular sections were given substantial discretion in determining the level of scrutiny applied to visa applications.

Since September 11, the U.S. government has introduced some changes to strengthen the security of visa issuance. For example, the State Department has increased the types of security checks it conducts on applicants and the number of agencies involved with those checks. Consular officers are also conducting longer applicant interviews and more of them. Along with these additional precautions, however, come delays that have seriously affected American businesses and the tourism industry.

Longstanding business relationships are being disrupted because legitimate travelers attempting to travel to the U.S. cannot obtain visas. Opportunities for new business relationships and normal business practices are being blocked, and personnel transfers within some U.S. corporations are being delayed. In addition, U.S.-based foreign employees visiting family or

traveling on business who need to renew visas or change them to reflect new status are being significantly delayed in their efforts to return to work.

If current delays weren't enough, we understand that additional delays are expected. On August first, the State Department will implement new regulations that will further reduce the instances in which consular interviews can be waived for visa applications. This is expected to change interview rates from ten percent of visa applicants in some locations to close to ninety percent of applicants. A cable sent in May of this year from Secretary Powell to all diplomatic and consular posts states, that the Bureau of Consular Affairs "expects and accepts that many posts will face processing backlogs for the indefinite future." Posts are required to use existing resources for the interview increase and are not permitted to use overtime.

In some countries, the wait time for interview appointments can be several months. For example, one of the consulates in India, a country that is a source of many hi-tech companies and employees, has such a large interview backlog that it is no longer accepting appointments for interviews. This means that travelers must spend additional time and money to travel to alternative interview locations. In some countries, the toll phone call to set up an interview appointment at the consulate can cost a day's wage or more.

We are here today to understand what steps the State Department is taking to minimize the impact this new requirement will have on business and tourism in the United States.

Committee staff visited U.S. consular operations in Germany and Latvia to see how increased security requirements are being implemented at both large and small missions. The embassies in both Latvia and Germany have already ramped up interview operations to require interviews for over 80 percent of visa applicants. The embassy in Berlin uses an appointment system that provides applicants an interview appointment within two business days of the date of a request. The embassy in Latvia has set aside one day of the week for interviews for applicants identified by the local chapter of the American Chamber of Commerce as priority applicants. This scheduling accommodation will save time for business travelers who need to obtain a visa quickly.

Another example of an innovative idea that minimizes delays is the way the embassy in Latvia permits maritime sailors who register through a central crewing agency to be granted visas safely without interviews. The embassy believes that this method allows for a secure way to streamline the visa process for what amounts to nearly a quarter of the total visa applicants in Latvia.

Under the impending State Department interview requirements, such a procedure may require a waiver. The Committee hopes that the State Department will consider reasonable alternative processes that will expedite processing without jeopardizing our security.

Another expected source of delays begins in October of this year when the USA PATRIOT Act requires visitors to the United States to use machine-readable passports to enter the country. Although government sources report that many countries are in fact producing machine-readable passports, travelers may not actually possess them. Travelers who attempt to

enter the country without a machine-readable passport will be required either to apply for a visa to enter the United States or to apply for a new passport. I am interested in hearing from our panels today about how this new requirement is being publicized both here and abroad, what policies are in place for any waivers, and what the airlines are expected to do when would-be travelers are unable to present machine-readable passports.

I hope that by the end of this hearing, the Committee will have a good picture of the important security measures the State Department, the Department of Homeland Security, and the Federal Bureau of Investigation are taking to protect the homeland from foreign visitors who would do us harm. But I also hope that we can learn about ways in which potential damage to American business and tourism can be avoided or mitigated.

We have assembled an impressive group of witnesses to help us understand the current and expected problems pertaining business travel and what actions are being taken to prevent or mitigate travel delays. We will hear from the Department of State, the Department of Homeland Security, the Federal Bureau of Investigation. We will also receive input from the private sector, including the U.S. Chamber of Commerce, the Travel Industry Association of America, and the law firm Fragomen, Del Rey, Bensen & Loewy.

I would like to thank all of our witnesses for appearing before the Committee, and I look forward to their testimony.

Chairman TOM DAVIS. And I now yield to our ranking member, Mr. Waxman, for his opening statement.

Mr. WAXMAN. Thank you Mr. Chairman. I appreciate you holding this hearing because today's hearing is about the balance we need to draw between having an open society, one that encourages international tourism and commerce, and the need to protect ourselves against real terrorist threats. Both are important interests. But when we take steps to advance one of these interests, we need to recognize that it often comes at the expense of the other. That's why we in Congress and the executive branch need to be thoughtful and selective about the measures we are prepared to take or not take in the name of homeland security.

In the wake of September 11, 2001, Congress passed the PATRIOT Act, the Homeland Security Act, and other measures to try to elevate the importance of security at home. Some of these reforms were necessary and long overdue. In some of these instances, however, I think we acted too quickly, giving little thought to the consequences.

The hearing today is going to focus mainly on two security regulations that may significantly affect the travel and tourism industry, exporters, and other sectors of our economy that rely on foreign travelers to the United States. One requires that countries participating in the Visa Waiver Program issue machine-readable passports by October 1, 2003. This is a requirement passed by Congress, and in concept it appears to make a great deal of sense. The issue is the timetable required by the law and its impact on travelers whose governments have not acted quickly enough to issue the new passports.

The other regulation will require consular officers around the world to conduct far more interviews of visa applicants, possibly causing long delays in the issuance of visas. The travel industry and other groups represented here today argue that this will add little to our security and will worsen the decade-long decline in the U.S. share of world travel. They say that it is not clear how the cursory interviews conducted at visa windows will really improve our ability to detect terrorists.

Although the numbers are unclear, we know that at least some of the September 11 terrorists who obtained visas were interviewed by consular officials. One official who interviewed one of the terrorists asked how she could be expected to tell from the interview that he was bent on committing an act of terrorism. That's a good question. Even if these interviews are a good idea, it appears the State Department is badly prepared for the backlogs and increased workload that will certainly follow.

A cable issued on May 3 to U.S. missions abroad, recognized the problems, but indicated that the State Department would not provide additional resources. The cable reads, "Posts must implement the new interview guidelines using existing resources. Posts should not, repeat not, use overtime to deal with the additional workload requirements but should develop appointment systems and public relations strategies to mitigate as much as possible the impact of these changes."

To me it's a recipe for disaster. If the United States is going to make this policy change, then the officials implementing it need

the resources to do the job. Appointment systems and public relation strategies are not the answer.

I welcome all of our witnesses and I look forward to hearing from them and receiving their testimony today.

[The prepared statement of Hon. Henry A. Waxman follows:]

**Statement of Rep. Henry Waxman, Ranking Minority Member
Committee on Government Reform
Hearing on
Smooth Sailing or an Impending Wreck: The Impact of New Visa
and Passport Requirements on Foreign Travel to the United States
July 10, 2003**

Today's hearing is about the balance we need to draw between having an open society – one that encourages international tourism and commerce – and the need to protect ourselves against real terrorist threats. Both are important interests. But when we take steps to advance one of these interests, we need to recognize that it often comes at the expense of the other. That's why we in Congress and the executive branch need to be thoughtful and selective about the measures we are prepared to take (or not take) in the name of homeland security.

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To me, that is a recipe for disaster. If the U.S. is going to make

this policy change, then the officials implementing it need the resources to do the job. Appointment systems and public relations strategies are not the answer.

I welcome our witnesses and look forward to hearing their testimony today.

Chairman TOM DAVIS. Do any other Members wish to make a statement? If not we will move to our first panel of witnesses and I want to thank them for taking time from their busy schedules to be with us today.

Welcome Ms. Janice Jacobs, the Deputy Assistant Secretary for Visa Services, U.S. State Department; Mr. Michael Cronin, the Associate Commissioner for Immigration Policy and Programs from the Bureau of Customs and Border Protection, Department of Homeland Security; and Mr. Robert Garrity, the Acting Assistant Director of the Records Management Division of the FBI.

It's the policy of this committee that all witnesses be sworn in before they testify. So if you would rise with me and raise your right hands.

[Witnesses sworn.]

Chairman TOM DAVIS. In order to allow time for questions—your total statement is in the record. We have a light in front of you. When the yellow light goes on, that means 4 minutes are up and you have a minute to sum up, and if you could move to summary and then we can get directly into questions.

Ms. Jacobs we will start with you and thank you for being with us.

STATEMENTS OF JANICE L. JACOBS, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, U.S. STATE DEPARTMENT; MICHAEL CRONIN, ASSOCIATE COMMISSIONER FOR IMMIGRATION POLICY AND PROGRAMS, BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; AND ROBERT J. GARRITY, JR., ACTING ASSISTANT DIRECTOR, RECORDS MANAGEMENT DIVISION, FEDERAL BUREAU OF INVESTIGATION

Ms. JACOBS. Mr. Chairman, members of the committee, thank you for inviting me to testify before you today on the subject of visa policy and its effect on the security of the United States, our economic health, and our openness to other societies. Clearly these are all significant interests of the United States that must be given their proper weight as the Department of State and Department of Homeland Security design and implement a visa policy that serves the broad goals of our country.

Visa adjudication by consular offices abroad underwent a change in the wake of the terrorist attacks on the United States on September 11, 2001. While detecting security threats to our country was always taken with the utmost seriousness by our officers, we had few tools beyond our incomplete watchlist to screen for terrorists and other security threats in the visa process before September 11.

Suspicion of illegal immigration was and remains the primary reason for turning down a visa applicant, and our officers are well trained to do this job. It is hardly surprising that their efforts were focused on the well-documented problem of illegal immigration prior to September 11, nor should it surprise anyone now that we have shifted our priorities toward the security of the visa process in order to render it a more effective antiterrorism tool.

The Department of State has invested substantial time, money, and effort in revamping our visa work to serve this end. We have

doubled our database holdings on individuals who should not be issued visas, increased our training efforts to better apprise consular offices of counterterrorism issues, set up special programs to more fully vet visa applicants of particular concern and moved to increase staffing for visa positions abroad.

While you never achieve perfection in this area, I am confident that we have a much stronger visa process in place at our overseas posts than we had just 1 year ago, and the country is safer for it.

There is a cost for all of this effort and it is not simply borne by the Department in terms of greater personnel and equipment needs. It also comes at a cost in time and a certain amount of inconvenience to visa applicants who must now navigate a process that is more rigorous than it has been in the past. Secretary Powell has succinctly articulated our policy as "Secure Borders, Open Doors," and we at the Department are acutely aware of the need to satisfy both of these objectives. The U.S. economy counts on the billions of dollars spent each year by international tourists. Our universities reap the economic benefits of preeminence among destination countries for international students. Our scientific establishment flourishes in a climate of open exchange across borders, and our entire society is accustomed to living in a free and open manner that counts upon an ease of movement across international borders.

We are determined to preserve these crucial benefits to the United States even as we work to strengthen the visa process. Most nonimmigrant visa applicants do not require any special check beyond the enhanced consular name check. While processing requirements have increased the burden on our officers in terms of the data they collect and the checks they must complete, most of this occurs out of the applicant's sight and does not add appreciably to the time required to make a visa decision.

Much of the frustration of last summer and fall when we were adding requirements without the resources to properly handle them has been overcome. But applicants and their sponsors often believe that nothing has changed, even when they have yet to test the system with a new application. In order to keep visas flowing smoothly with the new security requirements, we are adding additional officers in the field. We will have a net increase of 39 consular officers for fiscal year 2003 and another 80 in fiscal year 2004. We have tightened the conditions under which we allow posts to waive a personal interview by a visa applicant and asked our 210 visa-issuing posts to implement this new policy by August 1 of this year. By centralizing at headquarters level the decisionmaking authority on this issue, we can consult security experts before making changes to general guidelines. I will point out that many posts have met the new standard already.

Because most of our posts operate in countries where illegal migration to the United States has been a longstanding problem, consular officers there were already interviewing the vast majority of applicants. Some posts not facing a significant problem of illegal migration changed their interview policy without prompting from us. London, for example, went to an 80 percent interview rate in January of this year and was able to implement this policy without great stress to either officers or applicants. Clearly, however, there

are posts in high-volume places that will have a tougher time coming into compliance with the policy.

We are committed to toughening our security screening, but also to ensuring that applicants get their visas in a timely manner and we will work closely with affected posts such as Seoul, Rome, Paris, Tokyo and Taipei to see that both goals are attained. We are working to effectively and smoothly implement the requirement established by law that any visitors seeking to enter the United States under the Visa Waiver Program after October 1, 2003 present a machine-readable passport or otherwise obtain a U.S. visa, which has long been machine-readable. We are vigorously publicizing the requirement in the VWP countries and our embassies are fully prepared to issue visas quickly to VWP citizens unable to obtain an MRP in time for any needed travel.

A number of non-immigrant visa applications, approximately 2 percent of our workload, are submitted by consular officers overseas to the Department of State for Washington-level screening by Federal intelligence and law enforcement agencies. This is known as the "security advisory opinion" process. The purpose of the new additional review is to focus on serious issues such as hostile intelligence activity, potential terrorist threats and access to sensitive technology. The Department of State acts primarily as a clearinghouse in this process. We have added significant resources to the staff of the Visa Office to ensure that we return to posts overseas the results of the interagency review promptly upon completion. The analytical experts of the Department who review such cases do so within 2 weeks.

We are also spending approximately \$1 million to modernize the transmission of data in the security advisory opinion process to eliminate as much as possible manual manipulation of case data and make use of a new interagency network known as OSIS. This modernization should be complete by January 2004.

The Department of State is working hand-in-hand with our colleagues at Homeland Security and the Department of Justice to ensure we have a visa system that properly recognizes threats to the United States in the visa process and stops them from reaching our shores. We are working every day with business and industry to see that access to our country is not impeded for those whose business we want and whose presence we value.

I am happy to answer any questions that you may have. Thank you.

Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Ms. Jacobs follows:]

House of Representatives
Committee on Government Reform
Visa Processing Delays
Testimony of Janice L. Jacobs
Deputy Assistant Secretary of State for Visa Services
July 10, 2003

Mr. Chairman, Members of the Committee:

Thank you for inviting me to testify before you today on the subject of visa policy and its affect on the security of the United States, our economic health, and our openness to other societies. Clearly these are all significant interests of the United States that must be given their proper weight as the Department of State and the Department of Homeland Security design and implement a visa policy that serves the broad goals of our country. Visa adjudication by consular officers abroad underwent a sea change in the wake of the terrorist attacks on the United States on September 11, 2001. While detecting security threats to our country was always taken with the utmost seriousness by our officers, we had few tools beyond our incomplete watch list to screen for terrorist and other security threats in the visa process before 9/11. Suspicion of illegal immigration was and remains the primary reason for turning down a visa applicant, and our officers are well trained to do this job. It is hardly surprising that their efforts were focused on the well-documented problem of illegal immigration prior to 9/11, nor should it surprise anyone now that we have shifted our priorities towards the security of the visa process in order to render it a more effective anti-terrorism tool.

The Department of State has invested substantial time, money, and effort in revamping our visa work to serve this end, aided by a number of studies by the General Accounting Office (GAO), the Inspector General, and our own continuous reviews of visa policy and procedure. Assistant Secretary for Consular Affairs Maura Harty underwent a searching examination of the visa process during her confirmation proceedings and gives this effort her full support and attention. While it is not my purpose here to provide you with a comprehensive review of our efforts in this regard, I will point out that with passage of the USA PATRIOT Act we were able to acquire more lookout information from other agencies, and we doubled our lookout database. We increased our training efforts to better apprise consular officers of counter-terrorism issues, set up special programs to more fully vet visa applicants of particular concern, and moved to increase staffing for visa positions abroad. While you never achieve perfection in this area, I am confident that we have a much stronger visa process in place at our posts overseas than we had just one year ago, and the country is safer for it.

There is a cost to all of this effort and it is not simply borne by the Department in terms of greater personnel and equipment needs. It also comes at a cost in time and a certain amount of inconvenience to visa applicants who now must navigate a process that is more rigorous than it has been in the past. Secretary Powell has succinctly articulated our policy as "Secure Borders, Open Doors", and we at the Department are acutely aware

of the need to satisfy both of these objectives. The US economy counts on the billions of dollars spent each year by international tourists, our universities reap the economic benefits of pre-eminence among destination countries for international students, our scientific establishment flourishes in a climate of open exchange across borders, and our entire society is accustomed to living in a free and open manner that counts upon an ease of movement across international borders. We are determined to preserve these crucial benefits to the United States even as we work to strengthen the visa process' security.

Here I have good news and bad news, to use the old clichéd phrase. The bad news is that the heightened emphasis on security issues got off to a rocky start that occasioned much inconvenience for many legitimate applicants, especially in the summer and fall of 2002. The good news is that we have worked through many of these problems, invested in people and technology, and pioneered new processes with our law enforcement colleagues that have solved many of the problems of this start-up period. It is incontestable that getting a US visa today, in many parts of the world, takes longer than it used to, but it is by no means an impossible or needlessly frustrating task for qualified applicants to do so. We are working with the business community, the travel industry, and our scientific establishment to provide the access to the US they need while guaranteeing proper security to all.

Before I discuss in detail some of the procedural changes that might slow down the visa process for some applicants, I want to address what I believe is a widely held misapprehension among many in the business and scientific community: the notion that all applicants face vastly increased hurdles in order to get a visa. Most visa applicants do not require any special check beyond the enhanced consular name check (CLASS) search. While processing requirements have increased the burden on our officers in terms of the data they collect and the checks they must complete, most of this occurs out of the applicant's sight and does not add appreciably to the time required to make a visa decision. Much of the frustration of last summer and fall, when we were adding requirements without the resources to properly handle them, has been overcome, but applicants and their sponsors often believe that nothing has changed even when they have yet to test the system with a new application.

The process for obtaining a visa has not changed very much for the applicant. They still must make an appointment with our embassy or consulate, provide paperwork or come in for a personal interview, and have the application adjudicated by a consular officer. If the visa is approved, a visa is secured in the applicant's passport and the passport is returned with the visa. In most instances, this entire procedure takes place in a matter of weeks from first contact to delivery of the visaed passport. Visa demand is greatest in the summer. This is a temporary phenomenon due to the summer rotation of consular personnel to new assignments. With consular officers arriving at these posts over the next few weeks, this trend will quickly reverse itself. We also have a net increase of 39 consular officers for fiscal year 2003 and another 80 in fiscal year 2004.

Once an appointment is secured, the applicant will either present paperwork to the consular officer or speak directly with the consular officer to request the visa. We have

greatly increased our rate of personal interviews to meet national security goals. Many applicants can establish the bona-fide nature of their case to a consular officer within a few minutes. Examples of this would be articulate, well-prepared students going to prestigious US academic institutions or executives with major multinational companies. Consular officers will of course take as long as needed – until the consular officer has the information needed to make a decision in a specific case.

The change in policy on waiver of personal appearance has gotten a lot of attention, both within the Visa Office and outside, so I'd like to say a few words about what we are doing and why. Law and regulation have always demanded a personal interview of a visa applicant, but granted consuls abroad wide discretion to waive the requirement. When the Department was understaffed and underfunded in the previous decade, we found that saving time and money through waiver of personal appearance allowed us to keep up with a seemingly insatiable demand for non-immigrant visas. We carefully weighed the categories of applicants who we felt could be handled without an interview and were able to process record numbers in this fashion (10 million non-immigrant visa applications in fiscal year 2000).

The 9/11 hijackers made us reconsider the utility of this policy. None of them were on any US government watch list available to the consular officers who approved the applications, and most of them got their visas without a personal interview. Though much has been made of this fact, it is plainly true that Saudi Arabian applicants applying for visitor visas prior to 9/11 were considered to qualify for US visas. They had and have an extremely low rate of immigration violations, they come from a country with a healthy economy, and they return home after their visit to the US. We now know that there is a national security threat specific to certain Saudi nationals and certain nationals of countries that sponsor terrorism, and we use every technique and skill our officers can learn to try to identify such threats and keep up-to-date with changes to the threat assessment. We believe that a personal interview is a significant tool to help our officers to do just that.

We have tightened the conditions under which we allow a post to waive a personal interview by a visa applicant and asked our 210 posts to implement this new policy by August 1 of this year. By centralizing at the headquarters level the decision-making authority on this issue, we can consult security experts before making changes to general guidelines. I will point out that many posts have met the new standard already. Because most of our posts operate in countries where illegal migration to the US has been a long-standing problem, consular officers there were already interviewing the vast majority of visa applicants. Some posts not facing a significant problem of illegal migration changed their interview policy without prompting from us: London for example went to a 80% interview rate last year and has implemented this policy without great stress to either officers or applicants. Clearly, however, there are posts in high-volume places that will have a tougher time coming into compliance with the policy. We are committed to strengthening our security screening, but also to ensuring that applicants get their visas in a timely manner and will work closely with affected posts, such as Seoul, Rome, Paris, Tokyo, and Taipei, to see that both goals are attained. As we

implement the October 26, 2004, legislative mandate to include a biometric identifier with the visas we issue, all non-immigrants will have to appear in person for collection of the biometric data.

We are working to effectively and smoothly implement the requirement established by law that any visitor seeking to enter the United States under the Visa Waiver Program (VWP) after October 1, 2003, present a machine readable passport (MRP) or otherwise obtain a US visa, which has long been machine readable. A program to produce machine-readable passports has been a requirement for participation in the VWP since its inception in 1986, and every country participating in the VWP has long known of the need to issue these documents to their citizens. MRPs improve security by incorporating better anti-fraud features and allowing for rapid checking of automated databases. They also speed up processing of legitimate travelers and are a win/win situation for everyone. Unfortunately some of the VWP countries have not put these documents into circulation as thoroughly as needed and will now face an increase in passport demand from their citizens traveling to the US on the VWP. We are vigorously publicizing the requirement in the VWP countries, and our embassies are fully prepared to issue visas quickly to VWP citizens unable to obtain an MRP in time for any needed travel.

A number of non-immigrant visa applications, approximately 2% of our workload, are submitted by consular officers overseas to the Department of State for Washington-level screening by federal intelligence and law enforcement agencies. This is known as the security advisory opinion process. The purpose of the additional review is to focus on serious issues such as hostile intelligence activity, potential terrorist threats, and access to sensitive technology.

The business, academic, and scientific communities have expressed concern that delays in this process result in disruptions to on-going research and commercial activities. We cannot guarantee that specific cases will not be held up because these cases do frequently require expert analysis by Washington experts. We are working hard to provide more efficiency and predictability to the screening of visa applicants subject to interagency review, but these will always be the cases which take the longest to process to conclusion.

The Department of State acts primarily as a clearing-house in this process. We have added significant resources to the staff of the Visa Office to ensure that we return to posts overseas the results of the interagency review promptly upon completion. The analytical experts of the Department who review such cases do so within two weeks. We are also spending approximately one million dollars to modernize the transmission of data in the security advisory opinion process to eliminate as much as possible manual manipulation of case data and make use of a new interagency network known as OSIS. This modernization should be complete by January 2004.

The Department of State is working hand in hand with our colleagues at Homeland Security and the Justice Department to ensure that we have a visa system that

properly recognizes threats to the United States in the visa process and stops them from reaching our shores. We also work every day with business and industry to see that access to our country is not impeded for those whose business we want and whose presence we value. I am happy to answer any questions you may have. Thank you very much.

Chairman TOM DAVIS. We will move to Mr. Cronin.

Mr. CRONIN. Good morning, Chairman Davis, Ranking Member Waxman and members of the committee. I am pleased to have this opportunity to appear before you today. The focus of my testimony will be implementation of the machine-readable passport requirement for participation in the Visa Waiver Program. The Visa Waiver Program was established on a pilot basis in 1986. It allows foreign travelers from certain countries to be admitted to the United States as visitors under specific conditions and for a limited time without first obtaining a nonimmigrant visa.

As Ranking Member Waxman noted in his opening remarks, Section 217 of the Immigration and Nationality Act now requires that, barring a waiver, an alien at the time of application for admission must be in possession of a valid, unexpired, machine-readable passport that satisfies the internationally accepted standard for machine readability.

In October 2001, Section 417 of the USA PATRIOT Act advanced the deadline for implementation of this requirement from October 1, 2007 to October 1, 2003. Although this deadline represents the first universal application of the machine-readable passport requirement, it has been a longstanding Visa Waiver Program requirement that countries in the program issue or certify their intent to issue a machine-readable passport.

I would like to clearly note at this point that this October 1, 2003 deadline for machine-readable passports is distinct from the October 26, 2004 deadline for biometrics in passports. Under Section 303 of the Border Security Act, by October 26, 2004, visa waiver countries are required to certify that they have in place a program to issue passports that contain biometrics, and this will be a condition of continued participation in the Visa Waiver Program. Also, on or after October 26, 2004, any alien seeking admission under the program must present a passport that contains biometrics, unless the passport was issued prior to that date.

The use of machine-readable passports is critical to efficient border management and to the capture of accurate biographical and passport data relating to foreign travelers. This capability forms the backbone of the advanced passenger information system under which data on arriving air and sea travelers is communicated to the Bureau of Customs and Border Protection and to our ports-of-entry well in advance of the conveyances on which they are traveling. It greatly reduces the possibility of human error or misfeasance in capturing and communicating data and adds to the integrity of the documents presented. This data is used to identify persons seeking to enter our country who may present a threat to our national security or welfare.

As noted earlier, the October 1, 2003 deadline was enacted in October 2001, following a lengthy period during which the Visa Waiver Program countries were required to certify, as a condition of participation in the program, that they were issuing or preparing to issue machine-readable passports. The majority of visa waiver travelers are presently in possession of machine-readable passports and will not have difficulty meeting this new requirement. Those who are not in possession of machine-readable passports will, on and after October 1, 2003, have to acquire such a passport from their

country of nationality in order to enter the United States under the Visa Waiver Program. Alternatively, persons not in possession of a machine-readable passport will have to secure a nonimmigrant visa from the U.S. Embassy or consulate in order to enter the United States.

Clearly the Department of Homeland Security is mandated to implement this important requirement at our ports-of-entry on October 1, 2003, and it is our intention to do so. The Department will endeavor to work with interested parties, especially businesses associated with international travel and with foreign governments, to meet our statutory requirements without adversely impacting the vital flow of international visitors from Visa Waiver Program countries. We note that under the statutory scheme, this mandate extends to transportation lines which are signatory to agreements to transport VWP, Visa Waiver Program travelers, and which are further required under Section 273 of the Immigration and Nationality Act to ensure that their passengers are in possession of valid passports and visas if visas are required.

This Department will also work closely with the Department of State and with transportation lines to ensure that this requirement is widely known and understood by travelers who will be subject to it. Though this is not a new requirement, having been enacted nearly 2 years ago, it is very different from historic documentary requirements for which transportation lines have been responsible. Up to now, transportation lines' staff have been required to ensure that travelers were in possession of facially valid, unexpired passports and visas, if visas were required. In the case of visa waiver travelers, their passports and machine readability or lack thereof will now regulate whether or not a visa is required. Before and after implementation of the requirement, we will work closely with transportation lines to ensure they have a clear understanding of the document-checking requirements for which they are liable. We will work with transportation lines to provide feedback on what we are seeing at ports-of-entry concerning the presentation of machine-readable passports by visa waiver travelers.

I would like to thank the committee for the opportunity to present this testimony. The Department of Homeland Security welcomes implementation of this provision of the USA PATRIOT Act as a necessary step in ensuring that adequate and accurate data is available to our inspectors at ports-of-entry and to all law enforcement and national security agencies. We acknowledge the challenge of implementation of this requirement because it does represent a departure from document-checking standards. Nonetheless, in our view, it represents critical progress toward strengthening our intelligence, border protection, and transportation security capabilities and will serve as a model for international enhancements in these areas. The Department will achieve this security enhancement while endeavoring to facilitate the valuable economic and social benefits brought to our country by international travelers.

And I would be pleased to respond to any questions from the committee.

Mrs. MILLER. Thank you.

[The prepared statement of Mr. Cronin follows:]

Testimony of

Michael D. Cronin

**Associate Commissioner
Immigration Policy and Programs
Bureau of Customs and Border Protection
Department of Homeland Security**

Before the

House Committee on Government Reform

Regarding

**The Impact of New Visa and Passport Requirements on
Foreign Travel to the United States**

July 10, 2003 - 10:00 AM

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Chairman Davis, Ranking Member Waxman, and members of the Committee, I am pleased to have this opportunity to appear before you today to discuss the implementation of the machine readable passport requirement for participation in the Visa Waiver Program (VWP).

