

Testimony of
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Immigration policies aim to facilitate the entry of foreigners whose presence is desired, and to identify and deter the entry of unwanted foreigners. Since September 11, policymakers as well as the general public have questioned whether current policies and practices are capable of meeting these twin challenges. All of the terrorists suspected of blowing up the World Trade Center and the Pentagon entered the United States on valid visas. They resided and studied in this country and several European countries with little danger of apprehension—even though several had overstayed their permission to remain.

Overstay has been a persistent problem in managing immigration policies. Some perspective is needed, however, in assessing the scale and nature of the problem. Overstays represent a significant proportion of the unauthorized migrants currently in the United States. The most recent government estimates are that about one-third of the long term unauthorized population is composed of overstayers. If the best estimates of the number of long-term unauthorized migrants are correct, about 2.5 to 3 million unauthorized migrants are overstayers. About 125,000-150,000 overstayers are added to the long term unauthorized population each year. How many persons overstay their visas for shorter terms is unknown, but it is likely to also number in the hundreds of thousands per year.

Yet, even though a significant proportion of the unauthorized population, the overstayers are still a small proportion of the more than 30 million persons who enter the United States each year on visas. And, they are an even smaller proportion of the almost 300 million foreign visitors who

entered the country in FY 2002 alone. Moreover, the vast majority of overstayers pose no security threat to the United States, remaining in the United States for family or work reasons.

This is not to suggest that we should understate the problems posed by overstays. For a legal immigration system to function, there must be an ability to manage entries and exits in a way that ensures respect for the rule of law.

Current mechanisms for determining who has overstayed visas are inadequate. For most of those arriving by air, entry-exit tracking involves a foreign national completing the I-94 form and presenting it to the inspector upon arrival. When leaving the US, the foreign national returns the departure part of the form to the airline for transmission to the Department of Homeland Security, but compliance has been spotty. Those entering and exiting the US at land borders are also supposed to turn in I-94s forms, but many do not. In any event, I-94 forms are completed by hand and they cannot be used to track the departure of specific persons until the data are entered into a computer. If the number on the departure form is not clearly readable, which may be the case after weeks or months in the country, it may be very difficult to complete the matching process.

In 1994, the US Commission on Immigration Reform recommended the development of an electronic arrival and departure record system for all visitors coming into the country through air and seaports of entry. The Commission explained that computerizing arrival and departure information would “make determination if individual passengers have left the country prior to their required departure date easier than labor-intensive paper form matching to determine if individual visa holders have departed or overstayed the terms of their visa.” The Commission concluded that “exit controls are now one of the weakest parts of the inspections process.”

Congress in 1996 required the INS to develop a new system to record the entries and exits of all foreign visitors by October 1, 1998. The legislation required deployment of the system at air, sea and land ports of entry and exit. The universal entry-exit tracking system required in 1996 legislation was opposed by neighboring countries and U.S. border states for fear it would slow trade and tourism. The US Senate voted three times to repeal the requirement. The principal

opposition was to its deployment at land borders, which see far more crossings each day than airports. If each person has to be checked on entry and exit, cross-border commuting, trade, and tourism could be hampered.

Since September 11, more serious attention has been paid to the entry-exit control systems. To date, in the absence of a functioning universal entry-exit program, the administration has used ad hoc systems, generally aimed at specific, profiled populations. The National Security Entry-Exit Registration System (NSEERS) focuses on nationals of about thirty countries. NSEERS presently is composed of a registration program conducted at various ports-of-entry and a Special Registration program for certain foreign nationals already in the country. Although first established under the authority of the Immigration and Naturalization Service, due to the reorganization into the Department of Homeland Security, NSEERS is now overseen by the Bureau of Citizenship and Immigration Services (BCIS).

In testimony given before the Senate Committee on Finance, a senior INS official stated that the NSEERS program “promotes several important national security objectives:

- It allows the United States to run the fingerprints of aliens seeking to enter the U.S. or present in the U.S. against a database of known terrorists.
- It enables the INS to determine instantly whether such an alien has overstayed his/her visa.
- It enables the INS to verify that an alien is living where he said he would live, and doing what he said he would do while in the United States, and to ensure that he is not violating our immigration laws.¹

He further testified that as of January 23, 2003, “NSEERS has led to the identification and apprehension of 7 suspected terrorists.”²

There is reason to be concerned, however, about the targeting of Arab and Muslim foreign nationals for registration. The Special Registration program implicitly assumes that citizens of the stated countries are believed to be more likely to be participating in terrorist activities than those of other countries (even ones with known terrorist organizations operating within their

territories). There was little consultation with Arab and Islamic communities prior to the implementation of the registration system, leading to an increase in tensions between members of these communities and government officials. Yet, cooperation of the Arab and Islamic communities in the United States is a key ingredient in the intelligence gathering needed to identify actual threats. To the extent that the Special Registration makes such cooperation harder to achieve, it may harm national security and reduce the likelihood of apprehending terrorists.