My name is Michael Cronin and I am the Associate Commissioner for Immigration Policy and Programs in the Bureau of Customs and Border Protection of the Department of Homeland Security.

In 1986, the Immigration Reform and Control Act incorporated the Visa Waiver Pilot Program into the Immigration and Nationality Act (INA). The program retained its pilot status until October 30, 2000, when the Visa Waiver Permanent Program Act converted it from its pilot status to a permanent program. The Visa Waiver Program allows foreign travelers from certain countries to be admitted to the United States as visitors under specific conditions and for a limited time without first obtaining a nonimmigrant visa.

Section 217 of the INA states that, barring a waiver, an alien at the time of application for admission must be in possession of a valid, unexpired, machine-readable passport that satisfies the internationally accepted standard for machine readability. In October, 2001, Section 417 of the 2001 USA PATRIOT Act advanced the deadline for implementation of this requirement from October 1, 2007, to October 1, 2003. Although this deadline represents the first universal application of the machine-readable passport requirement, it has been a long-standing Program requirement that countries in the VWP issue or certify their intent to issue a machine-readable passport.

I would like to clearly note at this point that the October 1, 2003, deadline for machine-readable passports is distinct from the October 26, 2004, deadline for biometrics in passports. Under section 303 of the Border Security Act, by October 26, 2004, VWP countries are required to certify that they have in place a program to issue passports that contain biometrics as a condition of continued participation in the VWP. Also, on or after October 26, 2004, any alien seeking admission under the VWP must present a passport that contains biometrics, unless the passport was issued prior to that date.

The use of machine-readable passports is critical to efficient border management and to the capture of accurate biographical and passport data relating to foreign travelers. This capability forms the backbone of the Advance Passenger Information System under which data on arriving air and sea travelers is communicated to the Bureau of Customs and Border Protection and to our ports-of-entry well in advance of the conveyances on which they are traveling. It greatly reduces the possibility of human error or misfeasance in capturing and communicating data. This data is used to identify persons seeking to enter our country who may present a threat to our national security or welfare.

As noted earlier, the October 1, 2003, deadline was enacted in October, 2001, following a lengthy period during which VWP countries were required to certify, as a condition of participation in the Program, that they were issuing or preparing to issue machine-readable passports. The majority of VWP travelers are presently in possession of machine-readable passports and will have no difficulty in meeting this new requirement. Those who are not in

possession of machine-readable passports will, on and after October 1, 2003, have to acquire such a passport from their country of nationality in order to enter the United States under the VWP. Alternatively, persons not in possession of a machine-readable passport will have to secure a nonimmigrant visa from a United States Embassy or Consulate in order to enter the United States.

Clearly, the Department of Homeland Security is mandated to implement this important requirement at our ports-of-entry on October 1, 2003, and it is our intention to do so. The Department will endeavor to work with interested parties, especially business associated with international travel and foreign governments, to ~~meet~~ meet our statutory requirements without adversely impacting the vital flow of international visitors from VWP countries.

We note that this mandate extends to transportation lines which are signatory to agreements to transport VWP travelers and which are further required under section 273 of the Immigration and Nationality Act to ensure that their passengers are in possession of valid passports, and visas, if required. This Department will work closely with the Department of State and with transportation lines to ensure that this new requirement is ~~widely known~~ widely known and understood by travelers who will be subject to it.

Though this is not a new requirement, having been enacted nearly two years ago, it is very different from the historic documentary requirements for which transportation lines have been responsible. Up to now, transportation line staff have been required to ensure that travelers were in possession of facially valid, unexpired passports, and visas, if visas were required. In the case

of VWP travelers, their passports' machine-readability or lack thereof will now regulate whether or not a visa is required. Before and after implementation of this requirement we will work closely with transportation lines to ensure that they have a clear understanding of the document-checking requirements for which they are liable. We will carefully monitor and analyze documents presented by travelers at ports-of-entry and will provide feedback to carriers as we identify issues which merit attention or may affect implementation of this requirement. Although machine-readable passports are generally readily recognizable, some countries' passports contain machine-readable zones which do not conform to International Civil Aviation Organization (ICAO) standards as a result of design or production flaws. Again, we will work with transportation lines and, through the Department of State, with affected countries to ensure that the fullest possible information on compliance with this requirement is provided.

I would like to thank the Committee for the opportunity to present this testimony. The Department of Homeland Security welcomes implementation of this provision of the USA PATRIOT Act as a necessary step in ensuring that adequate and accurate data is available to inspectors at our ports-of-entry and to all law enforcement and national security agencies. We are aware that implementation of this requirement will be challenging for all parties at interest because it represents a departure from traditional standards for documentation of travelers. Nonetheless, in our view, it represents critical progress towards strengthening our intelligence, border protection, and transportation security capabilities and will serve as a model for international enhancements in these areas. The Department will achieve this security enhancement while endeavoring to facilitate the valuable economic and social benefits brought

to our country by international travelers. I would be pleased to respond to any questions the Committee may have.

Mrs. MILLER. We certainly appreciate the testimony thus far. As you can see, we have been called to the House floor for a vote and I am going to recess at this time and the chairman will be back shortly. Thank you very much.

[Recess.]

Chairman TOM DAVIS. Mr. Cronin, I don't want to ignore your testimony, but I want to keep things moving.

Mr. Garrity, I think you're on.

Mr. GARRITY. On behalf of Director Mueller, I want to thank you for inviting the FBI to testify this morning. I have submitted a detailed statement for the record but will summarize the highlights of my testimony this morning.

My name is Robert Garrity and I have been a Special Agent of the FBI for 27 years. Here with me today is David Hardy, chief of the Record/Information Dissemination Section which handles that part of the FBI's national name check program.

First, I want to emphasize to you that the FBI is sensitive to the impact that delays in visa processing may have on business, education, tourism, this country's foreign relations and worldwide perception of the United States. At the same time, the FBI mission for homeland security requires that our name check process be primarily focused on accurate and thorough results. This means that there are instances when the FBI's review of a visa request must require as much time as needed to obtain an unequivocally correct result. Thus we are striving to meet the challenges of ensuring the security without unduly disrupting legitimate commerce and foreign relations to this Nation.

With these considerations in mind, the FBI is working diligently with the Department of State toward the common goals of improving the expediency and efficiency of the visa clearance process.

I would like to give the committee some background. And if you will refer to the chart in my statement or also on the side here, prior to September 11, the FBI processed approximately 2.5 million name checks per year. For this fiscal year we estimate the number to reach 9.8 million requests. This represents an increase in excess of 300 percent. We will process approximately 200,000 visa name check requests, including approximately 75,000 Visas Condor and 25,000 Visas Mantis requests.

I invite your attention to the portions in my written testimony to provide a detailed description of the process that is used to check the FBI records for information on an individual. But in short, the process must resolve whether information on a specific individual requesting a visa is contained in FBI records and, if so, whether that information is such as to raise national security concerns about this individual entering the United States. Our goal is to have all visa name check requests resolved within 120 days.

I will show you two other charts that reflect the status of visa name check processing for the past year. The second chart reflects the status of Visas Condor name checks. For example, we received 7,384 requests during the month of June 2003. We resolved all but 649 of these requests, a 92 percent resolution rate. For the month of May, we received 5,059 Visas Condor requests and resolved all about 105, a 98 percent resolution rate.

Our next chart on Visas Mantis shows that we received 2,589 requests in the month of June and resolved 2,226 or 86 percent of them. Visas Mantis are particularly difficult to resolve due to a predominance of requests from China and the commonality of Asian names. On average, 80 to 85 percent of visa requests are resolved in 72 hours. As shown on the graphs, 86 to 92 percent are completed in 30 days.

For both Condor and Mantis visas, 98 to 99 percent of the requests are resolved within 120 days. These numbers provide you with accurate information to assess whether, both in time and numbers, the FBI visa name check process unduly disrupts the commerce of this Nation.

Nonetheless, we are striving to improve the process. Working closely with State, we are improving our interagency communication processes. This will result in significant improvement in the overall visa process. Likewise, internally we have made our name check processes much more efficient. We continue to aggressively seek additional efficiencies. However, the FBI recognizes that it needs a more modern name check application to meet the new demands of name checks. That process has already begun.

The FBI also recognizes that the retrieval of record information from FBI files constitutes our single greatest impediment to a more rapid process. FBI files are currently stored at one of approximately 265 locations worldwide. This provides some unique challenges to our efforts to be optimally effective and efficient. While the FBI's decentralized paper records management process does ease field investigations and local prosecutions, a process that may have sufficed before September 11, those terrorist attacks have forced the FBI to shift from parochial investigations to nationwide intelligence gathering and sharing. As the FBI is called upon to share and jointly investigate complex cases, it must share information internally with other cooperating organizations. Currently, analysts conducting research on terrorism or intelligence topics, who develop leads based on information indexed in files located outside Washington, must request those files to be retrieved and shipped to FBI headquarters.

The decentralized records management system hinders timely nationwide investigations and information sharing since much time and effort is expended simply locating and shipping the files across country. These delays have resulted from national name check program personnel identifying a file's location and then requesting the file from a field office. Time delays mount as field office staff search file rooms and ship the needed file back to FBI headquarters.

One possible solution to these problems that the FBI is currently exploring would be the creation of a central records repository where all of our closed paper files could be located and our active files stored electronically. Our frequently-requested closed files would be scanned and uploaded into our recordkeeping system so that agents and analysts worldwide would have instant and electronic access to the information they need to do their jobs. We believe that the current development of new FBI records systems and the establishment of a central records repository will have great promise in eliminating this problem.

In closing, I want to emphasize the visa name check processing has the direct attention of Director Mueller. The FBI has in place the process that provides certainty for businesses for their planning purposes. We are striving to reduce the time required for a visa name check, yet maintaining our primary focus of identifying potential threats to this Nation.

And I would be pleased to answer any questions you may have. Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Mr. Garrity follows:]

**Testimony of Robert J. Garrity, Jr.,
Assistant Director (Acting),
Records Management Division,
Federal Bureau of Investigation,
before the
House of Representatives
Committee on Government Reform
July 10, 2003**

* * * * *

Mr. Chairman and members of the Committee, thank you for inviting Director Mueller here today to testify in this hearing, in which the Committee is examining problems of delayed entry for aliens traveling to the United States for legitimate business practices. I am here to discuss the challenges of ensuring security without unduly disrupting legitimate commerce. Unfortunately, Director Mueller could not be here today, so I have been designated to provide testimony in his stead. My name is Robert Garrity, and I have served as an FBI Special Agent since 1976. I currently serve as the acting Assistant Director of one of the FBI's newest divisions, the Records Management Division (RMD). Here with me today is David Hardy, who serves as the Chief of the Record/Information Dissemination Section, the section within the RMD responsible for the National Name Check Program. My goals today are to inform you of the FBI's visa name check process; provide you with an accurate assessment of how well this process is functioning; and describe to you the measures the FBI is taking to continually improve this process.

Testimony of Robert J. Garrity, Jr.
Federal Bureau of Investigation

First, I want to emphasize to you that the FBI is sensitive to the impact that delays in visa processing may have on business, education, tourism, this country's foreign relations, and worldwide perceptions of the United States. With these considerations in mind, the FBI is working diligently with the Department of State toward the common goal of improving the expediency and efficiency of the visa clearance process. At the same time, the consequences of the FBI's mission on homeland security requires that our name check process be primarily focused on an accurate and thorough result. This means that there are instances when the FBI's review of a visa request must require as much time as needed to obtain an unequivocally correct result.

National Name Check Program

The National Name Check Program (NNCP) has the mission of disseminating information from the FBI's Central Records System in response to requests submitted by federal agencies, congressional committees, the federal judiciary, friendly foreign police and intelligence agencies, and state and local criminal justice agencies. For all except law enforcement requests, the program is to be operated on a fee-for-service basis, with the beneficiary of the name check paying for it, not the American taxpayers. The Central Records System contains the FBI's administrative, personnel and investigative files. The NNCP has its genesis in Executive Order 10450, issued during the Eisenhower Administration. This executive order addresses personnel security issues, and mandates National Agency Checks

Testimony of Robert J. Garrity, Jr.
Federal Bureau of Investigation

(NAC) as part of the pre-employment vetting and background investigation process. The FBI is a primary NAC conducted on all U. S. Government employees. From this modest beginning, the NNCP has grown exponentially, with more and more customers seeking background information from FBI files on individuals before bestowing a privilege - - Whether that privilege is government employment or an appointment; a security clearance; attendance at a White House function; a Green card or naturalization; admission to the bar; or a visa for the privilege of visiting our homeland; more than 70 federal and state agencies regularly request an FBI name check. Two specific visa request categories, Visa Condor and Visa Mantis, are relevant to the hearing today. In addition to serving our regular governmental customers, the FBI conducts numerous name searches in direct support of the counterintelligence, counterterrorism and homeland security efforts of the FBI.

Exponential Growth

Prior to September 11, 2001, the FBI processed approximately 2.5 million name check requests per year. In FY 2002, that number increased to 3.2 million. For FY 2003, the number of requests to date already exceeds 5.6 million and is expected to reach 9.8 million requests. That represents an increase in excess of 300%. Attachment A illustrates this explosive increase. This year, the FBI will process approximately 200,000 visa name check requests, including approximately 75,000 Visa Condor requests and 25,000 Visa Mantis requests.

Testimony of Robert J. Garrity, Jr.
Federal Bureau of Investigation

Over Burdened System

I can tell you, Mr. Chairman, that with the advent of new visa screening requirements in late 2001, specifically the Visa Condor program, the FBI was overwhelmed by the increase in names to be checked. We did experience a backlog, and visas requested in the spring and summer of 2002 were delayed beyond the time period travelers had anticipated. We have all but eliminated the backlog, and have worked together with the State Department to ensure that any old visa requests have been accounted for and processed. The days of what some people would characterize as an unreasonable delay have now passed us by. I would now like to explain the process the FBI uses to conduct name checks on these visa requests.

FBI Name Check Process

It may be helpful to the Committee to follow along with Attachment B, a flow chart of the FBI visa name check work process. Consular officers worldwide determine whether a visa request falls into one of the special visa categories requiring additional scrutiny. Two of these categories are Visa Condor, relevant to certain individuals who are from designated countries and who satisfy additional criteria which may make them worthy of additional scrutiny, and Visa Mantis, relevant to certain individuals who will have access during their visit to American special technologies. The consular officer will submit their name check requests by cable, simultaneously to both the FBI and State Department headquarters.

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In the next step of the process, the FBI communications center forwards the batches of names to be checked electronically to the name check program. The name is electronically checked against the FBI Universal Indices (UNI). The searches seek all instances of the individual's name and close date of birth, whether a main file name or reference. By way of explanation, a main file name is that of an individual who is, himself, the subject of an FBI investigation, whereas a reference is someone whose name appears in an FBI investigation. References may be associates, witnesses, conspirators, or a myriad of other reasons may exist to explain why an FBI Agent believed it important to index a particular name in an investigation for later recovery. The names are searched in a multitude of combinations, switching the order of first, last, middle names, as well as combinations with just the first and last, first and middle, and so on. It also searches different phonetic spelling variations of the names, especially important considering that many names in our indices have been transliterated from a language other than English.

If there is a match with a name in a FBI record, it is designated as a "Hit", meaning that the system has stopped on a possible match with the name being checked, but now a human being must review the file or indices entry to further refine the names "Hit" on. If the search comes up with a name and birth date match, it is designated an "Ident." An "Ident" is usually easier to resolve.

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Resolution Rate

Approximately 85% of name checks are electronically returned as having "No Record" within 72 hours. A "No Record" indicates that the FBI's Central Records System contains no identifiable information regarding to this individual. By agreement with State, partially due to our concern about the time factors in approving most visa requests, a No Record equates to a No Objection to the issuance of a visa. The substantive investigative divisions in the FBI, (i.e., Counterterrorism Division (CTD), Counterintelligence Division (CD), Criminal Investigative Division (CID) and the Cyber Division (CyD)) do not review visa requests where there is no record of the individual. Duplicate submissions (i.e., identically spelled names with identical dates of birth submitted within the last 120 days) are not checked and the duplicate findings are returned to State.

Because a name and birth date are not sufficient to positively correlate the file with an individual, additional review is required. A secondary manual name search usually identifies an additional 10% of the requests as having a "No Record", for a 95% overall "No Record" response rate. This is usually accomplished within a week of the request. The remaining 5% are identified as possibly being the subject of an FBI record. The FBI record must now be retrieved and reviewed. If the records were electronically uploaded into the FBI Automated Case Support (ACS) electronic recordkeeping system, it can be viewed quickly.

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If not, the relevant information must be retrieved from the existing paper record. Review of this information will determine whether the information is identified with the subject of the request.

If not, the request is closed as a "No Record."

The information in the file is reviewed for possible derogatory information. Less than 1% of the requests are identified with an individual with possible derogatory information. These requests are forwarded to the appropriate FBI investigative division for further analysis. If the investigative division determines there is no objection to the visa request, the request is returned to the name check dissemination desk for forwarding to the State Department. If there is an FBI objection to the visa request, the investigative division will prepare a written Security Advisory Opinion (SAO) and forward it to the State Department. In reviewing these visa requests, the FBI has identified individuals attempting to enter the United States who are of serious concern to the FBI.

Processing Times

As in the name checks processes for 70 other agencies, the name check system accurately monitors the status of visa requests in the name check process. The system's metrics are a dynamic tool, allowing the FBI to identify when to add additional personnel to process visas. The metrics also provide an accurate tool to determine whether the name check process is causing delays for visa requests.

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The FBI's goal is to have all requests completed within 120 days. Attachment C illustrates the current status of Visa Condor names checks, and Attachment D illustrates the same for Visa Mantis name checks. This status was taken on July 3, 2003. For example, for Visas Condor, the FBI received 7384 requests during the month of June 2003. The FBI resolved all but 649 of these requests, for a 92% resolution rate. In the month of May 2003, the FBI received 5,059 Visa Condor requests and has resolved all but 105 of these requests for a 98% resolution rate (See Attachment C). For Visas Mantis, the FBI received 2589 requests in the month of June 2003 and resolved 2226, or 86% of them (See Attachment D). Visas Mantis are particularly difficult to resolve due to the predominance of requests from China and the commonality of Asian names.

A common question we receive is, How long does it take to complete a visa request name check? As shown on these graphs, 86 to 92% are completed in 30 days. For both types of visa requests, 98-99% of the requests are resolved in 120 days.

Most name check requests that are over 30 days old are the result of the time required to retrieve and review field office record information. Some delay occurs at substantive analysts' desks, but this is to be expected. These analysts are assigned to the investigative divisions and are primarily assigned to the analysis of intelligence reports from

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around the world in order to support on-going investigations, or to support the flow of intelligence to policy makers. These are the best professionals, however, to review information in our records and to then make an informed decision on whether a requester of a visa represents a threat to our homeland, or is interested in illegally acquiring our targeted technology. Nevertheless, as I stated earlier, the FBI's resolves 99% of all types of visa requests within 120 days.

These numbers provide you accurate information to assess whether, both in time and in numbers, the FBI name check process for visa requests unduly disrupts the legitimate commerce of this nation.

Process Improvement

As I have said, during the spring and summer of 2002 the FBI was unable to adequately account for visa request processing times. This is no longer the case. This was accomplished through clarification of the FBI name check database, software modifications that allowed development of detailed metrics, and the development of an internal FBI tracking system for SAO opinions. With these metrics, the FBI can allocate resources as necessary to meet requirements. And, as I have also already said, the FBI worked closely with State on visa name check procedures. These past six months have seen considerable improvement in the coordination of visa name check processing.

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Improperly formatted cables are an obvious weak point in the visa submission process. The State Department submits their names by cable, whereas other agencies submit their requests by disc or tape and formatting errors are returned on disc to the requesting agency. This allows the requesting agency to identify and correct the errors in an electronic format. The State Department is working hard to resolve this problem by developing a system whereby visa requests will be submitted on disc through State as opposed to the current system of separate cables directly to the FBI. The FBI fully supports this effort. Currently, in anticipation of submission of visa requests by disc, the FBI and State Department's Visa Processing Center are developing common procedures and formats. Recognizing the need for interim measures until the time that State can submit all visa requests on disc or tape, the State Department is batching unresolved cables held within their database and submitting them to the FBI. In order to avoid the duplicate name problem, the FBI has developed special codes and manipulates the name check application for each submission. This is a time consuming, but necessary process to support State's efforts. This week alone the FBI is running thousands of names submitted by State from State's database.

Personnel Dedicated to NNCP

The FBI recently increased name check personnel from 75 employees to 125 employees. This 65% increase was taken from within existing Records Management Division resources and designed to address the projected increase in name check requests since

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September 11. We also reorganized the unit, dividing it into two units, one for Personnel Security name checks and one for Homeland Security name checks. The new homeland security unit will allow us to better focus on sensitive name check programs such as visa requests. To clear older cases, the FBI brought in additional personnel from the field on a temporary duty (TDY) basis and authorized substantial overtime work. The number of cases in excess of 120 days has been all but eliminated. The FBI is continuing these efforts by bringing in additional support employees to collect file information from the field. The FBI's Counterterrorism Division is temporarily assigning additional Agents to conduct SAO reviews. Visa Condor and Visa Mantis have been given the highest priority in processing name check requests.

However, the FBI recognizes that the explosion in numbers of requests necessitates development of even more efficient processes in order to sustain the current pace of processing name check requests. The FBI is in the process of developing interim improvements to minimize manual submissions by all agencies and increase efficiency within the name check unit. The FBI has developed high-level functional requirements for a new name check application compatible with the new FBI information systems in development. These new information systems, over time, will eliminate dependence on the retrieval of paper files.

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The development of this new name check application is now undergoing review within the FBI's Investment Management Process.

Decentralized Recordkeeping System

I have touched upon our IT systems shortcomings, but now I want to discuss the primary factor in any delay in the FBI responding to a visa name check. When the NNCP systems produces a "Hit" or an "Ident" that requires further review, the analyst must consult the actual file. If he or she is lucky, the file has been uploaded into our electronic recordkeeping system, ACS, and can be instantly accessed from her workstation computer. This system only came on-line in October 1995, so often the full text of the information has not been uploaded and the analyst must resort to the paper record. Paper records are divided into two basic file categories: active files and closed files. Active files are, as the name suggests, current, on-going investigations, analytical projects, or administrative functions. Closed files are records of past investigations or functions, now inactive, but for which the FBI is required to retain the records, either in satisfaction of statutory authority or regulations, or because the information contained in the closed file represents a key component to FBI's intelligence base.

FBI files are currently stored at one of approximately 265 locations, including the FBI's Headquarters facility, several warehouses around the Washington Metropolitan area, in records centers either operated by the NARA or commercial concerns, four large

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Information Technology Center facilities on the east and west coast, at each of the 56 field offices, many of the larger of our 400 resident agencies, and at legal attaché offices worldwide. This equates to approximately 1.8 million cubic feet of decentralized records storage, which provides some unique challenges to our efforts to be optimally effective and efficient. While the FBI's decentralized paper records management process does ease field investigations and local prosecutions - a process that may have sufficed before September 11, 2001 - those terrorist attacks have forced the FBI to shift from parochial investigations to nationwide intelligence gathering and sharing.

In addition, statutory authorities for domestic law-enforcement and international intelligence agencies have been expanded (e.g., USA PATRIOT Act), increasing the number of agencies requesting FBI information. As the FBI is called upon to share and/or jointly investigate complex cases, it must share information internally and with other cooperating organizations. Currently, analysts conducting research on terrorism or intelligence topics who develop leads based on information indexed in files located outside Washington, DC must request those files be retrieved from the shelves and shipped to FBI Headquarters. The decentralized records management system hinders timely nationwide investigations and information sharing, since much time and effort is expended simply locating and shipping files

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across the United States. Beyond file retrieval delays, records security and document safety are also a growing concern.

Delays have resulted from NNCP personnel identifying a file's location then requesting the file from a field office. Time delays mount as field office staff search file rooms and then ship the needed file or a prepared summary to FBI Headquarters. This process – repeated for many tasks, not only dilutes the FBI's responsiveness, but also limits information sharing – a critical success factor in working counterintelligence and counterterrorism cases. The name check delays have significant consequences to FBI customers and stakeholders. The delays impede hiring or clearing skilled workers; completing government contracts; student enrollment, and as is the interest of this Committee, clearing requested visas for business visits to the United States. More importantly than all of the foregoing, these processing delays can also diminish counterterrorism effectiveness.

One possible solution to these problems the FBI is exploring would be a central records repository where all of our closed paper files could be located, and our active files stored electronically. Our frequently requested closed files could be scanned and uploaded

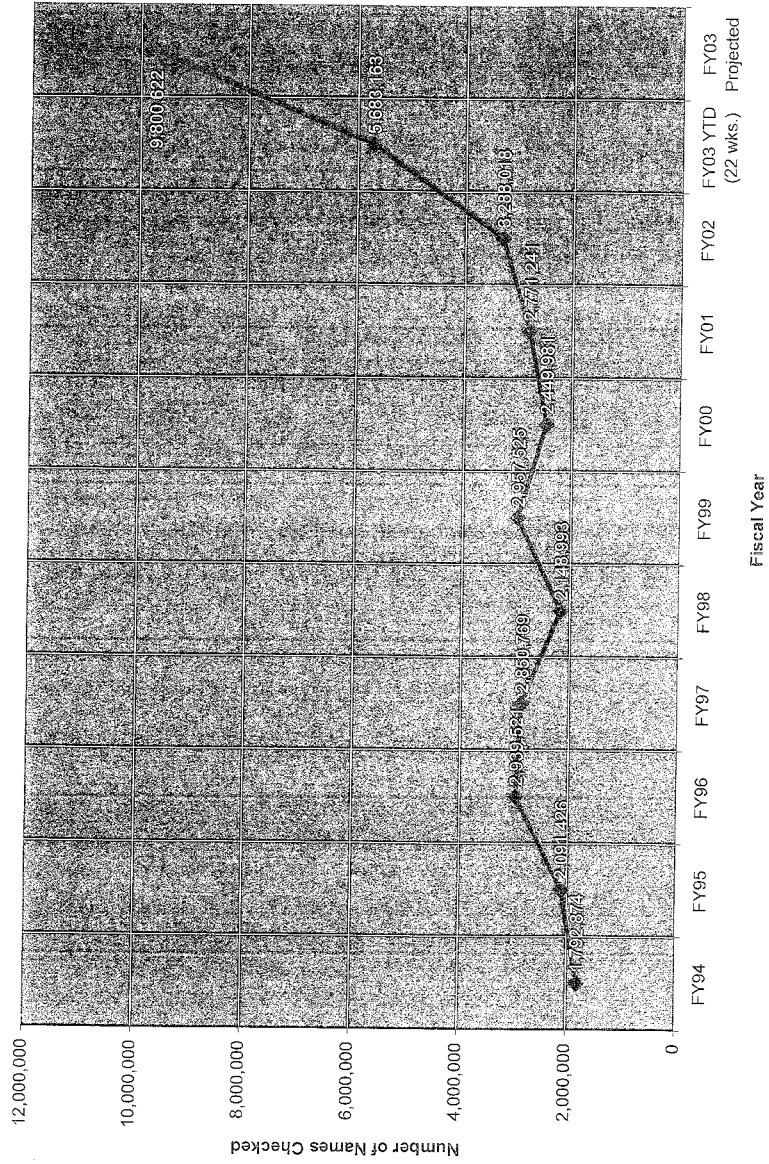
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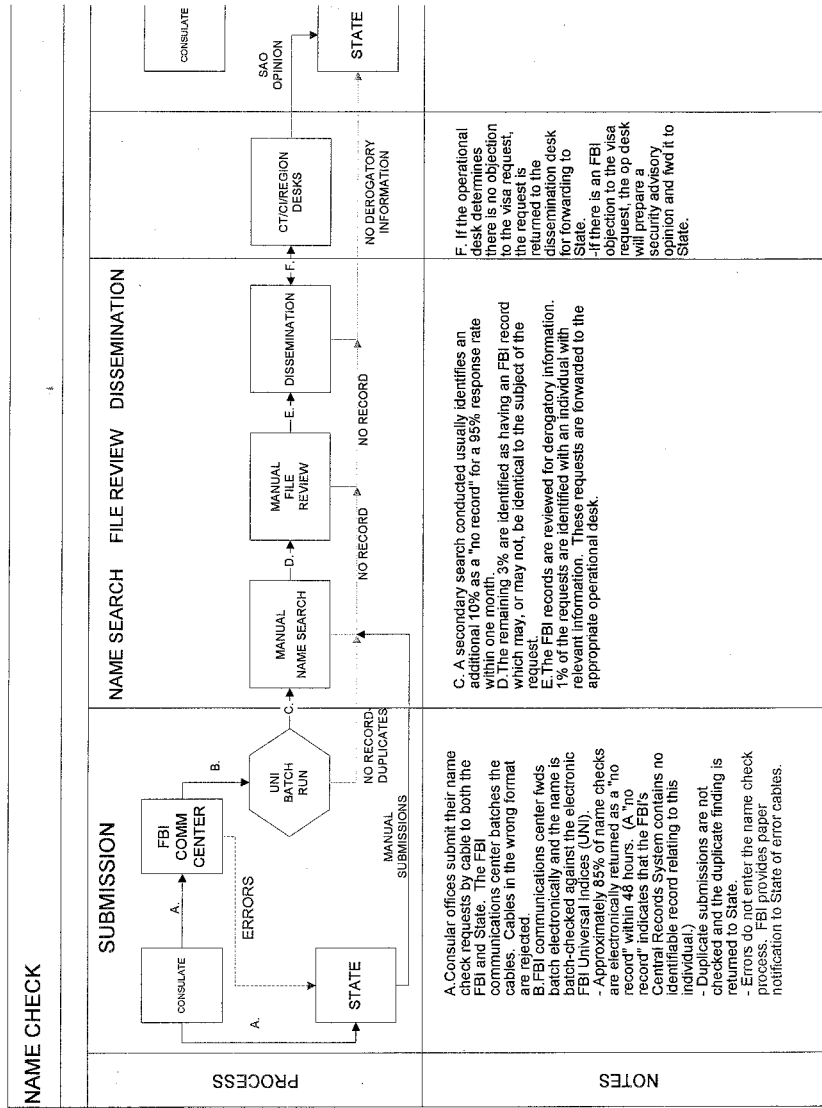
into our electronic record-keeping system, so that Agents and analysts world wide would have instant, electronic access to the information they need to do their jobs.

Conclusion

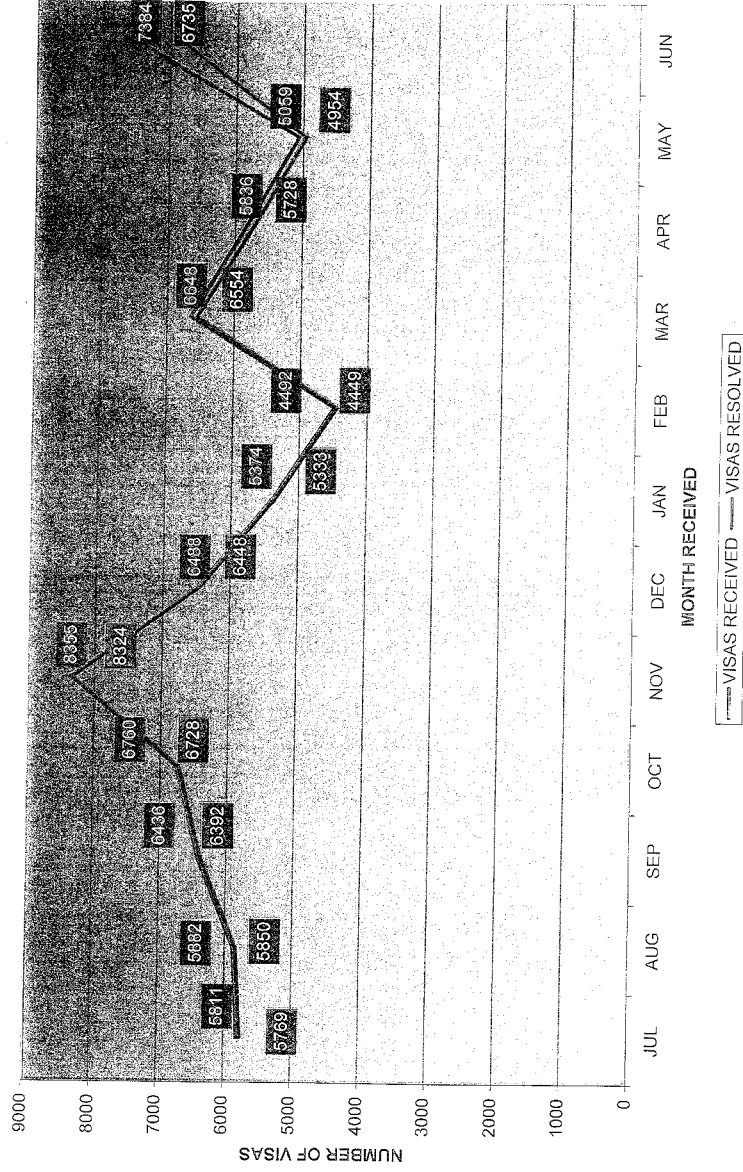
All of these efforts reflect the FBI's recognition of the importance of accurate and timely name check processing. I want to emphasize to you, this issue has the full attention of Director Mueller. The FBI appreciates the interest of the Committee in this matter. I thank you for your invitation to speak to you today and look forward to working with you in the future. I am prepared to answer any questions the Committee may have.

Total Name Checks (1994-2003)



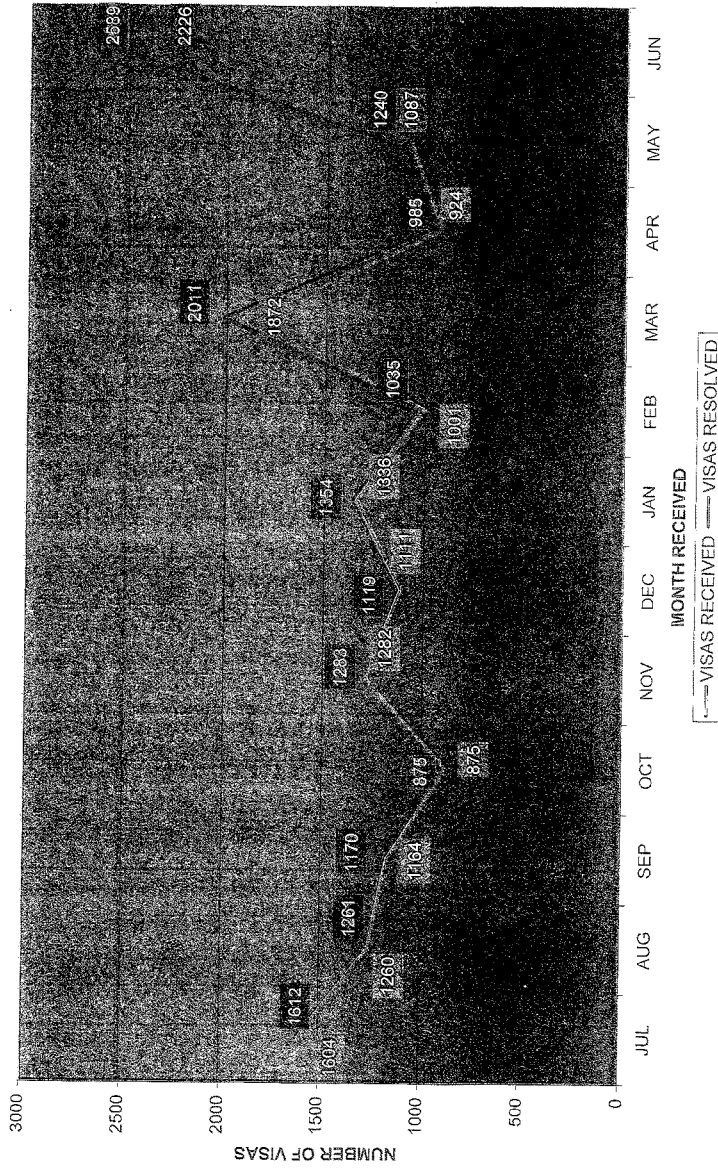


RESOLVED VISAS CONDOR



RESOLVED VISAS CONDOR

RESOLVED VISA MANTIS



Chairman TOM DAVIS. Let me start the questioning.

Ms. JACOBS, let me ask you: Our country has a lot of interactions with students, athletes, tourists and business people from our ally, Israel. Where does Israel stand in regard to the Visa Waiver Program? Are there ways the Israelis could receive expedited entry into the country? I mean, they have a pretty good security screening system just to be there. And I talked to the Ambassador. There is a lot of concern over there about how that is working. Can you help me with this?

Ms. JACOBS. The Visa Waiver Program has certain statutory requirements that have to be in place before a country can join. One of those is a low refusal rate for the visa applicants in the country. At this particular time, the refusal rate for Israeli nationals is higher than the statutory level that's required. And so on that basis, they wouldn't be able to qualify at this time. Also—

Chairman TOM DAVIS. Can you explain to me what you mean by the refusal rate?

Ms. JACOBS. The refusal rate is the rate of people that are turned down for visas that are not found eligible for visas because of one of the various provisions.

Chairman TOM DAVIS. What's the major reason they're turned down?

Ms. JACOBS. I think in the majority of cases it is because they have not been able to overcome the statutory presumption that they are intending immigrants, that they are coming here perhaps to work, to stay.

Chairman TOM DAVIS. Basically be illegal once they come in. Come here and disappear.

Ms. JACOBS. That's one of the problems. DHS is the one who decides who participates in the program. All of the countries are also looked at. There are several different factors that are considered: the integrity of the documents, border protection, whether there are any particular security threats presented by the nationals of the country. So it's really an interagency process where we all look at the different issues and criteria to make a decision.

Chairman TOM DAVIS. I understand from the Swiss American Chamber that Switzerland has a 4-month backlog on getting folks machine-readable passports. Is there going to be a State Department waiver for folks from that country who don't have machine-readable passports? I understand there may be similar problems for French citizens who get passports, which I don't care as much about. Will there be waivers for those people?

Ms. JACOBS. As Mr. Cronin mentioned in his testimony, in order to join the program all of the countries had to certify that they were either already issuing machine-readable passports or that they had a program in place to do so. All of the countries that are currently in the program have been in for over a decade. I think the feeling is they have had sufficient time to get machine-readable passports into the hands of their nationals.

Admittedly, some of these countries waited a long time, even though they certified they had a program in place. Switzerland did not start issuing until 2000. France, I think it was 1999. So some of the countries waited a long time before starting. Now they are going to be pressed to get the machine-readable passports into the

hands of travelers. Certainly we will be prepared to issue visas to people who are not able to get machine-readable passports in time for their travel, and that is something that all of our posts in the visa waiver countries are aware of and trying to take into account as they set up their appointment systems.

Chairman TOM DAVIS. We have gotten concerns from business groups in India and Korea. Are there going to be facility upgrades and staffing increases to accommodate increased interview requirements there?

Ms. JACOBS. All of the posts, in addition to the general categories of exemptions that we sent out to all of the posts whereby they can still waive interviews—the young, the old, officials, diplomats, people who already had visas—we have already said you don't need to interview those people. Posts have come in with additional requests for other categories that they can exempt from the interview. Seoul has come in with such a request and we are taking a very hard look at that. I think it's safe to say we will grant them some additional exemptions. We are aware of the business interests there. I think they received a lot of referrals through AMCHIN and I think we are going to be looking at some of those as people we can waive the interview requirement for.

Chairman TOM DAVIS. Our committee staff recently visited the embassy in Latvia in preparation for this hearing and the embassy staff mentioned that they had planned to ask for a class waiver for recruitment visas for sailors who had been prescreened through Latvian crewmen agencies and have high degrees of security. Because crewman visas make up about a quarter of the total number of visas issued at the embassy in Latvia, such a waiver would allow the staff to devote more time to applicants who need more scrutiny. If these crewing agencies provide adequate security safeguards, would this be the type of program for which the Department might grant a class waiver interview?

Ms. JACOBS. We would certainly take a look at that. I am not sure that Latvia has come in with that request yet, but when they do, we will certainly take a look at it. Crewmen a lot of times apply outside of their own country just because of the circumstances, the nature of their work. And so we would have to think about whether we could waive that requirement for any particular nationality, but it's certainly something that we will look at.

Chairman TOM DAVIS. Mr. Cronin, can you give me an update on the Memorandum of Understanding between DHS and the State Department that outlines the responsibilities of the two departments with regard to entry policy and procedures?

Mr. CRONIN. The two departments are very, very close to being finished with the MOU. It appears to be a matter of weeks. Under Secretary Hutchinson and Assistant Secretary Hardy have been meeting regularly and discussing the provisions of the MOU. Basically, it's designed to outline the roles and responsibilities of the two departments in terms of the Department of Homeland Security's role in setting visa policy versus the Department of State's role in managing and controlling consular operations overseas. I am not on the negotiating team, but my understanding is that we are down to the point of fine-tuning language.

Chairman TOM DAVIS. Who at DHS is going to be responsible for entry policies?

Mr. CRONIN. Essentially it would be the Director of Border and Transportation Security under Secretary Hutchinson who has control over the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement.

Chairman TOM DAVIS. Will DHS provide staff at embassies and consulates?

Mr. CRONIN. There is discussion within the MOU meetings about assignment of DHS staff overseas as the statute requires. Staff will be assigned to Saudi Arabia and there's discussion about assignment of staff to other locations.

Chairman TOM DAVIS. I understand that Customs and Border Patrol have implemented programs such as SENTRY and NEXUS, similar to programs in the commercial environment, to speed the low-risk travelers while enhancing security. Could these programs be expanded to other countries?

Mr. CRONIN. Well, in terms of SENTRY and NEXUS, those are land border programs, so obviously we are limited to contiguous territory. There is a possibility of doing a program similar to that in the airport environment. We operated a program like that in the past called INPASS. We are working with Canada which is looking at developing a program similar to that. And there is also a Dutch program currently in existence that we are observing very closely.

Given the nature and speed of the implementation schedule we have at the ports-of-entry coming up in the coming year, I don't think we are going to be looking at development of the U.S. program similar to that in the near term, but it is something that is very much—that would be beneficial to the process of moving people through the ports-of-entry and in which we are very interested.

Chairman TOM DAVIS. Mr. Garrity, I have a couple of questions for you. When will the FBI have the necessary technology in place to be able to receive State Department referrals electronically instead of by tape?

Mr. GARRITY. We have the technology in place right now to receive names electronically.

Chairman TOM DAVIS. Is it being implemented today?

Mr. GARRITY. We are working with State to make sure the two systems are compatible. Our system receives most of our names electronically.

Chairman TOM DAVIS. Does the FBI have long-term plans in the area of electronically capturing FBI records so consular and border officials can quickly download the security check information without having to refer records to the FBI for review?

Mr. GARRITY. We have two systems that we are looking at. With our fingerprints, and particularly with the Enhanced Border Security Act, which will require some biometrics that will be run through our criminal justice information systems. And the biometrics we plan to use, that will be one way of getting almost an instantaneous check against the FBI's database of our fingerprint records. The name check that we do here for State, UN visas, right now is checks of FBI records; whether or not the FBI has an investigation or information on an individual. We are looking at putting that in a database to be more proactive so that we have informa-

tion in the database. Our system is not set up to capture those names until we actually go through the files. So, as we get a name and as we are responding to State, we are going to try to start putting those in a database so we don't have to do that name again.

Chairman TOM DAVIS. Are there ways to avoid duplicates of name checks? And by that, when the Commerce Department issues a deemed export license for a particular person in a particular technology, security checks are required; couldn't that security check also be used as a security check necessary for visa purposes?

Mr. GARRITY. To my knowledge, Commerce does not check the name against us. They make the decision on the technology but do not run that name through our name check process.

Chairman TOM DAVIS. And Ms. Jacobs, you mentioned you vigorously publicize the new visa interview and machine-readable passport requirements. How is that word getting out, outside of publishing it? Are you doing anything else to inform the public on these requirements? We keep getting feedback from the traveling public that they are not aware of this.

Ms. JACOBS. We actually are engaging in active outreach in getting the word out about the October 2003 requirement for MRPs. When the Visa Waiver Program was made permanent, we notified posts that everyone would have to enter with a machine-readable passport by a date certain. When the Patriot Act was passed moving that date to 2003, we went out with a telegram to all of our posts advising them of this new requirement so they could tell host governments. This year, earlier in the year, we sent out another telegram to all of our posts asking them to reach out to the host government to remind them about the requirement. And by the end of this month we will have held press conferences and we will have made—this information is posted on our Web site and the Web sites of our embassies and consulates abroad. We are going to publish something in IATA's newsletter and we are taking a number of other steps. We are going to meet also with the embassies to let them know or remind them about the requirement.

Chairman TOM DAVIS. Thank you. Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Ms. Jacobs, I and the other members who serve on this committee have the benefit of having at least two perspectives on this question of visas. On the one hand we look at it from the vantage point of broad national policy, and also we look at it from the perspective of real individuals who are trying to play by the rules and obtain visas. And a big part of our job is to help our constituents deal with these visa problems so we're able to see which parts of the system work and which parts are clearly broken.

I am going to give you a summary of five cases that my office has been working on that all seem to have fallen through the cracks of your Department, and I am asking for your assistance in resolving them. Nothing else has worked, so I hope you will be able to make sure that these matters receive immediate attention. They are a few examples of what seems to be broken.

In one case, an immigrant visa petitioned for Ms. Asra Sharifi has been pending since June 2002. She was interviewed at the Ankara embassy in June 2002. A year has now elapsed and my office continues to be told that the case is pending, pending a security

clearance. Just last week we were told that the case is pending an FBI check. But when we checked with the FBI, we were told they have no record of ever receiving a security clearance request from the State Department. In other words, she has fallen into a big black hole.

And your office confirmed again as recently as yesterday that the official policy is applications should be completed 30 days following an embassy request. So in this case, that means the process should have been finalized last July or August.

I am obviously interested in the specific case, but I am also interested in the broader perspective of the problem it reveals. I understand, for instance, that the FBI and State Department have intentionally not linked their computers and the State Department must hand-deliver requests for security checks. This sometimes results in inexcusable delays. It seems obvious that you can do more to process embassy requests in a timely and efficient way. Can you give us specific improvements you intend to make?

Ms. JACOBS. We are working toward, I think both of our agencies, working toward eventually doing all of this electronically. I agree completely that would speed up the process. We are undergoing changes right now within the Visa Office. We are spending about \$1 million in order to take information from our consolidated consular database and put that into an electronic format that we can send out to the FBI to help speed up this process. We hope to have that in place by the beginning of next year and that would essentially eliminate the need for these telegrams that come in, which is not a terribly efficient way of doing things. So that is something we are trying to do and we hope eventually to be able to talk to each other completely electronically, because I think that is absolutely essential as we do more of these checks.

Mr. WAXMAN. Do you prioritize security checks? Are medical emergencies given special consideration, and are there circumstances in which the security checks can be expedited?

Ms. JACOBS. There are circumstances. In fact we do expedite all the time for emergency cases for people who really need to be here for a certain event. The embassies themselves, I have asked them to try to give priority in the summer months, for example, to students and exchange scholars who need to be here by the beginning of the school year. So yes, we have taken steps to try to address those situations.

Mr. WAXMAN. The chairman has asked about the situation in Israel. Here is an ally working with us to combat terrorism, and people have gone back and forth between the United States and Israel on a regular basis; I have one constituent who contacted our office regarding the difficulties his mother was experiencing with her tourist visa at the Tel Aviv Embassy. This woman happened to have been born in Iraq. She fled to Israel to escape religious persecution in the early 1950's. Her visa has been undergoing administrative processing for 3 months and she missed the birth of her first grandchild. The Bureau of Consular Affairs doesn't have any indication as to when this visa will be complete and the status of the security check process. And this particular woman has been traveling to the United States over the past 20 years to visit her

U.S. citizen children and she's never experienced this problem in the past.

I have a large population from Russia living in my district. One is an academic from the department of physics and astronomy at UCLA who contacted us regarding three of his Russian associates. They applied for visas at the embassy in Moscow in early February 2003, and although two of the visas were issued, one is still stuck in this administrative processing. And he is part of an important research project at UCLA. They cannot begin the project without this individual. To me it's reminiscent of the time when I used to go to the Soviet Union and they had the bureaucracy there to prevent people from leaving. Now we have the bureaucracy run by our government preventing them leaving to come here, even though it seems on the surface that they should be able to come here.

How can congressional offices determine what has happened with a security check? None of us wants security risks to be pushed through the system, but we also don't want legitimate applications to be lost. Unfortunately we aren't told by the Visa Office if a delay is due to legitimate security questions, if a case is still being processed, or if it is lost in the bureaucracy. Why can't we get this information?

Ms. JACOBS. I think probably part of the problem is the entire clearance process is an interagency process. The State Department serves more as a clearinghouse. Once these telegrams come in from the posts, they go to the other agencies involved in the name check process. And you know, we have to wait and hear back and get a positive response from everyone involved before we can go ahead and authorize issuance of a visa.

And so I think perhaps in the case of the mother in Israel that you talked about, born in Iraq, I think in that particular case, that probably is a case falling under Section 306 of the Enhanced Border Security act, which talks about people from countries on the state-sponsored list. There is a new requirement for them that takes longer and that perhaps explains why her visa is taking longer to get this time.

Mr. WAXMAN. On that particular case, if she were a citizen of France or Great Britain, having been born in Iraq, would she need a visa at all?

Ms. JACOBS. She would come in under probably the Visa Waiver Program if she had a French or UK passport.

Mr. WAXMAN. It raises the question in my mind whether it's reasonable for us to have this discrimination against Israel, which has been as close an ally to the United States as countries in western Europe. And to deny a woman the opportunity to come here to see her grandchildren being born simply because she was born not just in Iraq, but because she happens to live in Israel.

Ms. JACOBS. Right. We are taking a look at Section 306 and how it's implemented. At this time it's all undergoing interagency review, and that's one issue we are all looking at, whether it should be applied to people who are from a country but actually have moved and now live in another place as opposed to current nationality.

Mr. WAXMAN. I know it's a balancing act and we want the security of our country to be protected, but we want the bureaucracy

to do this efficiently, thoroughly, and certainly quickly, because people are waiting for determinations and it affects their lives. So I am going to send you the information about these cases, and it would help us as Members of Congress help you to make sure we do the right thing.

Thank you very much Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman. The comment I heard was that you use only the FBI database and there was some reference to State records, and I did not understand fully what your reference was there. Let me clarify where I am coming from. I understand that most States have their criminal records—are now being incorporated into the Federal database; is that correct?

Mr. GARRITY. Talking about our Criminal Justice Information Service Center in Virginia. Yes, sir. That handles our fingerprint cards and also our NCIC. That's where most States provide their arrest information and disposition of a particular case, yes, sir.

Mr. DEAL. Have you also integrated the old INS record base, which I presume now is under Homeland Security? And, for example, suppose someone has been deported previously from this country, but was not processed through the criminal system for criminal charges, either at the State or Federal level, but deportation was considered as the option in lieu of prosecution; do you have those records available to you?

Mr. GARRITY. I believe we do, but let me check. If I am answering wrong, I will get back to you.

I believe that we do have access to that, that there is a relationship between those two systems.

Mr. DEAL. All right.

Another area that is of concern growing out of September 11 is the student visa program. Would any of you choose to comment on several aspects of that, first of all, the responsibility of the institution in the United States, the educational institution to which these students are supposedly going, both in the initial application process and then with regard to any followup requirement that we have tried to tighten up on?

Would you comment on that part of the process?

Mr. CRONIN. Let me start by saying, Congressman, that I am not an expert in the area. There is a whole separate office working on implementation of the student and exchange visitor information system.

My understanding is that, yes, there is much greater regulation now on the issuance of certificates of eligibility to students. The schools basically have to communicate to the Bureau, I think it is the Bureau of Immigration and Customs Enforcement, that the student has been accepted in the school; they have to identify the student. That student has to have documentation when he or she arrives which indicates that nexus has occurred between the student and the school.

And, of course, under the implementation of the new system, the tracking begins with visa issuance overseas, through the port-of-entry and through arrival at the institution.

Mr. DEAL. So it is much more thorough followup, both from the beginning through the end of the process, than it was?

Mr. CRONIN. Absolutely, sir.

Mr. DEAL. Mr. Garrity, with regard to background checks, I presume that in large part you have to rely on the recordkeeping of the country from which these individuals are coming for background information of what they may or may not have done in their homeland?

Mr. GARRITY. No, sir. The background investigation that we do, or the name check that we conduct, is against the FBI's records. Does the FBI have a record of having conducted an investigation on this individual, or was this individual mentioned as a reference in an FBI investigation?

It is not going to other countries and seeking information.

Mr. DEAL. What responsibility, if any, is placed on the Nation from which this individual is coming to provide that kind of information in the initial screening process, or is there any requirement?

Mr. GARRITY. That would be from Ms. Jacobs, at the interview process. I am not certain.

Ms. JACOBS. For the student visas on the interviews?

Mr. DEAL. No, I am talking about all visas.

Ms. JACOBS. You are asking about the requirement for additional interviews?

Mr. DEAL. Well, let's take somebody that is coming from a country, that has a lengthy criminal record—murder, manslaughter, armed robbery—and they come in and apply for a visa. Now, they are probably not going to show up on the FBI's list, because they didn't commit those crimes in the United States.

What responsibility is there and what verification system do we have in place to determine that background in the initial application process? Is there any responsibility placed on that country?

Ms. JACOBS. Most of the responsibility is placed on the applicant to establish his or her eligibility for the visa. There are forms, application forms that the applicant fills out that ask specifically about various grounds of ineligibility to include any criminal activity, other types of activities that would make them ineligible under our law.

Mr. DEAL. So we assume then, that a felon is going to truthfully answer those?

Ms. JACOBS. We assume that in large part.

We also have very good relations with law enforcement entities in the countries where we have embassies. Sometimes they do share information with us, and we would have that available to us.

Any time we got information like that, we would go ahead and put it into our look-out system, so if this person came in to apply, we would know about it.

Mr. DEAL. But the bottom line is, it sounds like there is no obligation on the country to provide that information, and that there is no effort to seek out that information within the country of origin.

Ms. JACOBS. There is. Certainly, if we suspect anything, then we go to the host government to get more information; and we do expect them to be responsive, and they usually are. I should say for immigrant visa applicants, they do in fact have to present a police certificate, a clean record if you will, before they get a visa.

Mr. DEAL. So there is a distinction between the types of applications then?

Ms. JACOBS. Yes.

Mr. DEAL. Thank you.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

Ms. Watson.

Ms. WATSON. Thank you, Mr. Chairman. And thank you, panel. I am very interested in the visa process, having had some experience with it in the past. And I am concerned about maybe profiling, and I am concerned about the impact on the travel business and the free flow.

First, the problem that Congressman Waxman mentioned, the people he has been trying to help. Why would somebody be held up a year? What would be the process that would stall that visa approval for a year? That is the first question.

Can you respond, Ms. Jacobs?

Ms. JACOBS. No one should be held up for a year; I should say that. Back last summer when we were instituting a lot of these new procedures, the agencies involved did not necessarily have all of the resources needed to handle the enormous growth in cases that we had; and I think there were a number of cases that were backlogged at that point. And I don't know if the particular case in question would fall in that category or not.

Sometimes another agency has a serious concern about an applicant, and then, as Mr. Garrity said, they will take whatever time they need to go ahead and complete their analysis, their research, before they get back to us with an answer.

So I don't know if that particular case falls in that category.

I can tell you that the visa office now, once a case gets beyond a certain time and we have not heard back from agencies, we go back to them and ask what the status is.

So we are putting out those reminders.

Ms. WATSON. So you can go into the system on a specific case, because I would think that the time ticking on this raises the suspicion that there is something not quite right about this applicant.

Ms. JACOBS. That could very well be, and I look forward to getting the details on the case, so we can look into it.

Ms. WATSON. Are the visa applications coming from a certain region in the Middle East treated differently—and I am reading your list of visa types—than some of the other kinds of visa applications? Are we targeting areas where we have troubles, disputes, or we know that there are people who are trying to defraud the system and so on?

But are we looking at these troubled areas differently?

Ms. JACOBS. I think after September 11 that there was an inter-agency process to take a look at applicants who might be higher risk than others; and in fact there was a new check, security check, instituted in January 2002, called Visas, which really gets at those types of applicants, the ones considered to be of highest risk.