The Administration has announced its intention to move forward with a universal entry-exit program, US-Visit (United States Visitor and Immigrant Status Indicator Technology), by the beginning of 2004. The new system will allow for automated capture of basic information about each arriving and departing passenger. According to DHS, it eventually will collect information on date of arrival and departure; nationality; classification as an immigrant or non-immigrant; complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; U.S. visa number, date and place of issuance (where applicable); alien registration number (where applicable); and complete address while in the United States. It will also allow for recording of biometric information, such as a photograph and fingerprint. The system will be introduced at air and sea ports of entry and then extended to the land ports of entry, which have far more crossings each day. It will cover all phases of a person's visit to the United States, from pre-arrival screening by consular officers through departure from the country.

Introducing an electronic entry and exit system at airports and seaports should be relatively straightforward, even for persons who are able to enter without a visa. Other countries have working entry-exit systems in operation. For example, Australia issues an Electronic Travel Authority (ETA) after checking traveler's information collected at the time passage is booked with an airline. The electronic system enables the first security check to be done well in advance of international movement. Then, when a person arrives at check-in, the airline can check electronically to find out if the individual is cleared to board. The final inspection is done on arrival in Australia. When the person departs, the electronic system automatically records this event as well.

The land border implementation will be far more difficult without adversely affecting valued and legitimate border crossings. Given the very large number of such events each year, the small number of overstayers and even smaller number of persons who pose security threats, it is essential to balance the harm that may arise from overstays with the harm that may be done by unduly slowing down travel across the land borders. Efforts to facilitate admissions must be given as much attention as those to control entries and exits.

Pre-enrollment of frequent travelers can support both facilitation and control, allowing commuters and other frequent border crossers an expeditious method of entering and exiting, while allowing greater time and attention to be paid to visitors about whom the authorities have less information. Expansion of the existing commuter programs should be given high priority. The Secure Electronic Network for Travelers Rapid Inspection (SENTRI) identifies border crossers who pose little risk to border security, verifies their low-risk status through extensive record checks, and screens approved participants and their vehicles each and every time they enter the United States. Frequent commuters apply and pay a fee for the program. Names, digitized photographs, and vehicle information come up on an Inspector's screen just before the vehicle arrives at the Inspection site. Upon reaching the booth, the driver stops, reaches out the window and swipes an electronically coded PortPass card through a magnetic stripe card reader. Participants in the program generally wait no longer than three minutes behind other cars to enter the U.S. at the busiest time of day. Technically, the system combines security pre-screening with biometrics and fast crossing/inspection. It acts as an effective entry-exit system in allowing information to be collected on any abuses, such as overstay, while still facilitating rapid admissions.

A further point to make about entry-exit control systems involves the use of the data collected. The biggest benefit of such systems is not the identification and tracking of a specific individual who has overstayed, given the difficulty of finding a person who has determined to disappear. *Prevention* of the admission of persons who are likely to overstay, with particular attention to those who also pose a security threat, remains the most effective way to protect U.S. borders. Once someone has overstayed their visa for some period of time, it is very difficult to find them

and stop their actions. It is far better to prevent their entry, which requires good intelligence and look-out systems.

The benefit of the entry-exit control systems is to provide some of the intelligence needed to ensure better prevention and better facilitation. Analysis of the data collected through US-Visit will be essential to improving the management of our immigration system by giving more accurate information about the number of overstays, the classes of admission in which overstays take place, their duration, the characteristics of overstayers, and other valuable factors helping to understand the overstay phenomenon. The analysis capability should be worked into the design and deployment of the system.

To summarize, persons who overstay their permission to remain in the United State are a significant part of the total number of unauthorized migrants but a small proportion of the millions of foreign nationals who enter the United States each year. Electronic systems for tracking entry and exit, combined with systematic and consistent analysis of the data collected, can be a valuable resource to improve management of US immigration programs. Every effort should be made in deploying such systems to ensure facilitation of legitimate movements across our borders in recognition of the many benefits accruing from the admission of foreign visitors.

¹ Johnny Williams, Executive Associate Commissioner for Field Operations, U.S. Immigration and Naturalization Service, Statement before the Senate Committee on Finance regarding Combating Terrorism: Protecting the United States (January 30, 2003), <http://www.immigration.gov/graphics/aboutus/congress/testimonies/2003/Williams.pdf>.

² *Id.*