So I think, yes, the answer is that after September 11, we are doing more checks of people that we consider to be high risk.

Ms. WATSON. Is there, and I think there has been, a quota placed on visa applicants and visa approvals in various countries?

Ms. JACOBS. No. We have never—our immigrant visa system is based on worldwide limits, and in that regard there is—

Ms. WATSON. Can you explain “worldwide limits?” I guess that is what I am getting to, using the wrong language.

Ms. JACOBS. OK. For people coming here for temporary reasons—businessmen, tourists, students, visitors, people of that sort—there is no quota at all. Everyone comes in, applies, and either does or does not qualify for the visa based on the merits of the case.

For the immigrant system, there is a law set as a worldwide cap on the number of people who can come in, and then within that cap we control the numbers of visas that are issued every year.

Ms. WATSON. Let me give you a for instance.

My office gets quite a few contacts on visa issuance from the continent of Africa. When you talk about worldwide limits, what are the criteria that are used to put a limit on, say, countries from the continent of Africa versus Western countries?

Ms. JACOBS. There is no—it is a per-country cap. It doesn’t apply to any particular region. It is a worldwide cap that is set by law.

Ms. WATSON. OK. Well, let’s deal with the continent of Africa.

Ms. JACOBS. Every country in Africa would have a certain number of immigrant numbers allowed every year, as would any other country. There is no—it is not divided up by region. There is no difference between the regions.

Ms. WATSON. What is the meaning of the “worldwide limit?” Give me a definition.

Ms. JACOBS. That is a cap that the law puts on the number of immigrants who can come into the country in any year.

Ms. WATSON. Who can come into the country?

Ms. JACOBS. Who can immigrate, who can move here permanently.

Ms. WATSON. It is taken nation by nation?

Ms. JACOBS. It is a worldwide cap. And to distribute the numbers evenly, it is done on a country; there is a maximum number that each country can use.

Ms. WATSON. That is what I would like to know more about. I will put a request for information in writing.

Ms. JACOBS. OK.

Ms. WATSON. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Who was next over on this side?

I think Mr. Ruppertsberger was here, Mr. Bell, and then Ms. Sanchez.

Mr. RUPPERSBERGER. Thank you, Mr. Chairman.

First thing, the issue of consular offices that are checking on the visa applicants. Do those consular offices have the technology and the information readily available to determine if a waiver should be granted?

In other words, what I am getting to, is the amount of volume that you deal with, is the technology there to do what is needed to be done in the consular offices throughout the world?

Ms. JACOBS. Consular officers have a number of automated tools to help them do their job. We have given them computerized systems that help them in the adjudication process, help them speed up data entry, help them speed up and do name checks, do the tele-

grams that have to come back for name checks; all of that is automated.

So, yes, I think we have tried to automate as much of the processing as possible to make it easier for them.

Mr. RUPPERSBERGER. As much as possible. What I am getting to next is the issue of, say, a terrorist suspect who might be trying to get into the United States.

Are the databases sophisticated enough that the consular office at that front line would be able to check on these suspects?

Ms. JACOBS. Everyone who comes for a visa is checked through our look-out system. And that system has doubled since September 11 because of all of the information that we have received from other agencies.

On terrorists in particular—that particular category of look-out has increased substantially since September 11—we depend on the other agencies to provide us the information. And we have had—after September 11, as I said, the database itself has actually doubled because of all of the increase in data-sharing that has taken place.

So, yes, if another agency knows about or suspects that someone is a terrorist and has shared that information with us, that information would be readily available.

Mr. RUPPERSBERGER. In the average situation, if someone is there, does that system tie into, say, an FBI system or to your own intelligence-type system or to CIA?

Are we sophisticated at that front level with our technology?

Ms. JACOBS. Right.

Mr. RUPPERSBERGER. Probably not.

Ms. JACOBS. No. The system doesn't actually tie into the FBI or CIA, but we do have a very healthy system whereby CIA shares information with us, on terrorists in particular. It is called the tip-off system, and we know immediately how to handle those cases. They come back to Washington for a review.

Mr. RUPPERSBERGER. It is almost like the issue of port security. You have to deal with it at the beginning stage, and this is the front line. And it seems to me that we should be working a lot closer.

I think that the—in my experience, being around in government and law enforcement, that the CIA, the FBI, the NSA, local, State, they are all working together, and better than I have ever seen it, because there always were some territorial disputes.

But in the volume that you have and that we have to deal with, it seems that we have to start really focusing on the resources of technology and tie into that system so there will be red flags or alarms that will be set off right away. And that would help.

OK. Let me get into another area, because I won't be here for the second round. The issue of reaching out to the business community with respect to what we are talking about. We need a balance. We have to keep our commerce going. But, you know, since September 11 a lot of things have changed. So we have to have that balance.

I just know in the area of—the region that I represent, we have two major teaching hospitals, Johns Hopkins and University of Maryland—thousands and thousands of employees there; I think Johns Hopkins is 20,000 or so—and constantly they have individ-

uals that need to come, from a research point of view or whatever; and it is as important to them, I am sure, as to other businesses.

Has there been a—some type of government program to reach out to the business community to try to understand the issues, other than just a hearing like this, and maybe even reach out to the business community to help us develop systems that would help and expedite, and also ask the business community to even help from a financial point of view?

It seems to me that a partnership here might really make a difference and get things moving a lot quicker than just the typical government bureaucracy situation.

Ms. JACOBS. We at the State Department have made a special effort, I think, to meet with business, to meet with the travel and tourism representatives, to meet with the schools, academics, people interested in bringing researchers and scientists here to the country. Assistant Secretary Harty has met with these groups, I have met with them, and we have tried very hard to explain to them why we are doing what we are doing now with these new security requirements.

And we do listen to them. We have a very I think healthy exchange on problem cases that we are trying to resolve together.

Mr. RUPPERSBERGER. It seems to me that that needs to be a strong effort and hopefully we will move forward there.

Thank you.

Chairman TOM DAVIS. Thank you very much.

Mr. Bell.

Mr. BELL. Thank you, Mr. Chairman. And thank you very much for holding this hearing on what I think is an extremely important issue. I want to followup on some of the questions raised by my good friend from Maryland, Mr. Ruppertsberger, because it is not just the travel and tourism industry that is suffering under the new rules. Obviously, there are businesses, primarily in the medical community, who are experiencing extreme consequences as a result of the new measures.

I represent a District in Texas that has the largest medical center in the world, the Texas Medical Center. And they are routinely calling about various problems that they face. And the problems are really twofold. And Ms. Jacobs, I think you are aware of this, because you appeared before the Science Committee last March, and many of these issues were raised; and we have doctors and researchers who have come to the United States on various types of visas and return home for personal reasons and then find that they can't get back to the United States, causing significant personnel problems for the various institutions as a result.

And, of course, then you have foreign patients. And the Texas Medical Center had relied for a long time for a substantial portion of their business on patients coming from the Middle East; that was one of the primary areas where patients would come from.

And now these patients can no longer afford to wait for an answer and are going to Europe to seek care in many instances. And I heard just this week that Middle Eastern nations, realizing the situation, are now reaching out to medical institutions here in the United States and asking them if they would like to come and part-

ner with existing medical institutions in the Middle East to offer care there so people won't have to come to the Middle East.

And so from my standpoint, while we are all interested in increased security and salute and support those efforts, I think it is fairly clear that we are starting to enter into the unintended consequences stage. I don't think it was ever the intent of officials in the United States to be sending business back to the Middle East, business that would have been coming to the United States, or to severely impact tourism dollars in the United States.

And when you appeared before the Science Committee, Ms. Jacobs, it was my understanding that the State Department was well aware of those problems, that you were taking them into consideration and that steps would be taken to do something about the problem.

And so I ask you here today, what has been done in these last almost 4 months?

Ms. JACOBS. We have taken, I think, a number of steps on cases, especially unresolved cases as I mentioned earlier, to continue following up with the other agencies involved in the name check process, to make them aware that certain cases have been pending for a long time.

We have, I think, engaged in outreach in all of the countries about visa requirements, the processing requirements. I know that within the appointment systems, that are being set up by posts, that they do give consideration to people for medical cases, for example, true emergencies, people who need to come here quickly. So I think that within the system, we are taking the steps that we can to try to expedite processing.

I think once we have more electronic data-sharing between the name check agencies that a lot of these problems are going to be resolved.

Mr. BELL. And as far as data-sharing goes, what steps are being taken to perhaps expedite that process?

Ms. JACOBS. We at the visa office, at least as a preliminary step, are trying to eliminate the need for telegrams. We are trying now to use our consolidated database to extract people who need name checks and pass that information on electronically to the other agencies involved in the name check process. We hope to have that up and running by the beginning of next year.

Eventually we hope that we are all talking to each other, perhaps through the new system that has been set up, the OSI system.

Mr. BELL. What about an idea that I think was mentioned and discussed at the Science Committee hearing, this idea of a medical—a special medical visa. Has that been pursued at all or discussed further?

Ms. JACOBS. I am not sure that we did discuss a specific visa for medical cases. Normally, we have to use the visa categories that exist in the immigration law. So there wouldn't be a way to create a new category. But certainly we can take steps for true emergencies to try to get those cases handled as quickly as possible. I think all of our embassies and consulates do that.

Mr. BELL. Why could a new category not be considered, if the need is appearing to be so great that we need to move in that direction?

Ms. JACOBS. I think it could be considered. I think it is something that would require legislative action to create a new category.

Mr. BELL. Is that anything that has been discussed by the State Department?

And tell me, do you believe I am off base? Are these just unique circumstances because I represent an area with a medical center, or are these complaints that you all are hearing all across the Nation?

Ms. JACOBS. Well, I think that they probably tie in with the other complaints that we have heard about visa delays in general. I think all of these are because of all of the new security checks that have been put into place after September 11.

I think, to the extent that all of us can make this an electronic process, it is going to eliminate a lot of the problems that occur now because of technical glitches, the need to manually enter data, manipulate data; I think that is the real answer here.

Mr. BELL. And, Mr. Chairman, I know my time has expired.

Let me just close by saying, I hope, because I would disagree that it is just outreach efforts—the people that I represent, they understand what is required, but they also understand what is it doing in real-life terms to their businesses; and I hope that we are not just giving lip service to it and that in another 4 or 6 months you will be back before this committee or another committee testifying to the same old problems.

Some of the processes are going to have to change in order to deal with the problem; and I hope that the State Department understands that and will be taking the necessary steps. Thank you.

Ms. WATSON. Mr. Chairman.

Chairman TOM DAVIS. Thank you.

Let me say—I am going to recognize Ms. Watson in a second—one out of five adults in my congressional district was born in a foreign country. This is impacting their lives as well. So a lot of us have a keen interest in this, and we are going to continue to watch it vigilantly. And that is why we appreciate your being here, but there is a lot of concern that we hear from our constituents. So I appreciate your questions.

Ms. Watson.

Ms. WATSON. Just a clarification on this issue.

Under your visa types, you have a B2 visa. And I don't know if it would relate to the Congressman's question or not. But it says "for aliens coming for medical treatment." Could that be a visa category that could be extended for students coming in for medical school or for other kinds of related medical reasons?

I am just wondering if the B2 type could be used for his suggestion or recommendation.

Ms. JACOBS. The B2 visa is, in fact, the one that we do use for people coming for medical treatment or medical emergencies. There is a different category for students. There is a long alphabet of different types of visas. But, yes, there is a visa category right now that would allow people to come here for medical treatment.

Ms. WATSON. Rather than developing a new category, could this not be extended or broadened and fit into the B2 category?

Ms. JACOBS. I think it is already included.

Ms. WATSON. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you.

Mr. Clay, any questions?

Mr. CLAY. Thank you, Mr. Chairman. Let me ask about—Ms. Jacobs, the worldwide limits on visas. Let's take the continent of Africa. Do you have limits on the number of visas issued for people that come from the continent of Africa?

Ms. JACOBS. No, sir, we don't. For nonimmigrant applicants, there are no limits there.

There are certain categories of temporary workers where there are limits set by Congress, but again, those are worldwide; they do not apply to any particular region or continent.

The immigrant visas are by law set at a certain—there is a certain cap each year on the number of people who can come in as immigrants, and those numbers are distributed among the different countries equally. There is no difference between what an African country would get, or any other country.

Mr. CLAY. So there is a cap that they hit, and then you shut it off? Is that what happens?

Ms. JACOBS. Right.

Mr. CLAY. Let me ask Mr. Garrity, how long does it take—what is the running time when a visa expires, and I guess you all are notified and then the—I mean, what is the running time as far as finding this person whose visa has expired and then processing it, I guess for deportation or whatever?

Mr. GARRITY. I think you want to direct that question to Mr. Cronin.

Mr. CLAY. OK, Mr. Cronin, if you could help me with that.

Mr. CRONIN. Sure, Congressman.

Basically, we do try to prioritize the cases that we track in terms of persons overstaying their visas, to look if there are national security implications, to look if there are other priority indicators that would necessitate actual dispatch of agents to attempt to locate the individual, to arrest him, to deport him.

There are a large number of overstays. We have—the Bureau of Immigrations and Customs Enforcement has roughly something on the area of 5,000 agents nationwide to enforce the immigration and customs laws. So there is a necessity to prioritize those cases, to be sure we are focusing on persons who are criminals, who present security threats.

Basically those are the cases that would trigger the kind of proactive investigation of an overstay. Certainly we have individuals who encounter local law enforcement, who might come into an immigration office or something like that, but basically there is no set period or no set time during which this would happen.

It is a matter of prioritization on an enforcement basis.

Mr. CLAY. What is your success rate of locating these individuals?

Mr. CRONIN. I would have to get back to you on that, in terms of specific data. I can't give it to you off the top of my head. But generally if there is a case of this nature, I think the success rate

is fairly high. The agents are fairly unflagging in their attempt to locate and find those individuals when a specific threat is indicated.

Mr. CLAY. What is the running time as far as locating them?

Mr. CRONIN. That would vary from case to case, Congressman. I really can't give you a specific number.

Mr. CLAY. So you prioritize individuals based on background and criminal information, and then, what, you go out and find them? And—

Mr. CRONIN. They will go out and attempt to locate the individual.

Mr. CLAY. But you can't tell me how successful you are in getting them?

Mr. CRONIN. Again, as far as I know, when the agents are looking for someone specifically, when there is a national security reason to locate someone, there is—I mean, there is no limit to the efforts that are placed on trying to locate the individual.

They are certainly not always successful. And I can't give you—and I am not sure that there would be a way to give an estimate or data on the success rate in terms of that.

Certainly I will go back and attempt to get whatever we have on that.

Mr. CLAY. I would like to see it.

We have got visa types, a little sheet here. What types of visas did the hijackers of September 11 have?

Mr. CRONIN. If I recall correctly, I think one had a student visa. Most of the others entered as visitors.

Mr. CLAY. As visitors?

Mr. CRONIN. Yes.

Mr. CLAY. That stay is for how long?

Mr. CRONIN. Normally it would depend on the category. A B1 visitor for business is admitted for a period of time set by the inspector at the time port-of-entry. That can vary according to what the person states the nature of their business is and how much time they need.

Persons coming in as tourists under a B2 visa are automatically admitted for 6 months.

Mr. CLAY. All of theirs had expired, correct?

Mr. CRONIN. No. No. Several were in status.

Mr. CLAY. In status. All right.

Thank you very much.

Chairman TOM DAVIS. Thank you.

Ms. Miller, any questions?

OK. We will move on to the next panel. Why don't we take a 2-minute recess and get the next panel up. Thank you very much for staying with us.

[Recess.]

Chairman TOM DAVIS. Thank you very much. We have our next panel.

If you will rise with me, it is the policy of the committee that the witnesses be sworn.

[Witnesses sworn.]

Chairman TOM DAVIS. Please be seated.

I think you know the rules, 5 minutes, and then we can get right to questions. There is a lot of interest among committee members on this subject, and we very much appreciate your being here today.

Mr. Marks, we will start with you and move straight on down.

STATEMENTS OF JOHN A. MARKS, NATIONAL CHAIR, TRAVEL INDUSTRY ASSOCIATION OF AMERICA; RANDEL K. JOHNSON, VICE PRESIDENT OF LABOR, IMMIGRATION AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE; AND RICHARD J. PETTLER, PARTNER, FRAGOMEN, DEL REY, BERNSEN & LOEWY, P.C.

Mr. MARKS. Thank you very much, Mr. Chairman, Ranking Member Waxman and members of the committee. I appreciate the opportunity to testify before you on several recent decisions by the Federal Government concerning visa processing and entry into the United States for international visitors.

My name is John Marks. I am national chairman of the Travel Industry Association of America. And I am here to testify on TIA's behalf. I am also the president and CEO of the San Francisco Convention and Visitors Bureau. TIA is the national nonprofit organization representing all components of the travel and tourism industry whose mission is to promote and facilitate increased travel to and within the United States.

International business and leisure travel to the United States is a vital component of our national economy. In 2002, over 41 million international visitors generated some \$88 billion in expenditures, \$12 billion in Federal, State and local tax revenues, accounted for 1 million jobs nationwide, and a \$7.7 billion positive balance of trade.

The U.S. travel industry is struggling to survive in an environment where international travel to the United States is down nearly 20 percent since the terrorist attacks of September 2001. U.S. jobs have been lost. Despite this dire situation, the U.S. Department of State has decided to move forward with two new initiatives without sufficient resources and without the necessary outreach and communication. If implemented as planned, we believe these initiatives will deter legitimate low-risk international travelers from visiting our Nation.

The government's decisions are, first, to increase the number of personal interviews for nonimmigrant visa applicants and, second, to require a machine-readable passport for Visa Waiver Program travelers.

I would like to emphasize, we support efforts to improve U.S. national security, but we also believe there must be a better balance that also recognizes the need to promote U.S. economic security.

While personal interview rates now vary, I look to South Korea as an example of how the interview rule will hurt international travel to the United States. Only 27 percent of business and tourist visa applicants are currently interviewed. If a 100 percent visa interview policy were to be implemented for the U.S. Embassy in Seoul with no additional resources, TIA estimates this would result in a loss of approximately 114,000 travelers, or one of every six Ko-

rean visitors. Financially, this would mean a loss of \$205 million in expenditures from the South Korean travel market alone.

Expand this to other travel markets, and I think it is easy to see how the increase in interviews will cost the U.S. travel and tourism industry hundreds of millions of dollars and thousands of lost jobs.

The second decision concerns the Visa Waiver Program. By law, starting October 1, 2003, Visa Waiver travelers must possess machine-readable passports for entry into the United States. We support increasing the number of machine-readable passports in circulation. However, this new requirement will affect millions of international travelers, particularly in countries which have only recently begun issuing machine-readable passports.

The State Department was granted the authority to waive this deadline in the event it would disrupt travel from those countries that had just started issuing the newer passports. The travel industry is absolutely dismayed to learn that the State Department will not utilize this authority. The State Department only recently announced this decision to the international traveling public.

With travelers booking their trips as far in advance as 6 months and travel companies making their business plans and purchases even farther in advance, a 3-month notice is just insufficient. This lack of communication is particularly problematic for the U.S. airline industry, which is required by law to board only travelers who hold valid documentation.

The lack of communication on this rule even extends to the Department of Homeland Security. As of mid-June, Homeland Security officials were not prepared to state whether arriving visitors with the older, nonmachine-readable passports would be deported or allowed to enter the United States.

TIA calls on the State Department to implement immediately the following solutions to avoid serious disruption in international travel to the United States: TIA requests the Secretary of State to delay implementation of the increase in personal appearances for nonimmigrant visa applicants until such time as additional resources are requested and received from Congress.

An increased rate of personal interviews should be phased in only as additional personnel and facilities are made available at each consulate and embassy.

TIA urges the Secretary of State to exercise the waiver authority granted by Congress and delay the machine-readable passport requirement by at least 18 months for countries that have begun issuing machine-readable passports in 2000 or later.

In conclusion, TIA and the U.S. travel industry strongly support the efforts of the Federal Government to protect our homeland. We stand ready to work with Congress and the administration to develop and implement policies that prevent the entry of terrorists, while truly facilitating the entry of tens of millions of legitimate business and leisure travelers who provide a great economic, social and political benefit for this country.

Thank you, Mr. Chairman and members of the committee. I look forward to your questions.

Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Mr. Marks follows:]



Testimony of

**John A. Marks, National Chair
The Travel Industry Association of America**

Before The

**Committee on Government Reform
U.S. House of Representatives**

On

**Smooth Sailing or an Impending Wreck?
The Impact of New Visa and Passport Requirements on
Foreign Travel to the United States.**

July 10, 2003

Mr. Chairman, Ranking Member Waxman, and Members of the Committee, I appreciate the opportunity to testify before you on new proposed rules concerning visa processing and entry into the United States for international visitors. The U.S. travel industry stands ready to work with Congress and the Administration to ensure that the safety of Americans and all travelers – domestic and international – remains a top priority. But the travel industry is concerned that recent decisions by the U.S. Department of State are soon to be implemented without sufficient resources and without the necessary outreach and communication to impacted companies and organizations in the U.S. travel industry as well as international travelers.

I am John Marks, President and CEO of the San Francisco Convention & Visitors Bureau; however, I am testifying today as the National Chair of the Travel Industry Association of America. The Travel Industry Association of America (TIA) is the national, non-profit organization representing all components of the \$525 billion U.S. travel and tourism industry. TIA's mission is to represent the whole of the travel industry to promote and facilitate increased travel to and within the United States. Its more than 2,000 member organizations represent every segment of the industry.

The U.S. travel and tourism industry is alarmed that the U.S. Department of State is moving forward with new, onerous decisions on both personal interviews for non-immigrant visa applicants and a machine-readable passport (MRP) requirement for Visa Waiver Program (VWP) travelers. Our industry has already sustained a heavy blow since the events of September 11, 2001. We strongly support efforts to enhance U.S. national security, but also believe that

there must be a more appropriate balance that recognizes the need to protect U.S. economic security. This is not an “either or” proposition. This nation should and must have both.

Overview of International Travel to the U.S.

International business and leisure travel to the U.S. is a vital component of our national economy. In 2002, over 41 million international visitors generated \$88 billion in expenditures, \$12 billion in federal, state and local tax revenue, and accounted for one million jobs nationwide. International travel and tourism to the U.S. is a service export, and in 2002, the U.S. had a positive balance of trade of \$8 billion.

The continuing decline in international visitation over the past two years, though, has drastically reduced the flow of tax revenue to all levels of government and reduced our international balance of trade. Since 2000, the loss of international travel to the U.S. has cost our economy \$15.3 billion in expenditures. Below is a review of key international market performance since 2000, based on 2002 and 2001 arrivals figures:

2000 Ranking	Arrivals in U.S.	change in 2002 from 2001	change in 2002 from 2000
	Total arrivals	-7.0%	-19.5%
1	Canada	-4.0%	-11.1%
2	Mexico	+0.5%	-4.8%
	Total Overseas	-12.4%	-26.4%
3	U.K.	-6.8%	-18.8%
4	Japan	-11.2%	-28.3%
5	Germany	-9.4%	-33.3%
6	Brazil	-26.5%	-45.1%
<p>Note: Japan and the U.K. are in the Visa Waiver Program, which only requires a valid passport for entry. Travel from Brazil requires a valid passport and U.S.-issued visa. Different rules apply to Canada.</p> <p>Data Source: Dept. of Commerce, Ofc. of Travel and Tourism Industries</p>			

The decline in travel is due to a variety of reasons, including fear of travel because of terrorism, a downturn in the global economy and confusion over new U.S. visa and border security procedures. While some of the causes are beyond the reach of any single government, actions by the U.S. government can either enhance or harm our nation’s ability to attract increased international travel to the U.S. and create more jobs and economic opportunity for states and cities in every corner of our country.

New Rules for International Visitors

As security has become a paramount concern in visa processing, it now takes longer to process non-immigrant visa applications at numerous consulates. The State Department is taking more time to review applications, requiring more documentation and conducting an increasing number of personal interviews. Although greater emphasis on screening visa applicants is justified for national security reasons, these changes must be accompanied by additional resources so as not to impede inbound travel from key markets around the world. On top of the recent security changes and increased scrutiny of visa applicants, the Department of State is poised to implement two new decisions we believe could significantly reduce international travel to the U.S.

The first of these is a mandatory increase in the number of non-immigrant visa applicants who are required to appear in person for an interview at a U.S. consulate or embassy. On May 21, the U.S. Department of State sent a cable to all U.S. embassies and consulates instructing them to begin conducting personal interviews with virtually all applicants for non-immigrant visitor visas no later than August 1, 2003. While current U.S. law requires personal interviews for visa applicants, consular offices have routinely waived this requirement for low-risk applicants. Secretary Powell's cable states that this new workload will come with no additional resources and acknowledges that it will certainly result in further visa processing backlogs.

The second recent decision by the Department of State concerns the Visa Waiver Program. This program exempts short-term visitors from 27 (mostly Western European) countries from obtaining a U.S. visa and allows them to enter the U.S. with a valid passport. Starting October 1, 2003, Visa Waiver Program travelers will be required to possess a machine-readable passport for entry into the U.S. These newer passports contain a barcode or magnetic strip that can quickly and accurately transmit passport information to an inspector's computer.

The original deadline, which was negotiated as part of the legislation permanently reauthorizing this critical program in 2000, was October 1, 2007. The USA Patriot Act accelerated this deadline to 2003. However, Congress provided the Secretary of State authority to waive the requirement in the event the deadline would disrupt international travel to the U.S. To date, the Department of State has steadfastly refused to make use of this limited waiver authority.

The travel and tourism industry supports the use of machine-readable passports and was aware of the deadline. However, we fully expected that the State Department would use this waiver authority so as not to impede international travel to the U.S. and harm an already ailing industry. Up until mid-June of this year, our industry had received no indication from the State Department that it would do otherwise. It is now apparent that the State Department will proceed to require all travelers entering the U.S. under the Visa Waiver Program to hold a machine-readable passport.

Lack of Communication

The U.S. travel industry is dismayed that the State Department would move forward with these decisions with little-to-no communication both to U.S. travel industry organizations or

international travelers. U.S. travel companies have direct relationships with thousands of overseas companies that sell U.S. travel packages and could have helped to prepare prospective visitors for these changes in policy and practice. In fact, TIA held its 35th Annual International Pow Wow market place in St. Louis in late May of this year. More than 1,000 major international travel producers attended this business-to-business trade show to purchase U.S. travel products, and the Department of State could have used this as an opportunity to officially announce these new policies and allow both U.S. companies and impacted international travelers to better prepare in advance of their implementation.

The lack of communication on the machine-readable passport decision is especially disturbing. This new rule will affect millions of international travelers from 27 different countries. We believe it will particularly hit hard those countries – Italy, France, Spain, and Switzerland – which have only recently begun issuing machine-readable passports. When we asked the Department of State how many non-machine-readable passports were still in circulation in Visa Waiver countries, we were told they do not have this information. When pressed, we were given only an estimate for France, and were told that 50% of all French passports currently in circulation are non-machine-readable, and therefore invalid as of October 1, 2003.

We find it distressing that the State Department would make such a serious policy decision based on limited knowledge of the number of old passports in circulation in these twenty-seven countries. And if they do indeed possess this information, we are puzzled as to why they would not share this information with the U.S. travel industry. TIA and other travel organizations only recently learned of this decision by the Department of State through informal, staff-level conversations.

The State Department has only now begun to announce this requirement to the international traveling public. With travelers booking their trips as far in advance as six months, and travel companies making their business plans and purchases even farther in advance, a three-month education period is simply not enough time.

This lack of communication is particularly problematic for our airline members and other carriers who transport international visitors to the U.S. Airlines are required, by law, to board only travelers who hold proper documentation. The boarding of improperly documented travelers will result in the airline being fined and also bearing the cost of transporting an individual who has been deported from the U.S. After October 1, a non-machine readable passport will be considered an invalid travel document. TIA is concerned there may not be sufficient time for airlines to train their personnel on how to identify and distinguish between non-machine readable passports and newer MRP versions.

The lack of communication on this decision even extends to the federal government itself. Even though the Department of Homeland Security has authority for inspecting and granting admission to inbound international travelers, they were only recently made aware of this decision by the State Department. At a mid-June meeting of public and private sector parties, Homeland Security officials were not prepared to explain how arriving visitors with older, non-MRP's would be treated. They might be deported, or possibly allowed to enter the U.S. with a stamp in

their passport indicating this would be the last lawful admission into the U.S. with that document.

Rightly or wrongly, the international traveling public increasingly perceives that the myriad of new security rules is creating a "Fortress America." The State Department's anemic communication efforts and failure to work with the U.S. travel and tourism industry are only reinforcing this negative image of our country. The State Department promotes a policy of "Secure Borders – Open Doors", but the door seems to be closing at the present time, and the "welcome mat" seems a bit frayed.

Inadequate Resources

TIA is not opposed to more interviews for visa applicants. However, the travel industry is alarmed that the State Department plans to implement this requirement without additional personnel. Many U.S. embassies and consulates will need additional interview facilities to handle the greater number of applicants who appear in person for an interview. We fully acknowledge that in some countries the U.S. already interviews anywhere from 90% to 100% of non-immigrant visa applicants. But that is not the case worldwide, and pretending otherwise is not helpful. Without a corresponding increase in resources, travelers wishing to visit the U.S. will have longer waits for interviews. These long waits will discourage travel to the U.S.

One can look to South Korea for an example of how this new rule will hurt international travel to the U.S. TIA has been in contact with the Visit USA Committee in South Korea to learn about visa issuance in that country. Visit USA Committees are groups of businesses and associations in other countries that join together to help promote travel to the U.S. Last year, 638,000 Koreans traveled to the U.S. for business or leisure. In 2002, the U.S. embassy in Seoul issued 337,000 visas, of which 273,800 were B1/B2 visas for business and leisure travel. Only 27% of all B-1/B-2 visa applicants are currently interviewed in person. If a 100% visa interview policy were implemented for the U.S. embassy in Seoul with no additional resources, the embassy would be able to issue a maximum of 200,000 visas of all types per year. TIA estimates this would result in a loss of approximately 114,000 travelers (one of every six Korean visitors) and a loss of \$205 million in expenditures for the South Korean travel market alone. Expand this to other travel markets, and it is easy to see how the interview rule will cost industry and government hundreds of millions of dollars and thousands of lost jobs.

Until the U.S. Department of State has requested and received from Congress additional resources to take on the dramatically increased workload associated with this new policy, we respectfully request that the U.S. Department of State delay implementation of the plan outlined in the May 21 directive. The State Department must hire and train hundreds of new consular officers and dramatically expand facilities to conduct these personal interviews in order to avoid even greater visa processing backlogs. Returning to Korea, our embassy there is 40 years old. There is simply no more room to handle the thousands of additional in-person interviews planned. This situation is repeated around the globe where aging embassies and consulates lack the secure space to conduct additional visa application interviews.

TIA is also concerned that if the new interview requirement is implemented without consideration for additional resources, the security of our country could be weakened instead of strengthened. According to a report released by the General Accounting Office in November of 2002 (GAO-03-38), State Department officials claimed that an increase in the workload of consular staff without a corresponding increase in resources would result in overworked consular officers who “would become less effective and alert in dealing with cases needing additional scrutiny.”

Recommended Solutions

TIA calls on the State Department to immediately implement the following solutions to avert serious disruption in international travel to the United States.

TIA requests the Secretary of State to delay implementation of the increase in personal appearances for non-immigrant visa applicants until such time as additional resources are requested and received from the Congress. An increased rate of personal interviews should only be phased in as needed additional personnel and facilities are made available at consulates and embassies. Promising to be the front line for homeland security without allocating the people or facilities to do so is a false promise.

TIA also urges the Secretary of State to exercise the waiver authority granted by Congress and delay the machine-readable passport requirement by at least eighteen months for countries who have begun issuing machine readable passports in 2000 or later. This will allow enough time for the State Department to conduct an effective outreach and education program abroad. This additional time will also allow airline carriers sufficient time to train their staff to properly identify non-machine-readable passports and to understand what action to take with regard to that traveler. A delay in implementation would also provide an opportunity for the Departments of State and Homeland Security to design an appropriate admission policy and train front-line personnel on how to treat travelers arriving in the U.S. with non-machine-readable passports.

Conclusion

TIA and the U.S. travel industry strongly support efforts by the federal government to protect our homeland from attack by those who would seek to harm its citizens, residents, and international guests. We stand ready to work with Congress and the Administration to design policies that prevent the entry of terrorists while truly facilitating the entry of tens of millions of legitimate business and leisure visitors who provide a great economic, social and political benefit for this country.

Just last year Congress appropriated \$50 million to promote the U.S. internationally as the premier visitor destination in the world. Congress recognized the need to tell the world that we are not only open for business, but also eager to welcome international visitors to our cities and rural areas to experience our natural beauty, culture and exciting attractions. Even before government and industry have decided how to invest this \$50 million, these ill-advised decisions could potentially drown out any efforts to invite the world to “See America.”

Intentional or otherwise, a collection of rules and policies that discourages international visitors from coming to the U.S. also create a perception of "Fortress America." The U.S. "welcome mat" for international visitors is beginning to fray and the perception of some around the world is that we are no longer a welcoming nation.

We must have enhanced U.S. national security as well as improved U.S. economic security. The leaders of our nation must commit to both protect lives and preserve jobs.

Chairman TOM DAVIS. Mr. Johnson.

Mr. JOHNSON. Mr. Chairman, members of the committee, I would like to extend our thanks to you and the other members of the committee for holding this hearing on projected problems of delayed entry for foreign nationals traveling to the United States for legitimate business purposes, with a particular focus on the visa issuance process.

I am Randel Johnson, vice president for labor, immigration and employee benefits for the U.S. Chamber. And let me note that I do represent the Chamber on the Data Management Improvement Act Task Force, which was established by the Congress to study entry and exit problems at our Nation's borders; I am Chair of the Americans for Better Borders Coalition; and I am a member of the Board of Directors of the National Immigration Forum.

Well, as other speakers have made clear, we are all aware of the new environment in which not only businesses but all of us must live post-September 11. The need for security to protect our homeland is very real, and the U.S. Chamber has been part of that role.

We pledged our support to the administration early on, and to the Congress. We are still working with them. We worked closely on the development of the Department of Homeland Security legislation, and "key voted" that legislation in support in both the House and the Senate.

Now, at that time, certain provisions, as many of you know, were included in the legislation, which reassured, I think, quiet concerns among the business community that in implementing the Department, many would pursue a Fortress America mentality and would not weigh the potential negative economic impact on the country as a whole, which could result from significant increases at our borders, in delays at our borders.

And since the Homeland Department has come up and running, the decisionmakers within the government certainly have repeatedly assured those of us on the outside that the government will continue to search for ways to both expedite—to improve security and to expedite or at least not significantly hinder legitimate international commerce, travel and immigration.

However, I believe that the common concern or thread that you will hear today is a growing perception among the private sector that words are not matching the policies that have been announced, and that the policies coming down the road—many of which you went over in your opening statement, Mr. Chairman.

For example, I have just returned from a trip to El Paso, as part of my work on the DMIA task force, and these people—we met with various stakeholders in the community, and the State and local governments, and these people have the view that the government is simply not listening to their concerns. And they are in a state of panic looking at what the new entry/exit system may look like.

That is not atypical of experiences I have seen up in Buffalo and Detroit. There is concern that no one is listening, much less understanding that there is a way of life, there are questions of the environment, and the fabric and the future of a community are at stake here when these government decisions are made.

Now, none of this is to demean those in the government agencies that are struggling with very difficult questions. But I think we can all acknowledge that those within government—and I spent half of my career with the government—can isolate the real impact of their decisions and accept that impact as an acceptable cost to them of reaching a goal. Now, the fact that Congress, in some cases, imposes perhaps unrealistic deadlines on these same agencies, needless to say, makes that rationale all the easier sometimes.

Now, in the business community, we hesitate to be critical in this area of the government because, frankly, we are then sometimes accused of being not sensitive enough to national security concerns. Well, we are sensitive, but there are problems here and they need to be laid out. And in my written testimony, I have covered many examples which we have gathered from the American AmChams, which is the American Chambers abroad, from member companies. Each one is an individual story and each one, taken individually, may not seem like that big of a deal, except to those people who are immediately affected. But taken as a whole, I think they accurately paint a picture, a mosaic that everything is not as kosher or OK as the prior panel seemed to imply.

I mean, there are problems out there. And certainly many of the questions of the Members made that clear also.

Now, why is all of this important? Should it matter if people can travel to the United States in a timely manner, even after the tragic day of September 11? Well, yes, it does, because the Nation's business, their workers and the economy benefit from such international commerce.

It is important that a potential customer from overseas can visit the United States to examine and, hopefully, purchase products. It is important that visitors can come and, frankly, spend their money here and not in other countries. It is important sometimes that the business community has access to available labor when there is not domestic labor available.

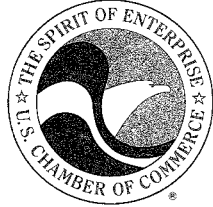
Now, Congress has a visa system established, but a visa system that doesn't work because of significant delays is not a visa system at all. So we need to find a way to make the law that is on the books work. We made our concerns to the State Department and other government agencies known. We frankly feel that our concerns are not even given a fair hearing, that the concerns of the business community are not weighted as heavily as they should be.

That being said, we look forward certainly to working with the government as we work through these difficult issues in the future, and certainly this hearing is helpful to us in doing that. We appreciate that.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Mr. Johnson follows:]



Statement of the U.S. Chamber of Commerce

ON: "CURRENT AND PROJECTED DELAYS IN THE VISA
PROCESS FOR ALIENS TRAVELING TO THE UNITED
STATES FOR LEGITIMATE BUSINESS PURPOSES"

TO: HOUSE COMMITTEE ON GOVERNMENT REFORM

BY: RANDEL K. JOHNSON

DATE: JULY 10, 2003

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 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 -- numbers more than 10,000 members. 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 95 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. Currently, some 1,800 business people participate in this process.

**Testimony of Randel K. Johnson,
Vice President of Labor, Immigration and Employee Benefits
U.S. Chamber of Commerce**

**Before the
House Committee on Government Reform
Hearing on the Impact of Visa Delays on Businesses**

**July 10, 2003
10:00 A.M.**

Chairman Davis, Members of the Committee, I would like to thank you for the opportunity to testify today on the issue of the current and projected problem of delayed entry for foreign nationals traveling to the United States for legitimate business purposes, with a particular focus on visa issuance problems. I am Randel K. Johnson, Vice President of Labor, Immigration and Employee Benefits at the U.S. Chamber of Commerce. While my biographical information is attached to my written testimony, let me note that I represent the Chamber on the Data Management Improvement Act (DMIA) Task Force, which was established by Congress to study and recommend suggestions on how to implement an entry-exit process at our nation's borders, chair the Americans for Better Borders Coalition and am a member of the Board of Directors of the National Immigration Forum.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size and in every business sector. The Chamber's membership also includes 95 American Chambers of Commerce abroad (AMCHAMs) located in 83 countries, which represent American companies and individuals doing business overseas as well as foreign companies with significant business interests in the United States. Because of their role at the crossroads of international business, we believe the AMCHAMs are excellent barometers of the strength of our international relationships.

We are all aware of the new environment in which not only business, but all of us must live. The need for security to protect us from another horror such as September 11 is very real. The U.S. Chamber has pledged its support for the broad ranging efforts to secure our homeland, was involved in the shaping of the legislation which created the Department of Homeland Security, and "key voted" in support of the legislation in both the House and the Senate.

Among the provisions we worked on were two that created a special office which was charged to reach out to the private sector, a particularly important function as the Department became up and running, and a provision which made clear that part of the Department's mission is to include consideration of America's economic security as the Department strives to also protect our national security. These provisions, along with those in title IV of the implementing legislation relating to border and transportation which reflect the need, consistent with national security, to "ensure the speedy, orderly,

and efficient flow of lawful traffic and commerce.” I believe went a long way in addressing concerns among the business community and others that the new Department would pursue a “fortress America” without weighing the negative economic impact on the country as a whole which could result from significant increases in barriers and delays at our borders. As Chamber President and CEO Tom Donohue has said, we need to ensure “that in the pursuit of security we don't lose our mobility and our economic freedom. Mobility and security must go hand-in-hand. Sacrifice one for the other and we'll pay a horrific price.”

And, indeed, the decision makers within government, at the Department of Homeland Security, the State Department and the White House, certainly have repeatedly reassured those on the outside that the government will continue to search for ways to both improve security and to expedite, or at least not significantly hinder, legitimate international commerce, travel and immigration.

However, I believe the common concern, or thread, you will hear today is a growing perception among the private sector, the traveling public, and local communities, that these words are not matching the new policies, present and impending. There is a sense that the concerns of the business community are perceived as relatively unimportant. With current policies pyramiding upon fast approaching deadlines for other changes, such as the August 1 deadline for visa interviews, the October 1 deadline for Machine Readable Passports for Visa Waiver visitors, the December 31 deadline for the US VISIT system at air and seaports, new requirements for biometrics by October of next year, and full implementation of US VISIT at the 50 busiest land borders in 2004 and the remaining land ports in 2005¹, this concern has reached a new urgency.

For example, I just returned from a trip to El Paso, as part of my work on the DMIA Task Force, where we met with various federal, state, and local government and private sector stakeholders. The general feeling was that the local communities and businesses had made their very serious concerns about entry/exit procedures known to various people in the government (and us) but really were wondering: “Is anybody listening?” or were they being ignored because it is “easy to ignore border communities.” Now that the deadlines for actually putting into place the entry/exit system are fast approaching, this concern has taken on a panic. This feeling was not too different than the ones I experienced in McAllen, Texas and at the northern borders, particularly in the Buffalo and Detroit areas. There is a sense that those within the government may not be carefully evaluating the degree to which their decisions will actually advance security, much less understanding that their decisions will impact, not just dollars and cents, but a way of life, jobs, the environment, and the fabric and future of a community. It may be a communication issue, but the perception is there, and it's a serious communication issue.

None of this is to demean those within the government agencies that are struggling with the very difficult questions of how to ensure that the next terrorist cannot penetrate our border protections—whether at the consulates overseas or at the ports of entry. And in

¹ For a useful overview of various deadlines, see GAO Report 03-563, “Homeland Security Needs to Improve Entry Exit System Expenditure Planning,” pages 48-50.

the end, it is the quintessential job of government to protect its citizens. But I think we can all acknowledge that sometimes those within government, and I spent over half of my career within government, can isolate themselves from the real impact of their decisions, and accept that impact as an acceptable cost (to them) of reaching a goal. That Congress, in some cases, imposes perhaps unrealistic deadlines on these same agencies, needless to say, makes this rationale all the easier.

Of course the business community, and others in this environment, hesitate to be critical because we will likely be accused by some of not being sensitive enough to national security. So I think the fact that we are here today and openly discussing these problems in and of itself is an indication of how important we feel about these issues. But let me be clear – we are not just here to complain. That will ultimately get us nowhere. We present our complaints only to illustrate the need for solutions. We are willing to work together with the agencies to advance solutions, and have offered to do so. However, to date, we sense that while the doors appear open and many are hearing, few are listening.

It is in that spirit that I come before you to share with you the concerns raised by the business community, by Chamber members, with the changes to visa and border policies implemented over the last year.

America's trade relationships, our diplomatic relationships, our cultural relationships and our academic relationships with the rest of the world depend a great deal on the ability of people to travel to the United States.

- U.S. companies exporting their goods and services abroad depend on the ability of customers and potential customers to visit, inspect the products and services they are purchasing and “seal the deal.”
- Multinational businesses depend on the ability to bring key personnel to the U.S. from overseas to facilitate management, executive decisions, research and development teaming, training and integration of far-flung subsidiaries and affiliates.
- Our entertainment industry relies on talent from around the world, and our arts and cultural communities give the U.S. public exposure to some of the finest in international arts and entertainment.
- Our world-class medical facilities are the envy of the world, and depend not only on international collaboration for many medical breakthroughs but also on patients from around the world who flock to our facilities to receive the best in medical care.
- Our educational institutions not only are crucibles of learning, but also create the diverse and international community of students, teachers and researchers that continues to make the United States the leader in

innovation and the location of choice for international scholars.

- Our hospitality and travel industries generate over 18 million jobs for Americans to support millions of international tourists and visitors annually.
- Employers in the United States count on their ability to hire from overseas when necessary to meet desperate workforce needs for specific skills, abilities or due to shortages of available U.S. workers.

The ability of any of these transactions to happen depends on the timeliness, predictability and efficiency of our visa and immigration system. Unfortunately, these qualities have been sorely lacking. Specifically, the changes to the visa system over the last year have strained many of our business and international relationships, and have created problems and costs for our economy.

Let me reiterate that we understand the concern for security. And the Chamber fully supports efforts to improve our screening of persons who wish to come to this country. However, as stated above, we must look for those processes that can achieve that objective without sacrificing the efficiency of our system. Our largest concern is that these new policies seem to have been put in place with very little if any consideration of the need for coordination and communication with the private sector, or the real resource needs to efficiently carry out these changes. Finally, while State Department officials have acknowledged that there are adverse impacts to the private sector, they have offered little in the way of options for improving the situation. As the recent State Department cable on visa interviews indicates, the Department “expects and accepts ... processing backlogs for the indefinite future.” Members of the Committee, it is unacceptable for a government agency to accept delays and backlogs as the normal course of business; we should continue to search for solutions and more resources may, in fact, be necessary.

We know that the State Department has tried to downplay the impacts of these changes, stating that their data do not show significant problems. Members of the Committee, I will shortly share with you some of the problems that have been brought to our attention as a result of these various changes, but the private sector is not responsible for collecting data on visa issuance, nor can we feasibly do so on a broad basis. That is the responsibility of the State Department. Their own data should show what consular posts are telling the business and traveling community in too many places around the world – “you must wait longer.” And in business delays do have an impact on costs and the ability to rationally plan for the future. Finally, I would point out what every association representative here and your own constituent services assistants could tell you – by the time we hear about an issue, it has gone beyond just a normal delay. Chamber members do not call us until they have exhausted their own (often significant) resources.

The U.S. Chamber began hearing about this issue from its members almost one year ago. It began with requests for assistance in specific visa cases that seem to have been delayed or “fallen into a black hole” at an embassy or consular office. While the Chamber gets

these requests occasionally (but rarely intervenes in individual cases) the increase in the number of requests was notable. Soon the requests on specific cases became a general concern that too many cases seemed to be falling into this "black hole," and a pattern was forming.

By last summer we were made aware of significant delays and problems processing visas in several Asian countries, most notably, China, Vietnam, Malaysia, and Taiwan. (Later Russia was added to this list.) Many of these problems were caused by the increasing use of "Security Advisory Opinions" or SAOs under the so-called "Visa Mantis" programs relating to technology transfers. It seemed that not only were cases being referred for SAOs that never had been in the past, but that the clearances themselves were taking months, severely straining business relationships and jeopardizing the ability of U.S. companies to export their products.

One such company in the industrial automation industry (who asked that its name not be used because it is fearful its foreign competitors will use the information to their advantage) had three sales engineers from China who were subjected to the Mantis screenings. While not a significant number in and of themselves, these three happened to be critical personnel to their operations. One of the engineers was working on industrial machinery for a mass transportation project in a major Chinese city. Because the Embassy decided this fell under the "URBAN PLANNING" technology field, the case was sent for an SAO. Because the engineer could not attend necessary training in the US, the project was set back a full year. Two other employees, a software sales engineer and the head of the company's automation research and development center were also delayed. The employer was not able to determine which "critical fields" necessitated the SAO's in these cases, and therefore was not able to provide any additional explanation or help to the consular officer in determining whether or not an SAO might have even been required, much less help the agencies involved determine whether or not to grant the clearance.

The State Department, FBI and others have acknowledged a glut of clearances last summer that they claim to have eliminated. However, it should be noted that while the numbers of "lost" cases seems to be lower, and there is improvement, delays of 30 to 60 days still appear to be the *average*, business is still skittish that the backlogs could develop again, and foreign customers are still apprehensive about doing business with American companies because of fears about visa issuance.

Other countries have had difficulty dealing with the additional delays due to the increased security checks under the so-called "Visa Condor" program. For example, a petroleum engineering company based in Texas has had difficulty in obtaining visas for project managers from its client, the Saudi national oil company, Saudi ARAMCO. ARAMCO has told them that they are going to start looking at contractors in the United Kingdom and other countries, potentially costing this U.S. company millions in revenue, and jeopardizing over 2,000 U.S. jobs.

The American Business Council of the Gulf Countries, the organization of AMCHAMs in the Gulf states, has discussed the unintended consequences of the current visa policies in those nations – American companies are facing skepticism by their Gulf partners in doing business, feeling “unwelcome” in the United States and concerned that what they see as visa “restrictions” will hamper their ability to oversee investments or partnerships in the United States. The American Chamber of Commerce in Malaysia reports a similar feeling among Malaysians, who are increasingly turning to the United Kingdom or Australia for business partnerships, study abroad and other activities.

The level of concern over these delays is evidenced by the more than 80 organizations that joined a letter to Secretary of State Colin Powell and Secretary of Homeland Security Tom Ridge in January 2003, including the American Chambers of Commerce in China, Vietnam, Hong Kong, India, Japan, Shanghai, Singapore, and Malaysia among others.

Since last year, the State Department has also phased out programs sponsored by many AMCHAMs to file visa applications on behalf of their members. Many AMCHAM member companies relied on these filing programs to expedite visa issuance for their employees and business customers. It should be noted that these programs NEVER involved any type of preadjudication or prescreening of the cases. The AMCHAM assisted companies with compiling the necessary documentation and filing cases through its agreement with the consular post. The discontinuation of these programs, combined with the increase in visa interviews already implemented in many locations and to be fully implemented on August 1, has resulted in even more delays for visa applicants (in many countries the wait time for a visa appointment can be months), and has created significant issues for many businesses.

The U.S. Consulate in Chennai, India recently announced that it was suspending all visa interviews until September. In the Czech Republic, where visa applicants must call a toll number to arrange an appointment at the consulate, and where those callers are often put on hold and given visa interview dates long after the expected date of departure (even when the caller has called weeks in advance of the trip), one airline company estimated a loss of over \$100,000 in the last several months due to cancelled travel plans.

In South Africa, the new interview requirements will often require a domestic trip of several hours travel time or a flight just to obtain the visa, even before traveling to the United States, adding additional cost and time out of the office.

The Swiss-American Chamber of Commerce recently wrote to the Department of State stating that visa applicants calling the toll line to set up appointments often spend over 30 minutes on the phone (at \$1.50/minute) and the wait time for an appointment in Bern is currently 8 weeks and growing. This is *before* any additional workload due to changes to the Visa Waiver program. In the words of the Chamber, this situation “adversely affects the image and reputation of the United States.” The Swiss Embassy in Washington received a copy of this letter and also forwarded it to the State Department to express its concern.

Korea, the 6th largest U.S. export market, second only to Japan in Asia, and the U.S. Consulate in Seoul is the largest nonimmigrant visa issuing post in the world and is among the top five origin countries for U.S. visitors last year. According to an analysis of processing data from the consulate, the American Chamber of Commerce in Korea estimates that the new visa interview requirement will mean an approximate six-month wait for an appointment. When the average U.S. airline ticket from Korea is purchased three weeks before travel, the potential impact is staggering.

Attached to this testimony are some additional case examples from companies and organizations that have been impacted by recent visa changes. As stated above, while we do not have statistics, these anecdotes demonstrate that whether or not significant *numbers* of cases are affected, in many cases it is key personnel², often essential for the operation of a company that experience delays. Further, the perception of widespread delays is enough to jeopardize trade and business relationships.

My testimony has focused on the impacts to the business community. However, as I stated at the beginning of the testimony, these delays are adversely impacting the education, arts and entertainment, travel and tourism, and medical communities as well.

We have met many times with the State Department, and sent several letters to make our concerns known. However, the response we have received has been less than, well, what we had hoped for. While the Department continues to claim that these changes are required by national security, it is difficult to understand how helpful, for example, an interview of a few minutes by an overloaded consular staff can be to security. Again, perhaps it is a matter of better communicating, but communication is a two-way street.

Finally, I would note, that while the GAO report on strengthening the visa process as an antiterrorism tool in October 2002 did recommend that the State Department create a more comprehensive set of guidelines and standards with regard to such things as visa interviews, it also specifically stated that such standards be "risk-based." The virtual blanket approach offered by the State Department in its May cable to posts would not appear to meet the risk-based recommendation.

We are also aware of the Congressional deadlines, for example for the biometric collection, but the precipitous requirement for requiring close to 100% interviews more than one year in advance of the deadline, and notably without any effort at obtaining additional resources has not been adequately explained.

Further, we are extremely dismayed at the lack of involvement of the affected stakeholders in the process of making decisions regarding these changes. We have suggested to the State Department that they allow businesses to assist them in their duties

² For example, CNET Networks, Inc., the well-known tech Internet company, recently sent its Controller to Ireland to renew his visa. He arrived shortly after the Embassy in Dublin changed its visa policy from same-day issuance to an appointment system. Because the first appointment was not available for three weeks, the Controller missed the quarterly closing of the corporate books, an important milestone in this age of corporate responsibility.

by providing additional information necessary to process clearances, and suggestions for phasing in interview requirements and others. To date, the State Department has followed up on few, if any, of these suggestions.

Perhaps most importantly, these changes have been happening at a rapid pace, leaving businesses no time to make adequate adjustments to accommodate the changes. Further, knowing that additional changes are forthcoming in the next year, it appears that no one at the State Department or at the Department of Homeland Security is attempting to manage the slew of changes or mitigate the impacts on the traveling public. As a member of the DMIA Task Force, I am acutely aware of the potential impacts of the proposed US VISIT system to the entry and exit of legitimate travelers to the U.S., and yet there has been very little consideration, from what we can tell, of the combination of the visa and the US VISIT deadlines on the traveling public.

The State and Homeland Security Departments need an aggressive and proactive outreach and communications campaign (perhaps working with the Department of Commerce) to counteract the increasingly negative image the United States is gaining among international business and travelers. U.S. companies are losing export opportunities to other nations because of the visa restrictions, tourism and trade shows that promote U.S. exports are losing to other destinations with easier visa policies, and American medical and higher educational institutions are losing some of their "luster" to foreign students, researchers and patients. In short, the U.S. is losing its competitive advantage in many areas because of its visa policies. This will ultimately impact our economic growth and our global war on terrorism can only be funded through a sound economy.

More resources, better communication, pilot projects, time studies and consultation before implementation or public announcements presented as a *fait accompli*, are all necessary to a successful effort. While in the end only the government can determine the best method to protect the country, surely there is room for public debate as to whether, e.g., a two or three minute interview will uncover a possible terrorist, and if the answer to that is no, whether, it is rational to require them of nine million visa applicants a year with the current level of resources available. We should examine whether the probable level of chaos at our airports related to the machine readable passport requirement on October 1 will actually enhance security or will it just make our friends around the world continue to see the U.S. as "just too much trouble" to visit or do business with.

The Chamber is willing to work with the State Department, the Department of Homeland Security and other agencies to address these issues, working toward solutions that meet the needs of our economy and our security.

Thank you and I am pleased to take your questions.

**Problems Encountered by Businesses in Obtaining Visas For Foreign Nationals:
A Sampling¹**

Internet Business, Financial Accounting Deadline Missed

CNET Networks, Inc. (Nasdaq: CNET), is the global source of information and commerce services for the technology industry. As a top 10 Internet company with established Web sites in 20 countries and content in 18 languages, CNET Networks connects buyers, sellers, and suppliers throughout the IT supply chain with award-winning content via the Web, wireless devices, television, radio, and print.

CNET sent its Controller to Ireland on business and while there he was to renew his H-1B, which had been extended in March 2003. He tried to renew the H-1 using the old same day process and was told on 6/23/03 that the earliest appointment he could receive was July 11. This delay has caused him to miss the quarterly closing of the CNET books.

Oil Company in Hot Water with Customers

A U.S.-based oil and engineering company that employs 2200 people, 2000 in Texas, provides engineering and project management services for the petrochemical industries, particularly production facilities for oil and gas, refining, chemicals and pipelines. Because of projected declines in the U.S. oil industry in the next years, the company has been aggressively pursuing international markets for new business in order to avoid significant staff reductions in the U.S. Much of this new business is targeted to come from the Middle East, and they have made substantial investments in sales activity in that region to achieve this objective.

But recently, customers in the Middle East, particularly representatives of Saudi Arabian companies such as Aramco, are experiencing long delays in the processing of business visas to the USA. These visas are required for their technical project teams to move to engineering contractors' offices as Owner's Representatives during the execution of their large petrochemical projects. These clients have a strong preference for awarding these contracts to US based firms, but because of the visa problems experienced since 9/11, they have been steering their business to European firms, jeopardizing not only the company's business in the Middle East, but the company's ongoing effort to create international markets for its services.

Pharmacist Can't Risk Visit Home

A CVS Pharmacist who recently changed to H-1B status wants to go to India and visit his parents this summer. He may not be able to, since the consulate in Chennai is not

¹ Note, while some companies have granted permission for their names to be used, many more are concerned about negative repercussions from public disclosure of what are deemed sensitive personnel or trade issues. Where appropriate, we have used anonymous examples, but some companies were concerned about even that.

scheduling appointments until the end of September and he cannot return to the U.S. without a new visa. He feels it may be too big of a risk to shoot for an emergency appointment that may or may not be granted. He is also not convinced that another consulate will accept his application in a timely manner.

New US Business Investment Can't Go Forward

An L-1A application for an Executive Vice President for an insurance company from the U.K. was approved by the Bureau of Citizenship and Immigration Services in {date}, but the Embassy in London could not schedule him for an appointment for visa issuance until the beginning of August. This delays the new office opening in the US and has disrupted the business plan for the company, including the hiring of U.S. workers.

International Executive Stuck at Home

The Chairman and CEO for Universal Genesis and its operational subsidiaries, including London-based Universal Genesis International, Ltd., Universal Genesis Ltd., UG Risk Services, Inc. and Enhance One, LLC, is required to travel frequently to oversee operations in the United States and many other countries. Universal Genesis and its subsidiaries provide financial project management and risk management services to governments, energy groups, industrial and banking groups, major international transportation, distribution and logistics operators, high wealth individuals, technology groups and other similarly multi-faceted entities. Its portfolio of economic development activities has included industry-specific development for two major governments, large-scale economic and financial infrastructure development and multi-national project development and linkage, creating economic activity growth and advancement.

This CEO has been unable to travel of the United States to oversee international operations because, although a British citizen since childhood, this, Iranian-born man must not only undergo security screening at the Consulate for his visa, but also register with the National Security Entry Exit System (NSEERS). The long registration delays and the delays to screen him at the Embassy for re-issuance of his L-1 visa have effectively grounded this CEO in the US.

Transfer of Manufacturing from UK to US Delayed

Ingersoll-Rand Company ("I-R"), with worldwide corporate headquarters located in Woodcliff Lake, NJ, USA, is engaged primarily in the design, engineering, and manufacturing of a diversified line of industrial components and machinery. Ingersoll-Rand operates manufacturing plants in over 21 countries around the world, markets through a world-wide distribution network, and employs approximately 55,000 worldwide, with 30,000 of those employees in the United States. Annual net sales of I-R products are in excess of \$9 billion.

Recently, elimination of the use of travel agents in London & personal interviews has resulted in increased processing times for international managers & executives for British nationals. London visa processing through American Express for British nationals used to take 5-7 business days. It now takes about 6 weeks to get the interview scheduled [first week of June they were scheduling appointments for last week of July] and applicants must travel to London for the interview and wait for passports with visas to be returned. One of I-R's business units is in the process of transitioning manufacturing from a UK plant to the US operations and its key managers, who have the product expertise, are required to lead this transition. The applicants have worked for IR in the UK for 8-15 years. The delay has resulted in lost revenues – a loss of 2 months in the transition.

Asian Operation Jeopardized Because of Delay in Visitor Visa

A Korean business manager for Ingersoll-Rand Asia missed a critical Migration Team Analysis Meeting for IR Productivity Solutions because of the delay in obtaining a new B-1 visa at the U.S. Consulate in Seoul (she previously received a B-1 visa and was renewing). The Asian international business is being rolled into the Ingersoll-Rand International Shared Service model for its global export business. She was scheduled not only to represent IR Korea at the meeting but is responsible for migration team initiatives for other Asia Pacific countries as well. The delay has not only cost productivity in Korea but in the rest of IR's Asia Pacific operations scheduled to move to this more efficient business model.

Delay in Engineers Training Costs Company and Delays Projects

Ingersoll-Rand runs a J-1 exchange visitor program for its international trainees to obtain 6-month courses in such areas as engineering. Delays in issuance of J-1 visas for engineers from the CADD Design Center in India, which supports and supplements U.S.-based engineering and manufacturing has cost the company thousands of dollars by one manager's estimate.

In addition, the denial of a business visitor visa for an Engineering Manager from IR-India to attend a two-week engineering and design meeting for new product development has delayed the new product launch in India and its market potential there, potentially costing the company hundreds of thousands of dollars in lost sales of a product that contains 60% US-manufactured components. The engineer is the only person currently working on this project. Of particular interest in this case is the fact that this applicant evidently had two "30 second" interviews, and was denied as an intending immigrant without the company's letters even being read by the consular officer. He has now been told he cannot reapply for two years. This now means the IR must train another engineer in this project or move all engineering meetings on the product to India to incorporate this individual.

Two other key managers in India (a Deputy Manager of Production and and the Manager of Information Technology) were scheduled to come to the U.S. for "Six Sigma" training

– an industrial quality improvement program, that were required for worldwide manufacturing initiatives throughout Ingersoll-Rand. The consulate denied the visas initially, but after six months and thousands of dollars in legal expenses the visas were finally approved -- -however the delay cost the Indian subsidiaries in terms of productivity losses due to the inability to implement the Six-Sigma initiatives along with the other subsidiaries.

US Company's China Contracts in Jeopardy

A leading US-based industrial automation company with customers in more than 80 countries had three sales engineers from China who were subjected to the Mantis screenings. While not a significant number in and of themselves, these three happened to be critical personnel to their operations. One of the engineers was working on industrial machinery for a mass transportation project in a major Chinese city. Because the Embassy decided this fell under the "URBAN PLANNING" technology field, the case was sent for an Advisory Opinion. Because the engineer could not attend necessary training in the US, the project was set back a full year. Two other employees, a software sales engineer and the head of the company's automation research and development center were also delayed. The employer was not able to determine which "critical fields" necessitated the AO's in these cases, and therefore was not able to provide any additional explanation or help to the consular officer in determining whether or not an AO might have even been required, much less help the agencies involved determine whether or not to grant the clearance.

Chairman TOM DAVIS. Mr. Pettler, thanks for being with us.

Mr. PETTLER. Good morning, Chairman Davis, Ranking Member Waxman, distinguished members of the committee. These hearings provide an opportunity to begin a dialog for change, a partnership, so to speak, between business and government, the common objective of which is to maintain U.S. competitiveness and economic interests while improving the security of our borders and the effectiveness of our visa process.

Since September 11, it has become increasingly evident that our government agencies are not communicating sufficiently with one another. The first step toward a solution is to make sure that all interested government stakeholders are provided needed input to policy and process decisions. Unfortunately, this is not happening on a consistent basis.

For example, under the Visas Mantis screening process, information elicited by consular officers is forwarded for necessary technical analysis by the Department of Commerce through industry and security. The Department of State has formed a working group to address these protocols, but for whatever reason, the Department of Commerce is not a full participant. This is simply not effective from a planning or an implementation standpoint.

Second, we need to avoid duplication of agency that causes unnecessary delay. Foreign nationals who require an export license for access to sensitive technology undergo an extremely rigorous background review as part of the licensing process. However, when that same individual applies for a visa, a de novo review is conducted without regard to the previous clearance.

In another example, the Bureau of Citizenship and Immigration Services conducts a background review prior to approval of certain nonimmigrant visa petitions. The BCIS clears the individual, approves the petition; but when the subject takes the approval and applies for a visa at a consulate, the Department of State conducts ostensibly the same check a second time, predictably with the same negative result.

The consolidation of visa policy in the Department of Homeland Security provides a unique opportunity for increased coordination, yet it is not clear that all interested agencies and bureaus are being consulted or that agency processes are in synch. This clearly must change.

A second area of focus should be industry-government cooperation. We recommend that an industry-government advisory panel be established. This panel could, for example, explore precertification programs to streamline all or parts of the visa application process for companies with proven immigration and export control compliance programs.

A precedent for this approach exists in the customs arena. Under the Customs-Trade Partnership Against Terrorism initiative, participating companies play a cooperative role and receive expedited clearances and a reduced number of inspections for their cargos. A similar effort should be considered with respect to the movement of people.

Improved communication with the U.S. business community is necessary for both corporate planning and corporate security. Companies can prepare and make the necessary contingency plans if

they simply know the rules sufficiently in advance. From a corporate security standpoint, companies want and need to know whether an employee poses a security risk in order to take necessary steps to mitigate possible breaches and to protect the propriety interests and those of their customers and business partner.

As we have heard, effective August 1, new guidelines will substantially increase the number of nonimmigrant visa applicants required to appear for personal interviews. What had been a 1-day process to certain folks may now require weeks, if not months, for an appointment followed by an additional hiatus for security reviews to be conducted.

The threshold question is whether universal interviews are useful and necessary. Leaving that aside and assuming the guidelines are implemented, what can be done to create efficiencies? Ideally, a visa applicant anywhere in the world should be able to go on the Internet, schedule an appointment utilizing an automated appointment system, and at the same time, submit his or her visa application online; upon receipt of the application, the consul would immediately commence any relevant security review so that, barring any complications, the visa could be issued on the day of the interview.

Automated and electronic processes save time and government resources. Electronic filing and other innovations such as digital signatures prevent fraud and protect the integrity of documents. These technologies must be linked with other planned technology enhancements, such as biometric identifiers, machine-readable passports and visas, and the U.S. VISIT system to ensure a coordinated effort.

The U.S. business community has a shared interest in national security and achieving efficiencies in global mobility. U.S. industry, with its advanced technology, stands ready and willing to participate in a cooperative effort with government agencies. If such a partnership can work in the customs arena, it can and must work here as well.

I have submitted a full statement for the record and look forward to answering any questions you may have. Thank you very much.

Chairman TOM DAVIS. Well, thank you very much.

[The prepared statement of Mr. Pettler follows.]

U.S. House of Representatives Committee on Government Reform
"Foreign Travel to the United States"

July 10, 2003

Testimony of Mr. Richard J. Pettler, Partner
Fragomen, Del Rey, Bernsen & Loewy, P.C.

Good morning Chairman Davis, Ranking Member Waxman, and distinguished Members of the Committee. On behalf of Fragomen, Del Rey, Bernsen & Loewy, P.C. (FDB&L), it is a privilege to have the opportunity to testify before this committee today. As we have heard from my co-panelists this morning, concern about the impact of visa processing delays on U.S. businesses has risen to the top ranks of corporate America. They have articulated the costs to U.S. business and the U.S. economy of policies that unduly restrict and delay the entrance of foreign employees and visitors. We have also heard of the agencies' plans for improving the system, and we commend them for their efforts. I hope this morning to offer recommendations, from a corporate practitioner's perspective, on how we can meet our goal of achieving a secure, fair and efficient system. I have submitted a full statement for the record, and look forward to answering any questions that you might have.

Founded in 1951, FDB&L is the world's largest firm practicing exclusively in the area of global immigration and nationality law. Our firm provides immigration services worldwide to multinational corporations, emerging companies, universities, entertainers, entrepreneurs, and professional sports organizations, all of which employ foreign nationals on a temporary or permanent basis in the United States or overseas.

FDB&L delivers immigration services of an unparalleled scope and scale, with 130 attorneys practicing in offices located across the United States and in Europe and the Pacific Rim. FDB&L offers guidance in the various practice areas surrounding corporate immigration policy, including U.S. immigration and Department of Labor compliance, international visa services, and U.S. immigration-related export control. In addition, FDB&L operates a government affairs office that provides our clients with legislative and regulatory expertise and representation in Washington, D.C. for immigration-related matters. Members of our firm sit on the Boards and the immigration steering committees of the U.S. Chamber of Commerce, the American Bar Association, the Information Technology Association of America, and the American Council on International Personnel to name just a few, and several partners also have in the past or presently teach immigration law at some of the country's leading law schools.

I have practiced various aspects of immigration law for the past 25 years and currently serve as head of the firm's Export Control Practice Group. In this capacity I deal with a myriad of issues involving the visa process and the impact of national security concerns on how companies recruit and deploy their foreign national workforce. I have and continue to serve as a policy and legal advisor to various industry groups and Fortune 500 companies on immigration and related national security issues.

Mr. Chairman, national security has long intersected with immigration law. I have spent my career advising companies on the immigration, export control and other legal concerns surrounding their relationships with foreign employees, clients and business partners. For most of the public, and much of corporate America, the national security provisions of our immigration laws operated invisibly or were but a minor burden prior to September 11, 2001. The tragic events of that day dramatically brought to the forefront the urgent need for greater scrutiny of those who seek entry to our country.

In moving swiftly to protect our borders we must not lose sight of the connection between security, immigration and the economy. Global mobility is, more than ever, essential to the growth and stability of both the U.S. and international business community. Our elaborate employment-based immigration

framework provides companies and organizations with access to highly educated and specially skilled foreign professionals. In addition our visa policies provide for entry by foreign clients and business partners whose presence may be essential to the success of a wide range of domestic and global business transactions. With U.S. industry continually seeking new opportunities and markets to maintain and expand operations, international mobility will be an increasingly important component of business strategy and global competitiveness. Ideally, our immigration process and programs will continue to evolve and provide for the fluidity and mobility necessary in a global economy.

The challenge before us is not insurmountable – reconciling security concerns with the need for efficient processes to facilitate business mobility are not mutually exclusive goals. In seeking this balance, and in implementing protocols and procedures we need look no further than to those principles that have served our nation so well for so long. Fairness and transparency in process. Dignity towards the individual. Creativity and effectiveness in getting the job done. In this regard, there are four areas in which the government can and must improve: Intergovernmental Coordination; Industry-Government Cooperation; Customer Service; and New Technologies.

1. Intergovernmental Coordination

After September 11, 2001, it became evident that our government agencies were not communicating sufficiently with each other. While we have already seen dramatic improvement, we believe that there is still much more that needs to be done in this regard. For example, the Department of Commerce (DOC) has not been involved in the Security Advisory Opinion (SAO) working group put together by the Department of State (DOS) despite the fact that the Visas Mantis review to screen for access to sensitive technology is dependent on coordination with the DOC. Moreover, consular officials acknowledge that no credit is given for DOC deemed export license reviews even though that process may have involved many of the same checks that are run a second time in connection with visa issuance. Similarly, when the Bureau of Citizenship and Immigration Services (BCIS) investigates a “hit” during background checks and subsequently is able to clear the individual, this information is not shared with DOS who then must make this check all over again. This duplicative work is a less than efficient use of our limited resources, and it frustrates U.S. companies who do not understand why clearances obtained from one agency are not recognized by another.

We recommend that the government take steps necessary to ensure all appropriate government agencies are sitting at the table when policy and process decisions are made. The consolidation of visa policy in the Department of Homeland Security (DHS) provides a unique opportunity for coordination yet it is not clear that all interested agencies and bureaus are being consulted. This must change. In addition we recommend that the government take action to make all aspects of the visa process more transparent. While we recognize that security considerations prohibit the sharing of classified and certain highly sensitive information, basic insight into the paths of inquiry a particular application may take, the timeframe for decisions, and the role of each participating agency would alleviate some of industry’s concerns.

2. Industry-Government Cooperation

It is in the economic interest of both U.S. employers and our nation to have a functioning and secure system to welcome business visitors and employees into the United States. Industry-government communication and cooperation is vital to this effort. In the customs arena, recent industry-government cooperation has greatly facilitated the inspection and movement of cargo. Pre-clearance of goods and containers before they reach U.S. borders, and the recognition of “known shippers” enhance security and

efficiency. Important lessons are to be learned from this example, and similar efforts should be explored with respect to the movement of people.

An Industry-Government Advisory Panel could be established to recommend areas where communication and cooperation could be improved. This Panel could explore pre-certification programs to streamline all or parts of the visa application process for companies with proven immigration and export control compliance thus allowing the respective agencies to devote their limited resources to the areas of greatest risk.

The Panel could further recommend process changes to minimize business disruptions, including those that now occur in the visa revalidation process for employees already in the United States. For example, for employees from the Middle East who must return home to renew their visas, there is no way for a company to start the paperwork ahead of time. This means companies must either refuse to allow an employee to travel or find a way to be without the employee for months. Such a Hobbesian choice is unacceptable. We are not seeking pre-approval or even expedited approval, merely mechanisms to begin the paperwork process in advance.

Industry could also provide expertise to the government in terms of what information it should collect. From our perspective, it is not clear that agencies are even asking for the appropriate information necessary to elicit effective and thorough security decisions. The information collected about visa applicants is inconsistent and not necessarily germane to the inquiry. A Panel could help develop a more meaningful, focused and coordinated process.

Finally, improved communication with U.S. business is essential. Companies can prepare and make the necessary contingency plans if they know the rules in advance, e.g. what paperwork is needed, processing times and procedures. Companies often are not told why visa issuance has been delayed or why someone is denied a visa, perhaps in part, due to privacy considerations. If in fact there is a security-related delay in visa issuance, companies want and need to know certain details for their own security, for the security of their customers, and to meet work-related and contractual deadlines critical to maintaining and expanding business opportunities.

Greater transparency and better communication would allow the company to provide supplemental information that would assist the agencies in conducting the reviews in a timely manner and alleviate the business costs of unpredictable delays. This is of particular importance to the Visas Mantis program as the required technical information is uniquely within the control of the sponsoring company and is key to any meaningful review of possible export control violations involving sensitive technologies.

While we appreciate the efforts made to place more information on the Internet, the ability to contact agency officials to discuss a particular case is crucial. This is particularly true in emergency situations where it is imperative that an employee travels in a timely manner. We urge the agencies to think creatively about opening lines of communication that provide useful information in a timely and responsive manner.

3. Customer Service

The enhanced security procedures have added immeasurably to the stress and uncertainty faced by those who seek entry to the United States. In many cases the visa and entry process is the only contact a foreign individual may have with the U.S. government. That first impression may last a lifetime, to be shared

with countless others who may never set foot on our soil. Our actions and the examples we set may also have a reciprocal impact on how other governments treat U.S. citizens traveling abroad.

Visa applicants must be able to understand the process, and know what is happening with their applications and paperwork. Foreign nationals are frustrated when their passports are held by the U.S. government for months while an SAO is conducted. They are upset by the time and money required to call 900 numbers to schedule appointments for interviews. Stranded abroad for no apparent reason, foreign nationals become angry and scared when unable to return to their jobs and families in the United States. Business visitors begin to doubt the advisability of travel to and investment in the United States.

Technology can help facilitate this process and reduce the vagaries of new security measures. We appreciate DOS expanding the use of its website to report on consular functions and procedures, and the Internet is already proving helpful in scheduling some consular appointments. Such information and functions must continue to be expanded and updated on a regular basis.

The agencies are in a difficult situation given limited resources and mandates to enact ever increasing security measures. In addition to much needed additional resources, agency sensitivity to customer service issues will help to diffuse the problem. This circumstance is not unlike that faced by the airports in the wake of September 11th. The general view was that the baggage and passenger inspection process was unprofessional and ineffective, in addition to being intrusive. There has been a marked change in public perception since the Transportation Security Administration has taken over the inspection process. The attitude, training, and professionalism of the TSA staff has significantly improved the public acceptance of what is a necessary, if unpleasant, procedure. A comparable approach should be taken in connection with the visa and border inspection process.

4. New Technologies

Finally, I would like to focus on issues and potential additional delays as DOS moves to require interviews for almost all visa applicants, and the use of new technologies to help prevent or diminish the impact of these delays. In May 2003, DOS announced new guidelines that will substantially increase the class of nonimmigrant visa applicants required to appear at consulates for personal interviews. The vast majority of foreign nationals will be required to make personal appearances in conjunction with their nonimmigrant visa applications, and the result, as DOS has acknowledged, will be significant processing delays.

As Congress and the relevant departments and agencies implement new security-related measures that inherently delay visa issuance and entry, we should also be exploring technology-based avenues to reduce the interview time at Consulates and to otherwise achieve efficiencies. As a preliminary matter, we thank DOS and urge the continued use by Consular Posts of automated appointment systems to manage their workloads. We strongly advocate that all efforts possible be made to allow use of the Internet to schedule appointments and interviews.

Electronic filing of visa applications would reduce the burden on government data entry staff and contractors, and would save employers significant resources presently devoted to courier costs. Electronic filing and digital signatures, even more so than traditional filing and manual signatures, prevent fraud and protect the integrity of written documents. These technologies must be linked with other planned technology enhancements, such as biometric identifiers, machine-readable passports and visas, and the U.S. VISIT system, to ensure a coordinated effort.

Conclusion

The reassessment of U.S. immigration-related security considerations prompted by the events of September 11, 2001 has presented new obstacles and burdens for multinational employers as well as for foreign nationals seeking admission to the United States. These hearings provide an opportunity to begin a meaningful dialogue for change, a partnership so to speak between business and government, the common objective of which is to maintain U.S. competitiveness and economic interests while improving the security of our borders and the effectiveness of our visa process.

Ensuring security and improving efficiency are not conflicting ideals when it comes to global mobility. The U.S. business community, with its technology, ingenuity and resources, stands willing and able to assist government agencies to this end. With such a partnership we shall not fail in this most critical of challenges.

Thank you for your time and consideration.

03GM089

Chairman TOM DAVIS. Let me just start. Mr. Pettler suggested a private industry advisory panel.

What are your opinions on that, Mr. Marks?

Mr. MARKS. Excuse me?

Chairman TOM DAVIS. Mr. Pettler has suggested a private industry advisory panel.

Mr. MARKS. I think the concept, Mr. Chairman, of including the private sector in the decisionmaking process and in the guidance of the program is a very good idea, because we have been left somewhat in the cold after a long and very good relationship with the State Department.

In this particular case, it has just been a directive, this is what it will be, with little opportunity to share with those people that influence travel around this world and those folks that travel to the United States of America; and we are left a little bit holding the bag in this case.

But we just haven't been able to tell our story. Had there been a private sector panel involved from the get-go, I think we may have mitigated some of these issues.

Chairman TOM DAVIS. Airlines are the first line of defense in passport checks. What are they saying about the upcoming requirements and is there any impact on bookings?

Mr. MARKS. Well, clearly, anything that we do that deters booking an airline passage to America is going to hurt our economy.

You have to remember, we are in a very competitive environment. This isn't just a matter of my home city of San Francisco competing for business against Los Angeles or New York, but we are competing against Spain. We are competing against Switzerland. We are competing against all areas of the world, and the more difficult we make it for someone to enter this country, the harder it will be and the more it will cost us economically.

Now, at the same time, we are extraordinarily sensitive to homeland security. But it shouldn't be an either/or situation; both are terribly important. And we just need to be perceived as something other than Fortress America.

And I would just add, I was participating in a press conference in Geneva at a Global Summit on Peace Through Tourism earlier this year. And that was the first question asked of me as I sat alongside the former mayor of Tel Aviv and a minister from Jordan, fully assuming they would get the first question. But, rather, it came to me, and it was, "Tell us what it is like in Fortress America."

That doesn't send a very good sales message.

Chairman TOM DAVIS. No. But to what extent do travelers seem to be choosing other countries for tourism, to go to on vacation or to conduct business as a result of our increased requirements? Are you seeing that?

Mr. MARKS. Well, the—

Chairman TOM DAVIS. I will ask that to you and Mr. Johnson.

Mr. MARKS. There is no question that our country has lost market share. In fact, we have lost some 37 percent of market share of world travel and tourism in the last decade. There are many things that can probably come into play here, one being that this

country has not been as effective marketing from a national perspective as maybe others have.

Congress has just put \$50 million to the Department of Commerce to, hopefully, solve some of this problem. But we are doing that also at a time when we are making it more difficult in order to achieve entry into this country.

The longer the lines that we have for people applying for visas—and those situations where the machine-readable passports are not yet totally in vogue, if you will, because this was going to begin in 2007; it was we, after the USA Patriot Act moved us forward to 2003.

It just seems to me, based on the feedback that we have gotten from international tour operators—and we were just together at what we call the “International Pow-Wow,” which is the one time of the year our country brings together about 4,000 people to sell and buy the U.S. travel product. For the more than 1,000 buyers that were here, they are very, very concerned about our ability to facilitate their travel, particularly from those countries that require visas.

I will give you a very specific example. In Brazil, we have one embassy and three consulates. We are now requiring personal interviews in Brazil. And, again, personal interviews can work if it is—the personnel are there to do it. But in a directive from Secretary Powell to all of the consulates, it is very clear in that May 21 directive that this is to be done without any additional expense or workload or overtime. So I don’t know how we do that in Brazil.

A family not living in Sao Paulo, Rio, Brasilia or one other city that I don’t recall, that—where we have a consulate, it seems to me that they are going to have to make a trip just for the purpose of having the personal interview to make the ultimate trip—to come to America. Now, if I am one of those families in a very large country that has to go through that time and expense, I am going to think very hard about that. I may choose to go somewhere where it is just a little bit easier.

Chairman TOM DAVIS. Any comments from you?

Mr. JOHNSON. Mr. Chairman, with regard to the advisory council—and certainly we support that concept—I have seen enough of those to know that, depending on how the details are written in the implementing legislation, how they are staffed will determine whether or not the agency involved actually listens to that council. So in a setting like that, some attention has to be given to those kinds of details. Certainly we would like to be helpful on that.

With regard to problems out there what we are hearing, you know, we do have these examples in our testimony. But I think the better test is where the rubber meets the road. We are hearing from the American Chambers abroad, we are hearing from our member companies that they are having serious issues with what is going on and we are trying to meet their needs.

They don’t come to the Chamber until they have really exhausted their own resources to try and work through these problems. We are sort of at the top here in Washington, removed, and it is kind of like a last—let’s go to Washington and get some help because we can’t figure out this mess.

That is what brings us here today. It is a serious problem.

Chairman TOM DAVIS. Thank you. My time is up. I am going to recognize Mr. Bell.

Mr. BELL. Thank you, Mr. Chairman.

Mr. Marks, I am curious if you were here for the previous panel. I believe you were. You may have heard me refer to the phrase, "unintended consequences," and I guess if there was no communication whatsoever prior to the new measures being implemented, it was sort of impossible to avoid unintended consequences. Would you agree with that?

Mr. MARKS. Absolutely, Congressman. Like you, we in San Francisco have a large medical center at the University of California that has had some similar issues that you shared earlier. There is no question that we have not done a good job of telling this story. And the travel and tourism industry has not been asked to help engage in telling that story.

We have 37 Visit USA committees around the world, people whose only intent in life is to help direct visitation to our country. These are people that work at no cost on our behalf. They represent both U.S. companies and they represent international tour operators that send people here. That is really the communications link.

And we have some other issues falling through the cracks when it comes to a Web site. I mean, we have a Web site that links to visas. It is in English. You know, we have been promised that this was going to be put into five different languages, but it is in English. If you are sitting in Japan or in Germany, you just can't assume that everyone speaks English.

And there are also some linkage problems, we understand, between our consulates in the field and the State Department.

Mr. BELL. And just so it will be clear also, since I talked about the—what the impact on the medical industry, previously—it is not an expression that I am necessarily fond of—medical tourism really doesn't paint the picture of everyone's favorite vacation.

But that is a very real piece of business here in the United States, is it not, people traveling to the United States for medical reasons?

Mr. MARKS. Congressman, it is a very real piece of business, because probably in 99.9 percent of the cases, the person seeking the treatment, consultation, whatever it may be, has family members traveling with him or her, along the way.

And so, in fact, they are filling hotel rooms, they are eating in restaurants and, yes, they are probably doing some things along the way to maybe take their mind off the seriousness of what the original intent of that trip may have been. So it is very real.

Mr. BELL. Is there any kind of estimate that any of you may have on the dollars associated with that kind of tourism?

Mr. MARKS. I would not have that available.

Mr. BELL. And we have talked about outreach efforts now, and working with business to let them know about the new requirements. But in your way of thinking—and any of you can speak to this—is that really the problem?

There seems—at least in my district there seems to be a full understanding of what the requirements are. It is just, the impact that the requirements are having is what the concern is.

And my question is, is there any discussion taking place in that regard now between the private sector now that we have realized some of the unintended consequences to address those?

Mr. MARKS. I think I would start by coming right back to the fact that, as Mr. Johnson said, that is one of the reasons I think we are here today. And the fact simply is, when something is put forward, it will happen on this date, it is not widely circulated; I don't believe it is widely circulated amongst those of us on this end.

We certainly understand it, but the message is being received in these countries that are sending visitors our way in a very negative way; and what just doesn't seem to connect is the fact that the State Department was given by Congress the ability to waive machine-readable passports, a timing issue that will allow them to have an orderly transition to this. Because everybody agrees this is the right way to go; no one will disagree with that, I don't believe.

On the issue of the personal interviews for the visa scenario, that is a whole different issue. That is a resource issue. And we are not objecting to the personal interviews, although from a marketing perspective, it isn't viewed as friendly. We certainly accept and understand that.

So if you are going to do it, you have to do it in such a way that people have the ability to be assured, if I have an appointment on this day, I can get a visa, it will be done in a timely fashion unless they find something out; and we just don't have the people to do that.

If we are doing 27 percent out of South Korea, and they say they are maxed, how can we expect to reach the—I think it is a 90 percent guide that has been required. How do we get there?

Mr. BELL. I think the emphasis has to be on the timely fashion aspect, because that seems to be what is driving people to other places. And as you point out, there is global competition in all of those areas now.

But thank you all for being here today. I appreciate it.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Chairman. I might pick up a bit on what my colleague from Texas, I think, was trying to drive at as well; and that is just education, I suppose, of letting people know exactly what the requirements are and what their expectations are.

And to the Chamber, Mr. Johnson, I am just wondering, are you working with your local chamber affiliates throughout the Nation as well as overseas in some of your consular offices?

Mr. JOHNSON. Well, we are in the entry/exit issue in the U.S. visa system. I think, coming back to the prior questioning, too, if we had better lead time on these announcements from State and other groups, we could then—two things.

Frankly, we would like to get some lead time so we can have some input with regard to, hey, maybe this isn't the right way to go. And in doing that, we could collect information from our American chambers abroad and local chambers—and in this case, it would be mostly local along the borders—and get some feedback as to some factors you might want to look at.

If you are not willing to go that far, at least give us lead time so that we can get it out to the American chambers abroad and our local and State chambers. We have that apparatus and fortunately most of it now is on e-mail, which is how we are able to gather the information we did for our testimony.

But give us the stuff ahead of time.

And maybe they don't want to because maybe the feedback might be negative. But that is how people are going to learn about these things.

And the employers over here in the medical community, they are very sophisticated. I would say they are atypical. They have lawyers tracking this stuff. But most people, they just want to go on a trip or come to the country for a while.

Mrs. MILLER. Is there a public hearing time now, through State, if you are talking about some lead time, whether from the Department of State or even from the Department of Homeland Security? Obviously they need to communicate better in some format.

Maybe you can give us some feedback on what kind of lead do you need, actually?

Mr. JOHNSON. I don't know of any hearings that they've set up on any of these issues. I am on the Data Management Information Task Force and so we go on our separate trips to listen to stakeholders and try to give the feedback back to DHS.

Mrs. MILLER. A comment as well to Mr. Pettler: I know you were speaking about some of the different licensing requirements that many of the other agencies might have, and I think you talked about driver's license requirements. Let me mention to you, as a former Michigan Secretary of State whose job it was to do motor vehicle administration, particularly after September 11, we found that—it was actually the case in our State, and I have now subsequently found in most States, that there is a requirement, even if the Department of Motor Vehicles knows that you are in the country illegally, if you are here as an illegal alien, we are required, for example, under Michigan law to give you a driver's license or a State identification card; and we have been unable to change the law in Michigan. That will be one of the things I will be working on as a Member of Congress, the possibility of a national driver's license.

The licensing requirements are probably the most porous security breach that we have in our Nation as well. We would like to—I think many of the people in the motor vehicle business would like to work more closely with perhaps licensing people that are here as people with visas and that type of thing. I just make that comment.

Also, Mr. Marks, one other question as well. You mentioned—trying to take some notes you were mentioning what I felt were startling numbers. I think you used South Korea as an example about the business travel and that kind of thing, the subsequent loss of dollars. You were also asking for a time extension or a waiver, which would seem to me to be—and I think you mentioned 18 months, which would seem to me to be a security breach.

But do you have any ideas that would really ensure national security and at the same time try to mitigate some of the problems that you've articulated?

Mr. MARKS. First and foremost, as I said in my testimony and as I said just a moment ago, the notion of homeland security and economic security truly are not coequals. But one cannot be overlooked for the other; I think we need to make that clear.

In terms of the timing issues, when it comes to the machine-readable passports, to begin with, these are our trading partners. These are the 27 countries that we have strong relationships with, like Spain, the United Kingdom, Japan, Switzerland and even France, the point being we are starting at a destination where we are dealing, we believe, with low-risk situations.

And so to give them, if you will, their head just a bit to implement the machine-readable passport, because what we don't know the result of will at this point be if someone appears at an airline stand in a country with a machine-readable passport, but they have the old one, by law the airline won't be able to board that individual. Some will because you know that is just going to happen, so they are going to end up in the United States.

Are we going to deport them or will they need then to apply for a visa here? It becomes a very confusing issue. And there doesn't seem to be much clarity between the State Department and Department of Homeland Security in this matter.

We do think, going back—the original date was 2007, and these 27 countries have known that for a long time; following the USA Patriot Act, following the events of September 11, that was moved up to this October, and just about everyone is making a pretty good attempt to get this done. The United Kingdom and Japan are just about there. Others are getting close, but there are countries—France, trading partners, that have only begun the process. They are just not there, but we think even just given a little bit of a window, they can succeed.

On the other issue of the personal interviews, once again, the PR marketing spin aside, I understand the need for and have no problem with it. We just have to be able to put the resources behind it so it doesn't become a black eye on our country, so it isn't an unimaginable situation with lines going around blocks, people having to take trips waiting 2 days, pay for one trip to take the ultimate trip. At that stage of the game, I just think we will find ourselves in a terrible situation from a competitive standpoint having lost market share, as I indicated, over the past decade of some 37 percent.

And I will tell you in my home city of San Francisco, where I spend the vast majority of my life, we have been hit even harder than that. And the reason for it is that we are a major gateway city. And if you would have talked to New York, San Francisco, Los Angeles, Miami, Boston, talk to some of our major gateways, I think they will sing similar tunes.

Mr. PETTLER. Excuse me, Congressman. If I may add something to that, to the issue of unintended consequences, I think one thing we haven't talked about here is that other countries are looking at what we do. And there is certainly the risk that if we take too aggressive an approach in these situations, we may see other countries reciprocating in kind, against U.S. individuals who are seeking visas to enter those destinations, and it could have a collateral damage effect in that regard.

Getting back to your comment about licenses, I was referring more to the export control licenses which are licenses that the U.S. Government, in many cases, if applicable, require that companies obtain prior to release of certain sensitive technologies to foreign nationals. And that process is collateral with the visa issuing process. There is a screen that takes place as part of that.

Just overall and just addressing the overall problem and leaving machine-readable passports aside, I agree with the other speakers that it is primarily a resource issue when it comes to the concern about the interview situation. If we can throw enough resources there, we can put some dent into those timeframes.

I think, no matter what we do, we are going to see delays and have a universal mandatory interview requirement. I also think the process is extremely important. If you look at the report that came out from the GAO, that talked about watch lists and the need for better coordination between agencies and these various watch lists, what we find is, nine different agencies of the Federal Government have 12 different watch lists. They have been developed independent of one another based upon criteria and mission statements of those agencies. There is a need to coordinate those better.

I think in the end result, we will see a point down the line where there's going to be at the terminal, where the consular officer sits, the ability for that consular officer to go in and run the clearance on-line in real-time on these name-check issues.

I think the issues of the technology reviews, which require more in-depth technical analysis, that cannot be done by a consular officer. That has to be referred back to the appropriate agencies—Department of Commerce, one of those—for more intensive review. But that process needs to be refined.

I can envision a time, if we really get on it and we deploy our technology, where we can have a situation that even with an interview being mandatory, we can turn this around in a much more acceptable period of time. We are not anywhere near there now. We are not utilizing the right tools nor do we have the necessary coordination to see that on the immediate horizon.

Chairman TOM DAVIS. Thank you very much.

Mr. Platts, any questions?

Let me thank our witnesses for appearing today, and I want to thank the staff who worked on this hearing and Foreign Service Officers Landon Taylor and Nick Fetchko who provided assistance to the staff who traveled to Latvia and Germany for this hearing.

I want to add that the record will be kept open for 2 weeks to allow witnesses to include other information in the record if something occurs to you that would be very helpful to us. We are going to continue to monitor this. It is very, very important from a lot of different perspectives; and we will stay on top of it with your assistance.

Thank you very much and the hearing is adjourned.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

[The prepared statements of Hon. Christopher Shays, Hon. Elijah E. Cummings, and additional information submitted for the hearing record follows:]

**Opening Statement
Vice Chairman Christopher Shays
Committee on Government Reform
“Smooth Sailing or an Impending Wreck?
The Impact of New Visa and Passport Requirements on Foreign Travel
to the United States”**

July 10, 2003

As chairman of the Subcommittee on National Security, Emerging Threats, and International Relations and a member of the Select Committee on Homeland Security, I am convinced the visa process needs rigorous oversight. Visa screening needs to be a far more effective anti-terrorism tool.

Today’s hearing will examine new visa rules to go into effect later this year: requirements that almost all applicants be interviewed and have machine-readable visas or passports. Both requirements should deter terrorists, but both also promise further delays in a process already slowed for legitimate national security reasons.

We are a welcoming nation. Businesses, such as hi-tech and tourism industries, have a serious stake in seeing that visa procedures work efficiently, and securely.

I hope today’s hearing will suggest some solutions to the dilemma inherent in trying to welcome global visitors, while protecting our borders against potentially violent invaders.

I look forward to the witnesses’ testimony. Thank you Mr. Chairman.

1 **Statement of Congressman Elijah E. Cummings**
2 **Government Reform Committee**
3 **“Smooth Sailing or an Impending Wreck? The Impact of New Visa and**
4 **Passport Requirements on Foreign Travel to the United States”**

5 **July 10, 2003**
6
7
8
9

10 **Thank you, Mr. Chairman.**

11 **For more than 50 years, the United States has required visas to study,**
12 **visit, or conduct business in the U.S. The Immigration and Nationality Act of**
13 **1952 serves as the foundation of U.S. visa policy and procedures.**
14

15 **Following the September 11, 2001 terrorist attacks, the government**
16 **reviewed and revised our laws governing visitor entry and exit. Important**
17 **security measures were implemented to protect American citizens and our**
18 **national monuments from any foreign visitors determined to do us harm. One**
19 **such measure involves the limiting of circumstances in which a consular**
20 **officer can waive the visa personal appearance requirement. I understand the**
21 **need for such a security measure. Like most Americans, I accept the fact that**
22 **we are living in changed times where security must be a top priority.**
23

24 **For the past 40 years, State Department regulations have allowed for a**
25 **range of applicants whose personal appearance for an interview could be**
26 **waived by the consular officer. This practice, unfortunately, is one of the**
27 **many sacrifices that must be made in the interest of national security. Under**
28 **new rules, consular authorities can waive the applicants appearance if there**
29 **are unusual circumstances or if doing so is in the national interest.**
30
31

1 **The Visa Waiver Program is another area of security concern.**
2 **Currently, twenty-seven countries participate in this program that allows**
3 **citizens of participating countries to enter the United States without a visa.**
4 **Effective October 1, 2003, participating countries must have machine-**
5 **readable passports. According to the Travel Industry Association, several**
6 **member countries of the program will not be in compliance by the October**
7 **deadline.**

8
9 **As I stated earlier, I feel that increased security is a necessity. However,**
10 **many business and tourist travelers experience delays in the visa process while**
11 **attempting to enter the United States. Delays of this type create problems for**
12 **business entities that rely on tourist trade as well as businesses that are**
13 **dependent on trade with foreign countries.**

14
15 **The changes to the U.S. visa policies are to ensure the safety and security**
16 **of all Americans. America is still however, a nation where people from all**
17 **over the world are welcome. Our borders will remain open to those who want**
18 **to do business in America, visit our great country, and become citizens to take**
19 **advantage of the many freedoms we enjoy.**

20
21 **Mr. Chairman, I hope that today's hearing will help in our efforts to**
22 **reach a critical balance between protecting our nation and welcoming citizens**
23 **and business from other countries.**

24
25 **I look forward to hearing from today's witnesses as the Committee**
26 **examines the conflict between implementing security measures and**
27 **facilitating commerce.**

28 **Thank you.**

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International Air Transport Association
MONTREAL/GENEVA

Giovanni BISIGNANI
Director General & CEO

1 July 2003

The Honorable Colin L. Powell
Secretary of State
U.S. Department of State
2201 "C" Street, NW
Washington, DC 20520

Dear Mr. Secretary,

The International Air Transport Association understands that you have decided to require all foreign visitors seeking to enter the United States under the existing visa waiver program to hold a machine-readable passport (MRP); otherwise, they will be required to obtain a U.S. non-immigrant visa prior to traveling.

Potentially millions of business and tourist visitors - citizens of U.S. allies - will be discouraged from traveling to the U.S. by this change in policy. The new procedures for obtaining visas often require a wait of up to 70 days for foreign citizens. Moreover, I am concerned that consular offices in the visa waiver countries will still not be able to cope with the new visa requests in a timely manner. All this can only invite retaliatory action.

The USA Patriot Act empowers you to waive the 1 October 2003 deadline for any visa-waiver nation that has demonstrated it is progressively moving to the MRP system. Many of them are doing just that. I encourage you to acknowledge those efforts of good faith by granting the waivers as Congress envisioned.

I am hopeful that the reciprocal visa-waiver relationship that the United States has nurtured with more than two dozen nations can be preserved without jeopardizing national security or international commerce. If IATA can assist the Department in this regard, please let me know.

Yours sincerely,

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July 9, 2003

The Honorable Tom Davis
House Government Reform Committee
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Davis,

The National Business Travel Association (NBTA), representing over 1,500 corporate travel managers for the Fortune 1000 companies, and over 8 million international business travelers, would like to voice our concerns regarding new visa and passport requirements on foreign travel to the United States.

Prior to September 11th, 2001, international business travelers were becoming an integral part of our economy. Even today, multinational corporations like IBM, Hewlett Packard and General Motors provide consistent services and support to the United States from offices across the globe. While the national security "hassle factor" seems to be decreasing and the U.S. economy seems headed for a rebound, there are still remnants of the fallout of September 11th that are threatening the resumption of international travel and the restoration of a solid economy.

The State and Homeland Security departments' newest policies for regulating international travel to the United States clearly could deter the gains that we have experienced over the last eight months. While we recognize the need to fortify our international borders, no one would wish to give up all the benefits—openness and efficiency--of our modern international travel system. In fact, the prosperity that the market economies of the world enjoyed prior to September 11th was dependent on open and efficient travel facilitation systems.

NBTA is very concerned that the recent changes to enhance the security of our visa and passport system could damage open and efficient travel facilitation and slow our economic recovery. We believe the current policy proposed by the Congress and State and Homeland Security departments to require visa interviews and machine readable passports will lead to increased delays that will keep corporations like Pfizer, Microsoft and others from carrying out their commerce. Our fear is that barriers to entry will discourage multinational corporations from coming to the United States to buy goods, build factories and contribute to our economic recovery.

NBTA believes it is incumbent on Congress to work with the State and Homeland Security departments and put forth visa and passport policies that are fair and responsible and in the best interests of the traveler, corporations and countries impacted. We are concerned that through this current policy we are sending a message to other countries that travel to the United States will be burdensome and that we don't have an interest in nurturing global commerce.

NBTA believes that without a commensurate increase in resources to accommodate the substantial increase in workload that will result from this new requirement, there will be even more delays than there already have been for international students, business and leisure travelers, and public servants who seek to gain benefit of the many resources this country offers.

NBTA is presently partnered with the Australasian Business Travel Association, the Canadian Business Travel Association, the Institute of Travel Management (U.K.), International Business Travel Association and the German Business Travel Association to form the Paragon Agreement, which works towards advancing corporate travel among organizations around the world. NBTA would urge Congress and the State and Homeland Security departments to bring together the resources of the private sector and the resources of the Government in a public-private partnership to work together in finding solutions to enhance our border security.

Prior to September 11th, 2001, the system was challenged, but it sustained itself. Through the cooperation of the public and private sector, we have come through the worst difficulties. In the process, the U.S. economy is starting to rebound, and the international system has made itself stronger, more flexible, and more enduring.

In order to continue the process of economic recovery, NBTA would strongly urge that implementation of the new visa interview and machine readable passport requirements be delayed until such time as sufficient resources are available to meet the increased volume of visa interviews and passport changes, and that it be phased in gradually by country and security risk rather than all at once.

Sincerely,



Kevin Iwamoto
President and CEO, NBTA
Global Airlines and Car Rental Supplier Manager, Hewlett-Packard Company

cc: The Honorable Henry Waxman
Ranking Member
House Government Reform Committee

TRAVEL BUSINESS
ROUNDTABLE



STATEMENT SUBMITTED FOR THE RECORD
BY THE TRAVEL BUSINESS ROUNDTABLE

FOR THE

HOUSE COMMITTEE ON GOVERNMENT REFORM

HEARING ON THE IMPACT OF NEW VISA AND PASSPORT REQUIREMENTS ON FOREIGN
TRAVEL TO THE UNITED STATES

THURSDAY, JULY 10, 2003

Overview

The Travel Business Roundtable (TBR) would like to thank Chairman Davis and Ranking Member Waxman for holding this important hearing, and is pleased to have the opportunity to submit a statement for the record regarding the impact of new visa and passport requirements on international visitation to the United States. TBR is a CEO-based organization that represents the diverse travel and tourism industry, with more than 80 member corporations, associations and labor groups. Travel and tourism is one of America's most dynamic industries, and epitomizes the service sector that drives our nation's economy in the 21st century. Our industry creates jobs and careers, employing nearly 18 million Americans. In 2001, we produced \$98.8 billion in federal, state and local tax revenues. And as the nation's second largest service export, we generated an annual balance of trade surplus for the U.S. of \$8.6 billion that same year. We are in 50 states, 435 congressional districts and every city throughout the nation.

It is impossible to stress enough how important international visitors are to the health of our industry as well as the overall U.S. economy. Total arrivals of international travelers to the U.S. registered 41.9 million in 2002 – a 7 percent decline from the 44.9 million foreign visitors in 2001. This is a continuation of a downward trend: in 2000, international arrivals were at an all-time high of 50.9 million. More to the point, the balance of trade surplus generated by travel and tourism has plummeted from \$26 billion in 1996 to \$8.6 billion in 2001.

Machine Readable Passport/Visa Issues

TBR is extremely concerned about recent visa policy decisions taken by the State Department that we fear could have a detrimental effect on the desire of international travelers to visit the U.S., both for tourism and business purposes. TBR has held conversations with Department officials and continues to support its efforts to ensure that those who wish to do our country harm are kept from crossing our borders. However, we remain extremely concerned that the Department is neither considering the possible consequences of its recent decisions to our nation's economy nor realistically assessing the capabilities of those responsible for effectively implementing these policies within the deadlines that have been imposed.

TBR is particularly concerned about the fast-approaching implementation date of the Machine Readable Passport (MRP) requirement for citizens of Visa Waiver Program (VWP) countries. Many of the countries that participate in this program are among our closest allies and are the home nations of the vast majority of international visitors to the U.S. It is our understanding that most of these countries have just recently begun issuing MRPs or are in the process of doing so. However, even in those nations where MRPs have been issued for some time, not all passport offices within these countries uniformly issue the new passports. Moreover, we believe that the Department's requirement that all family members have MRPs (including infants, who often travel on a parent's passport) presents an additional obstacle that discourages travel. The Department has stated that VWP travelers who are

unable to supply an MRP when traveling after October 1, 2003 will need to apply for visas at U.S. consulates in their home countries. However, given the Department's new requirement set to take effect on August 1, 2003 that nearly all visa-seekers be subject to an in-person interview, these travelers are likely to face lengthy delays when trying to come to our country. We must note that we are also extremely concerned about this new interview requirement, which the Department also implemented with little notice and one year in advance of the statutory deadline for its implementation.

We recognize that in initiating the MRP requirement, the Department is responding to the statutory requirement in the USA Patriot Act that moved the deadline ahead to 2003 from 2007. However, as is also the case with in-person interviews, the law gives the Department waiver authority that it is opting not to exercise. TBR is particularly disappointed that the Department waited until June 13 to notify the industry that it would go forward with the October 1 effective date for MRPs, and has made no effort up to this point to inform citizens of VWP countries that this change is coming. It is also our understanding that the decision to go forward with this deadline was taken without assurances that the technology will be in place to read the passports or that the Department of Homeland Security will be prepared to take care of VWP travelers who arrive in the U.S. with non-machine readable passports.

Given these factors, it appears that this decision was made without considering all the relevant information and without a full appreciation of the potential consequences to the flow of commerce or to our nation's image abroad. Overseas travelers who decide to come to the United States do not make these decisions at the spur of the moment. VWP travelers who are planning to attend conventions or tour the U.S. in October likely booked their passages months ago, when convention planners, travel agents, tour operators, airlines, etc. had no available information from the Department to disseminate regarding the MRP requirement. We believe the potential havoc that this will create in the coming months – on top of the enormous backlog of visa approvals engendered by the in-person interview requirement – will send yet another signal to the world that the U.S. does not welcome visitors or those wishing to do business with us.

U.S. VISIT

TBR also continues to monitor activities at the Department of Homeland Security's Bureau of Customs and Border Protection with respect to the implementation of the U.S. Visitor and Immigration Status Indication Technology (U.S. VISIT) program, which is scheduled to be introduced at U.S. airports and seaports on January 1, 2004. All the details of the program have not yet been announced, but we do know that one of the key components will be the capturing and reading of biometric identifiers (initially fingerprints and photographs) in travel documents. While we are supportive of the use of technology to help the government account for international travelers in a more systematic manner, we are concerned that the Department will not have the sufficient number of trained staff or the necessary technology in place to ensure that visitors' documents are processed in an efficient and timely manner. As is the case with the visa and passport issues addressed above, we are extremely concerned that this initiative be rolled out in a way that does not create new obstacles for legitimate foreign travelers.

Recommendations

We would like to be very clear that TBR continues to support the tireless efforts of the State Department, Homeland Security Department, the Congress and other governmental entities to ensure that terrorists and other individuals who wish to do us harm are prevented from crossing our borders. Indeed, the security of our nation is our highest priority. It is our hope, however, that policy changes will be implemented in a manner that will minimize disruption to the travel and tourism industry, and therefore not be detrimental to the U.S. economy as a whole. As President Bush, Secretary Powell and Homeland Security Secretary Ridge have stated, it is imperative that the U.S. seek solutions that will balance our security needs with our need to ensure that the flow of U.S. commerce continues.

With that in mind, TBR has requested that the Department exercise its waiver authority to ensure that sufficient time is available to notify and educate VWP travelers about this significant change and to ascertain that those who will be processing these passports are prepared to do so in an efficient manner. Four months is simply not enough time to implement a program of this magnitude, and the prospect of turning away or detaining our long-time allies at our borders is alarming. International visitation to the U.S. has steadily declined in the past two years, and these types of policy decisions will only serve to further this negative trend.

We also support the appropriation of sufficient federal funds for the State Department and Homeland Security Department for increased staffing, better facilities and state-of-the-art technology to help ensure that they have the necessary resources to implement new policies in a manner that will be least disruptive to the traveling public.

TBR stands ready to work with Congress, the State Department, the Department of Homeland Security and other relevant federal entities to ensure that those who wish to do harm to our nation are prevented from traveling to the U.S., while those who seek to visit our country for legitimate reasons are treated respectfully and are admitted in an efficient manner. We appreciate the Committee's attention to these pressing matters and offer our assistance in any way.

TRAVEL BUSINESS
ROUNDTABLE



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Testimony of
The Alliance for International Educational and Cultural
Exchange
And
NAFSA: Association of International Educators

Submitted to
Committee on Government Reform
U.S. House of Representatives
July 10, 2003

**Statement of The Alliance for International Educational and Cultural Exchange
and NAFSA: Association of International Educators**

**Committee on Government Reform
U.S. House of Representatives
July 10, 2003**

The Alliance for International Educational and Cultural Exchange and NAFSA: Association of International Educators appreciate the Government Reform Committee's interest in our nation's visa system, and welcome the opportunity to submit testimony for the record on this important issue.

The Alliance and NAFSA believe we want what the Congress and the American people want: a visa system that protects our national security and that provides for predictable, efficient handling of legitimate applications that support our national interests. Our national security requires that our visa system accomplish both of these important tasks.

In public comments and on a new website, the State Department has consistently supported this concept, encapsulated on a new State website with the phrase, 'Secure Borders, Open Doors'.

Our concern is that at present, the scale appears to be tilted significantly away from the openness side of this necessary balance.

This concern has been echoed high-level administration officials, as well as by distinguished members of Congress. Secretary of State Colin Powell acknowledged in a March 26 hearing before the Commerce, Justice, State Appropriations Subcommittee, "We can't win the public diplomacy argument if people think they can't come here... We must be the most welcoming nation we can be... We've got to be sensible and find the balance." When summarizing the problems that have occurred for universities as a result of changes implemented hastily after September 11, Secretary of Homeland Security Tom Ridge noted in a speech before the Association of American Universities: "There has been, I think, a notion that we need to do it quickly rather than to do it right... I assure you we're going to try to do a lot better job working with you under the time limits that are imposed to avoid these kinds of problems in the future."

Our national interest demands that we find the right balance, and so far, it doesn't appear that we've been getting it right.

The trade-off is not between security on the one hand and educational exchanges on the other. In fact, educational and cultural exchange programs have always enhanced our nation's foreign policy and security objectives. America's leadership in the global age, and our effectiveness in waging the war on terrorism, depends on the strength of our ties with and knowledge of the world. Far from threatening our security, openness to educational and cultural exchanges is crucial to ensuring that security, by establishing

common ground for cooperation between nations and fostering mutual understanding and respect. Clearly, we do not protect our nation's security by closing our borders; we diminish it. Through our full range of exchange and international education programs, we must continue to welcome future generations of world leaders to the United States. The opportunity to engage with them remains one of our most important foreign policy assets.

We are particularly concerned with the Department of State's new policy, announced in a worldwide cable May 21 and codified in an interim final regulation published July 7, to strictly limit the waiver of personal appearance for nonimmigrant applicants.

Simply put, the State Department does not have – and cannot realistically look forward to having in the foreseeable future – adequate staff and other resources to take on this burden. Moreover, the new regulation reverses a sensible and long-standing State Department practice of allowing ambassadors and their staffs to make the crucial, on-the-ground judgments about which applicants need to be interviewed.

On May 2, we wrote to Secretaries Powell and Ridge to recommend steps to ensure that the visa screening process was streamlined in time to avoid a recurrence of last year's crisis when hundreds of students and scholars were unable to enter or return for the fall semester. On June 17, the heads of four leading higher education associations followed with their own letter to Secretary Powell.

That letter, sent by the American Council on Education, the Association of American Universities, the National Association of State Universities and Land Grant Colleges, and the Council of Graduate Schools, states: "We strongly urge that implementation of the new visa interview requirement be delayed until such time as sufficient resources are available to meet the increased volume of visa interviews, *and* that it be phased in gradually by country and security risk, rather than all at once." In its June 23 editorial, the New York Times called these "good suggestions", and we fully concur. We believe that the State Department cannot do 90 per cent interviewing on a budget that will accommodate 20 per cent interviewing. A strong visa process makes an important contribution to our national security, and it should be funded appropriately.

For the record, we enclose with our statement a copy of the NAFSA/Alliance letter to Secretaries Powell and Ridge, the letter from the four higher education associations to Secretary Powell, and the New York Times editorial.

This summer, before the nearly-mandatory interview policy takes effect on August 1, we have already seen significant delays in visa processing at our posts abroad. The advent of the Student and Exchange Visitor Information System (SEVIS) has imposed new burdens on consular sections, as well as on exchange sponsors and academic institutions. This has significantly slowed the visa adjudication process this summer, even though the mandated increase in interviewing has not yet taken effect.

The most difficult instance for exchange sponsors has been at our embassy in Moscow. In mid-June, our embassy still had approximately 6500 applications pending for the summer work-travel and camp counselor programs. The embassy is working to clear this backlog, and has publicly committed to having all visa applications adjudicated by July 15. We are hopeful that the embassy will be able to meet this deadline, but recognize that this will not be easy.

These prospective participants represent well over \$2 million in revenue for American NGO sponsors, who of course have salary, benefits, and other overhead expenses to meet. In addition, the economic impact on American employers waiting for these students will be severe. A service contractor for Yellowstone National Park, for example, plans to employ some 900 summer work/travel students, including many from Russia. Yellowstone will have a very hard time compensating for a sudden shortfall in seasonal staff.

The summer work/travel program was designed for students exactly like these: students who will benefit (as our nation will) from a first-hand encounter with the United States and the American people, but who cannot afford the cost of an American education. The public dismay in Russia is likely to be significant if a large number of these students never make it through the visa process. Moreover, there is likely to be an unfortunate ripple effect for U.S.-Russia relations: in the future, American employers disappointed this year may not seek or accept Russian students, thus diminishing a significant avenue for building mutual understanding and respect between our two countries.

We will not know the full effect of all these new measures on higher education until this fall, but it is worrisome that in a survey conducted last fall by NAFSA and the Association of American Universities, we found that hundreds of students and scholars were delayed. Respondents indicated numerous consequences occurring due to student visa delays, including classes and other campus jobs left unstaffed, major conferences or important meetings missed, damage to university linkages abroad, and scientific research delayed or stalled.

With delays like this even without interviewing, the American exchange and higher education community is deeply concerned about the impact on exchange programs and academic mobility when mandatory interviewing takes effect August 1. Delays will seriously and adversely affect American higher education, schools, nongovernmental organizations, and businesses that host exchange participants.

And most important, delays will inhibit the programs from serving our broad national interests in building mutual trust, understanding, and respect between Americans and the peoples of the world.

We are grateful for the Department of State's recent instruction to its consular posts to give priority to student, scholar, and researcher applications, given the approach of the fall semester. We hope this will help more of these applications be processed expeditiously, and thus facilitate the timely arrival of a higher percentage of these

students and exchange visitors. We encourage State to use this approach of establishing seasonal priorities in other exchange categories, to alleviate backlogs in traditional periods of high demand.

We are particularly concerned that our embassies around the world will no longer have discretion to make decisions about who must be interviewed. Our professional foreign service, expert in foreign languages and cultures, is charged with analyzing the political, economic, and social climate in countries around the world, and with advancing American interests. Our diplomats are in the best position to assess the need for face-to-face interviews, and traditional State Department practice has recognized that reality.

The new regulation removes this task from those best equipped to perform it, and places the burden on Washington. It is worth noting that a December 2002 report on the visa system by State's own Inspector General recommended that each U.S. embassy develop a personal appearance waiver program, approved by the ambassador, and that the plan be approved in Washington by the appropriate regional bureau and the Bureau of Consular Affairs.

The Assistant Secretary for Consular Affairs, responding to the IG report, took issue with this recommendation and insisted that the authority to waive personal appearance be centralized in Washington. That view is now codified in regulation.

In an environment where available consular resources clearly do not match the task at hand, a one-size-fits-all approach to visa adjudication is not likely to serve the nation's interests. We urge the Committee to direct the State Department to phase in the interview process, concentrating first on those countries and applicants likely to pose the most serious risks.

Many good ideas have been advanced for a visa policy that produces secure borders and open doors. They tend to fall into four major categories: providing adequate resources and managing within them; focusing efforts on those who require special screening; creating a predictable, time-limited visa process; and establishing effective policy guidance from Congress and DHS. We also enclose for the record our compilation of recommendations in these four key areas that would produce a more balanced policy which better serves our national interests.

We thank the Committee for the opportunity to comment.



May 2, 2003

The Honorable Colin L. Powell
U.S. Secretary of State
U.S. Department of State
Security
Washington, DC 20520

The Honorable Thomas J. Ridge
U.S. Secretary of Homeland Security
U.S. Department of Homeland
Security
Washington, DC 20528

Dear Secretary Powell and Secretary Ridge:

With the busy summer visa application season just ahead, we urge you to ensure that the visa screening process is streamlined in time to avoid a recurrence of last year's crisis when hundreds of students and scholars were unable to enter or return for the fall semester.

We are encouraged by your recent statements acknowledging the critical role foreign students and scholars play in U.S. world leadership, and we applaud your willingness to take a second look at new security measures to ensure that they do not have the unintended consequence of impeding the flow of these students and scholars.

Last year's problems are perhaps best summarized in the speech Secretary Ridge recently made before the American Association of Universities: "There has been, I think, a notion that we need to do it quickly rather than to do it right...I assure you we're going to try to do a lot better job working with you under the time limits that are imposed to avoid these kinds of problems in the future."

Much as our government, universities, and exchange program sponsors were under enormous pressure to implement new procedures quickly following the tragedy of September 11, we are now working against the clock to get it right this time. As Secretary Powell has said, "We can't win the public diplomacy argument if people think they can't come here...We must be the most welcoming nation we can be... We've got to be sensible and find the balance." If we allow a repeat of last year's experience, we will do serious damage to our image as an open, welcoming nation to the world's brightest minds.

The recent launching of the Secure Borders: Open Doors campaign presents both an opportunity and a challenge. If, together, we can all do a better job this summer of admitting the world's students and scholars who wish to study or conduct research here, we will indeed have accomplished the campaign's goal of demystifying the visa process.

If, on the other hand, this summer turns out to be as disastrous as last summer, or worse, then we will do irreversible damage to our ability to convince people that this country is indeed still open to them, and we will lose the opportunity to attract future goodwill ambassadors to our shores.

In the interest of our nation's foreign policy, economic, and security objectives, we ask you to institute the necessary reforms to the visa system in time to prevent a recurrence of the problems students and scholars experienced during the high-volume application season last summer.

We attach a few specific recommendations for such reforms, and we would value the opportunity to discuss them with you or appropriate members of your staff.

Again, we thank you for your commitment to ensure that while our nation places our greatest priority on securing our borders, we will also work to maintain open doors to legitimate visitors.

Sincerely,

Marlene M. Johnson
Executive Director and CEO
NAFSA: Association of International Educators

Michael McCarry
Executive Director
Alliance for International
Educational
and Cultural Exchange

Cc: The Honorable Maura Harty, Assistant Secretary for Consular Affairs, U.S.
Department of State

The Honorable Asa Hutchinson, Under Secretary for Border and Transportation Security,
U.S. Department of Homeland Security

NAFSA: Association of International Educators
Alliance for International Educational and Cultural Exchange

PROMOTING SECURE BORDERS AND OPEN DOORS

**Recommendations for a Balanced Visa-Processing System
For Students, Scholars, and Exchange Visitors**

1. **Provide the necessary resources, and manage within them.**
 - Congress must act to bring the resources appropriated for the consular affairs function into line with the increased scrutiny of visa applicants that Congress demands.
 - Meanwhile, State must manage within the available resources. State should phase in new procedures as increased resources become available, as recommended by the Association of American Universities, the American Council on Education, the National Association of State Universities and Land Grant Colleges, and the Council of Graduate Schools.

2. **State must focus efforts on those who require special screening. An unfocused visa-screening policy will produce neither sufficient attention to problem cases nor timely processing for legitimate visitors.**
 - End redundant reviews. Too many resources are now wasted in multiple reviews of the same people.
 - Solve the problem of temporary departures from the U.S. The presumption should be that clearance is good for duration of status or program. Any necessary reviews within this period should be fast-tracked.
 - There should be a presumption of approval for repeat visitors who have previously been granted visas and who have no status violations.
 - State must revert to its time-tested practice of giving posts discretion to grant waivers of personal appearance, subject to State's policy guidance and approval, as recommended in December 2002 by the State Department Inspector General.

3. **State must create a transparent, predictable, time-limited visa process.**
 - "Reimpose the clock," as recommended by National Foreign Trade Council. An efficient inter-agency process is impossible without effective time guidelines. We recommend a 30-day standard, with a "hotline" to help resolve cases that require more than 30 days to process.

- Make ground rules predictable by imposing them prospectively—i.e., on future applicants, not on those already in the pipeline. This is necessary to avoid a repeat of the debacle of summer 2002.

4. **Policy**

- Congress and DHS must act to make “Secure Borders-Open Doors” the effective policy guidance for State. State cannot implement an effective, efficient visa system absent the appropriate policy guidance. In cooperation with Congress and DHS, State should implement a policy consistent with its resources and the national interest, and be held accountable for its success.

AAU Association of American Universities
ACE American Council on Education
NASULGC National Association of State Universities and Land-Grant Colleges
CGS Council of Graduate Schools

June 17, 2003

The Honorable Colin Powell
Secretary
United States Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Powell:

On behalf of the member universities of the Association of American Universities (AAU), the American Council on Education (ACE), the National Association of State Universities and Land-Grant Colleges (NASULGC), and Council of Graduate Schools (CGS) we write to inform you of our significant concerns related to our nation's visa system. Current policies are hampering the ability of the world's best and brightest international students, scholars, and researchers to study and work in our country and to contribute to our nation's science and technology enterprise, economy, and security.

We support the Federal government's efforts to strengthen homeland and national security through the visa issuance process. We also applaud the thrust of the Federal government's "Secure Borders. Open Doors." initiative. However, we do have three serious concerns about visa policy and implementation.

Our first concern is that many international students and scholars are now experiencing unusually long delays in receiving visa decisions. We have shared examples of such delays with Assistant Secretary Maura Harty of the Bureau of Consular Affairs and with your science advisor, Dr. Norman Neureiter. We appreciate the attention both have given to our concerns, and hope these delays can be reduced.

Secondly, we are aware of a recent policy improvement that will allow a limited number of international students and researchers who are sponsored by the U.S. government and who have received visas after going through the Mantis clearance process to be able to depart the U.S. and return without going through the Mantis clearance process again for a period of one year. We very much appreciate this step in the right direction, but we urge you to lengthen the time period and to broaden the scope of this policy to allow non-government sponsored international students and scholars to exit and reenter the country more easily – since this limited improvement will otherwise not help many of our students and scholars.

Finally, we are very concerned about the recent change to visa interview policies that requires nearly all foreign individuals seeking to visit the U.S. to be interviewed (State Department cable #136100, May 21, 2003). Specifically, we are concerned that this new policy is to be implemented by August 1, 2003, but without additional resources. As your cable to consular posts announcing this new policy clearly states "many posts will face processing backlogs for the indefinite future." We share this

pessimistic assessment, and believe that without a commensurate increase in resources to accommodate the substantial increase in workload that will result from this new requirement, there will be even more delays than there already have been for international students, scholars, and researchers who seek to study in the U.S.

As you know, in most cases international students and scholars who seek to study and work in the U.S. are already interviewed as part of the visa issuance process. Our concern is that they will not be able to be interviewed in a timely fashion due to the increased number of *other* individuals that will now need to be interviewed and the lack of additional resources to conduct these interviews. For example, we have already received a report from Purdue University that an admitted student from India has been informed in the past week that the *earliest* interview appointment he can obtain is August 21, 2003. Purdue's academic term begins on August 25, 2003. This means he will likely miss the beginning of the academic term, if not the entire term, depending on the student's application, the amount of resources consular staff have to process the application further, and whether or not a security advisory opinion will be sought. We fear that this kind of visa delay will become routine, causing international students and scholars to miss the fall academic term, classes to be cancelled, and educational and research opportunities to be lost.

We strongly urge that implementation of the new visa interview requirement be delayed until such time as sufficient resources are available to meet the increased volume of visa interviews, and that it be phased in gradually by country and security risk rather than all at once. The university community supports additional appropriations for consular activities of the State Department for this purpose.

Higher education and science are international activities. If the U.S. is to remain the world's leader in higher education, science, and technology, we must have a visa system that is secure, timely, efficient, transparent, and predictable; that will permit scientific exchange and collaboration; and enhances homeland security. We stand ready to work with the State Department to accomplish these goals, and thank you for your consideration of these matters.

Sincerely,



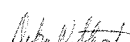
Nils Hasselmo
President, AAU



David Ward
President, ACE



C. Peter Magrath
President, NASULGC



Debra Stewart
President, CGS

cc: The Honorable Tom Ridge, Secretary, Department of Homeland Security
The Honorable Richard L. Armitage, Deputy Secretary, Department of State
The Honorable John Marburger, III, Director, Office of Science and Technology Policy
Robert M. Gates, President, Texas A&M University
Martin C. Jischke, President, Purdue University
Hunter R. Rawlings, III, President, Cornell University and AAU Chairman
Charles M. Vest, President, Massachusetts Institute of Technology

The New York Times
June 23, 2003, Monday

EDITORIAL DESK

Education and National Security

(Editorial) 349 words

Secretary of State Colin Powell recently announced that nearly all foreigners seeking entry to the United States would have to undergo in-person interviews. The idea, of course, is to detect and deter potential terrorists. The problem is that we are more than halfway through June, and the new term begins in August at many American universities. Thousands of foreigners hoping to study here will not make it in time. A compromise is needed.

The presidents of four major higher education groups have sent Mr. Powell a letter asking him to delay the interview requirement so that American consulates can prepare for the task. In addition, they suggest that the State Department phase in the interviews, starting with countries thought to pose an immediate risk. These are good suggestions.

Better control of our borders is clearly warranted, and much has already been done to reform the visa-granting process. Background checks are now routine, whereas prior to 9/11, they were not mandatory. Before, nonresidents could start taking classes while approval for a student visa was pending. This was chillingly brought home when student visas for two of the Sept. 11 hijackers arrived at their flight school months after they had flown airplanes into the twin towers. Communication has also been increased between colleges and government agencies to keep track of foreign nationals studying here. In-person interviews would add another line of defense, but they are being implemented too hastily.

Keeping the United States accessible, rather than bureaucratically impenetrable, is an important key to American security. Welcoming students from all over the world to study in the United States will not only help us learn about the perspectives of other societies, but also demystify the United States for those who return home and become leaders and professionals. Such an exchange is also a vital tool for ensuring national security.

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AAU Association of American Universities
ACE American Council on Education
NASULGC National Association of State Universities and Land-Grant Colleges

July 23, 2003

The Honorable Tom Davis
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the undersigned organizations, we thank you for this opportunity to offer a statement for the record with respect to the impacts of new visa policies on the higher education sector. We represent over 2,000 public and private colleges and universities in the United States that host the majority of international academic personnel, including students, faculty, and researchers, in the country.

Due to the international nature of higher education and academic research, the American higher education community is keenly interested in and aware of visa issues, especially as they relate to delays in the visa system.

The nation's higher education community supports the Federal government's efforts to bolster homeland security, including strengthening the visa system. We are concerned, however, that changed visa policies and procedures have had unintended negative consequences on educational exchange and science. The most pressing of these are the unpredictable and lengthy delays that many foreign students, scholars, and scientists have experienced due to security checks involving the Visa Mantis and Visa Condor systems. In many such cases, these individuals face long delays despite the fact that they were granted visas in the past. For example, we have received many reports from campuses that international scientists and students have experienced visa delays ranging from 2 months to 1 year as they wait for a Visa Mantis or Visa Condor security advisory opinion to be issued.

The higher education community applauds the recent policy change by the State Department that will allow a limited number of international students and researchers who are sponsored by the U.S. government and who have received visas after going through the Visa Mantis system to be able to depart the U.S. and return without going through the Mantis clearance process again for a period of one year. We appreciate this step in the right direction, but hasten to urge that the one-year period be lengthened and that the policy be broadened in scope to allow non-government sponsored international students and scholars to exit and reenter the country in a more expeditious and timely fashion—since this limited improvement will otherwise not help most international students and scholars.

Prior to September 11, 2001, individuals whose applications were selected for a Visa Mantis system review were automatically approved within 30 days if their applications were not flagged or rejected by the State Department or other agencies. Today there is no such limit and sponsors and applicants are unable even to check on the status of visa applications in the Visa Mantis system. This is a source of great frustration. Therefore, the higher education community urges the federal government to create a mechanism for the Visa Mantis system that will enable applicants and sponsors to inquire about the status of applications undergoing security reviews.

The higher education community also views with particular concern the recent change to visa interview policies that will limit the circumstances in which consular officers may waive visa interviews and will in effect require nearly all foreign individuals seeking to visit the U.S. to be interviewed (State Department cable #136100, May 21, 2003). Specifically, we are concerned that this new policy is to be implemented by August 1, 2003, but without additional resources. The State Department cable to consular posts announcing this new policy clearly states "many posts will face processing backlogs for the indefinite future."

We share this pessimistic assessment, and believe that without a commensurate increase in resources to accommodate the substantial increase in workload that will result from this new requirement, there will be even more delays than there already have been for international students, scholars, and researchers who seek to study and work in the U.S. In most cases, students, scholars, and researchers who seek to study and work in the U.S. are already interviewed as part of the visa issuance process. Our concern is that they will not be able to be interviewed in a timely fashion due to the increased number of other individuals that will now need to be interviewed and the lack of additional resources to conduct these interviews. We have already received multiple reports from universities that some of their international students and scholars have been told by consular offices that the earliest visa interviews can be scheduled will be *after* the fall academic term begins.

Consequently, we strongly urge that implementation of the new visa interview requirement be delayed until such time as sufficient resources are available to meet the increased volume of visa interviews, and that it be phased in gradually according to security risk, as determined by the appropriate agencies, rather than all at once. We support additional appropriations for consular activities of the State Department for this purpose.

We fear that visa delays of any type will become routine, causing international students and scholars to miss the fall academic term, classes to be cancelled, and educational and research opportunities to be lost. Moreover, we are concerned that international scientists and scholars will be prevented from traveling to and from academic and scientific conferences in the U.S. and abroad. We fear a chilling academic and scientific environment has begun to emerge for foreign students, scholars, and scientists, and if current problems and delays in the U.S. visa system are not addressed swiftly and effectively, our nation may lose some of the world's best and brightest scientists to other countries. Such losses could prove devastating to our nation's higher education system, science and technology enterprise, and economic and national security.

If the U.S. is to remain the world's leader in higher education, science, and technology, we must have a visa system that is *secure, timely, efficient, transparent, and predictable*; that enhances homeland security; and, that will permit scientific exchange and collaboration.

Enclosed you will find a copy of a recent communication from the higher education community to House Appropriations Committee members that outlines these concerns.

We appreciate this opportunity to share our concerns about new visa policies that are hampering educational and scientific exchange. In closing, we wish to underscore the higher education community's commitment to assist in the broader national effort to enhance homeland security. We stand ready to work with you and the Committee to strengthen our nation's visa system while preserving the international educational and scientific exchange that fuels new knowledge, technology, and commerce.

Thank you for your consideration of our views on this critically important issue.

Sincerely,



Nils Hasselmo
President, AAU



David Ward
President, ACE



C. Peter Magrath
President, NASULGC

On behalf of:

American Association of Community Colleges
American Council on Education
Association of American Universities
College and University Professional Association for Human Resources
Council of Graduate Schools
NAFSA: Association of International Educators
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges

Enclosure



Association of American Universities

July 2, 2003

The Honorable Frank R. Wolf
Chairman
Subcommittee on Commerce, Justice,
State, and Judiciary
House Committee on Appropriations
241 Cannon House Office Building
Washington, DC 20515

Dear Chairman Wolf:

I write on behalf of the undersigned higher education associations to inform you of our significant concerns related to our nation's visa system and to request that additional funding be included in the FY2004 Commerce, Justice, State, and Judiciary Appropriations bill for the State Department to facilitate the implementation of new visa policies.

Current policies are hampering the ability of the world's best and brightest international students, scholars, and researchers to study and work in our country and to contribute to our nation's science and technology enterprise, economy, and security. We support the Federal government's efforts to strengthen homeland and national security through the visa issuance process. We also applaud the thrust of the Federal government's "Secure Borders. Open Doors." initiative. However, we have some serious concerns about visa policy and implementation. We have articulated these concerns in the attached letter sent to Secretary of State Colin Powell last month.

One of these concerns pertains to the recent change to visa interview policies that requires nearly all foreign individuals seeking to visit the U.S. to be interviewed (see attached for State Department cable #136100 dated May 21, 2003). Specifically, we are concerned that this new policy is to be implemented by August 1, 2003, but *without* additional resources. As the cable to consular posts announcing this new policy clearly states "many posts will face processing backlogs for the indefinite future." We share this pessimistic assessment, and believe that without a commensurate increase in resources to accommodate the substantial increase in workload that will result from this new requirement, there will be even more delays than there already have been for international students, scholars, and researchers who seek to study in the U.S.

We strongly urge that sufficient appropriations be made to the State Department in FY2004 to implement the new visa interview requirement and that it be phased in gradually by country and security risk rather than all at once.

Higher education and science are international activities. If the U.S. is to remain the world's leader in higher education, science, and technology, we must have a visa system that is secure, timely, efficient, transparent, and predictable; that will permit scientific exchange and collaboration; and that enhances homeland security. We stand ready to work with the Congress and the State Department to accomplish these goals. We thank you for your consideration of these matters.

Sincerely,



Nils Hasselmo
President, AAU

On behalf of:

Association of American Universities
American Council on Education
Council of Graduate Schools
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
NAFSA: Association of International Educators

Identical letters sent to:

The Honorable José E. Serrano, Ranking Member, House Appropriations
Subcommittee on Commerce, Justice, State and Judiciary
The Honorable C.W. Bill Young, Chairman, House Appropriations Committee
The Honorable David R. Obey, Ranking Member, House Appropriations Committee
The Honorable Ted Stevens, Chairman, Senate Appropriations Committee
The Honorable Robert C. Byrd, Ranking Member, Senate Appropriations Committee
The Honorable Judd Gregg, Chairman, Senate Appropriations Subcommittee on
Commerce, Justice, State and Judiciary
The Honorable Ernest F. Hollings, Ranking Member, Senate Appropriations
Subcommittee on Commerce, Justice, State and Judiciary

Attachment

AAU Association of American Universities
ACE American Council on Education
NASULGC National Association of State Universities and Land-Grant Colleges
CGS Council of Graduate Schools

June 17, 2003

The Honorable Colin Powell
Secretary
United States Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Powell:

On behalf of the member universities of the Association of American Universities (AAU), the American Council on Education (ACE), the National Association of State Universities and Land-Grant Colleges (NASULGC), and Council of Graduate Schools (CGS) we write to inform you of our significant concerns related to our nation's visa system. Current policies are hampering the ability of the world's best and brightest international students, scholars, and researchers to study and work in our country and to contribute to our nation's science and technology enterprise, economy, and security.

We support the Federal government's efforts to strengthen homeland and national security through the visa issuance process. We also applaud the thrust of the Federal government's "Secure Borders. Open Doors." initiative. However, we do have three serious concerns about visa policy and implementation.

Our first concern is that many international students and scholars are now experiencing unusually long delays in receiving visa decisions. We have shared examples of such delays with Assistant Secretary Maura Harty of the Bureau of Consular Affairs and with your science advisor, Dr. Norman Neureiter. We appreciate the attention both have given to our concerns, and hope these delays can be reduced.

Secondly, we are aware of a recent policy improvement that will allow a limited number of international students and researchers who are sponsored by the U.S. government and who have received visas after going through the Mantis clearance process to be able to depart the U.S. and return without going through the Mantis clearance process again for a period of one year. We very much appreciate this step in the right direction, but we urge you to lengthen the time period and to broaden the scope of this policy to allow non-government sponsored international students and scholars to exit and reenter the country more easily – since this limited improvement will otherwise not help many of our students and scholars.

Finally, we are very concerned about the recent change to visa interview policies that requires nearly all foreign individuals seeking to visit the U.S. to be interviewed (State Department cable #136100, May 21, 2003). Specifically, we are concerned that this new policy is to be implemented by August 1, 2003, but without additional resources. As your cable to consular posts announcing this new policy clearly states "many posts will face processing backlogs for the indefinite future." We share this

pessimistic assessment, and believe that without a commensurate increase in resources to accommodate the substantial increase in workload that will result from this new requirement, there will be even more delays than there already have been for international students, scholars, and researchers who seek to study in the U.S.

As you know, in most cases international students and scholars who seek to study and work in the U.S. are already interviewed as part of the visa issuance process. Our concern is that they will not be able to be interviewed in a timely fashion due to the increased number of *other* individuals that will now need to be interviewed and the lack of additional resources to conduct these interviews. For example, we have already received a report from Purdue University that an admitted student from India has been informed in the past week that the *earliest* interview appointment he can obtain is August 21, 2003. Purdue's academic term begins on August 25, 2003. This means he will likely miss the beginning of the academic term, if not the entire term, depending on the student's application, the amount of resources consular staff have to process the application further, and whether or not a security advisory opinion will be sought. We fear that this kind of visa delay will become routine, causing international students and scholars to miss the fall academic term, classes to be cancelled, and educational and research opportunities to be lost.

We strongly urge that implementation of the new visa interview requirement be delayed until such time as sufficient resources are available to meet the increased volume of visa interviews, and that it be phased in gradually by country and security risk rather than all at once. The university community supports additional appropriations for consular activities of the State Department for this purpose.

Higher education and science are international activities. If the U.S. is to remain the world's leader in higher education, science, and technology, we must have a visa system that is secure, timely, efficient, transparent, and predictable; that will permit scientific exchange and collaboration; and enhances homeland security. We stand ready to work with the State Department to accomplish these goals, and thank you for your consideration of these matters.

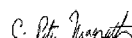
Sincerely,



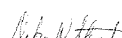
Nils Hasselmo
President, AAU



David Ward
President, ACE



C. Peter Magrath
President, NASULGC



Debra Stewart
President, CGS

The Honorable Tom Ridge, Secretary, Department of Homeland Security
The Honorable Richard L. Armitage, Deputy Secretary, Department of State
The Honorable John Marburger, III, Director, Office of Science and Technology Policy
Robert M. Gates, President, Texas A&M University
Martin C. Jischke, President, Purdue University
Hunter R. Rawlings, III, President, Cornell University and AAU Chairman
Charles M. Vest, President, Massachusetts Institute of Technology



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 18, 2003

The Honorable Tom Davis
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Re: Hearing entitled, "Smooth Sailing Or An Impending Wreck? The Impact of New Visa and Passport Requirements on Foreign Travel to the United States"

Thank you for the opportunity to testify at the hearing before your Committee, on July 10, 2003, concerning the FBI's role in Visas Mantis and Visas Condor processing. There have been several developments in our efforts to expedite this process that I believe you will find of interest.

Last month, subsequent to my testimony, the FBI developed programming improvements that now enable us to extract requests based on the period of time a request has been pending. Heretofore, we were able only to extract the number of requests that were of a certain date. This new capability will allow us identify, by name, requests that exceed our 120-day processing goal and systematically resolve them. We are now reviewing our data base and resolving the oldest requests.

However, one detail we realized as we worked to resolve requests in this manner is that the number of error and duplicate submissions from the Department of State are significantly higher than we had previously realized. Error and duplicate numbers are also included in the "Requests Received" and "Requests Resolved" totals that I provided to you in my testimony. The inclusion of these numbers inflates the totals of received and resolved names, and consequently decreases the percentage of resolved cases.

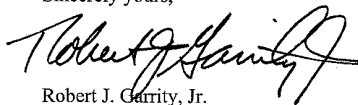
For example, I testified that the FBI had received 2,589 Visas Mantis requests, in June 2003, and had resolved 2,226 or 86%, of them. Now, excluding the error and duplicate submissions, the FBI actually received 1,728 Visas Mantis requests and resolved 1,365 or 79%, of them. Nevertheless, even excluding errors and duplicates, the FBI's resolves 99% of all types of visa requests within 120 days. This discovery also compels us to re-project our anticipated total number of name checks for this fiscal year. In my testimony, I stated that the FBI anticipated conducting 9.8 million name checks this year. It now appears a more accurate projection will be 8.1 million names.

The Honorable Tom Davis
Chairman, House Committee on Government Reform

As a final note, in order to identify and expedite visa submissions that are not processed by the FBI due to cable error, we are providing the Department of State notification and an explanation of errors for each cable when they occur. The State Department, in turn, can now forward this to the originating post, where it can correct and resubmit the cable. We believe this should alleviate the problem of "lost" error cables.

The FBI continues to strive towards the goal of completing, in the most expeditious manner possible, thorough and accurate FBI record checks for visa applications. We look forward to our continuing work with your Committee to achieve our common goals of ensuring the national security while permitting travel to our country.

Sincerely yours,



Robert J. Garrity, Jr.
Assistant Director (Acting)
Records Management Division