Backgrounder

Biometric Exit Programs Show Need for New Strategy to Reduce Visa Overstays

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Abstract: *Despite Congress's mandate in 2007 that the Department of Homeland Security track all foreign visitors biometrically by June 2009, DHS missed the deadline, and biometric exit, as opposed to the current biographic approach, has proved costly without adding much additional security. Following is a plan on how Congress can break the stalemate—and provide useful data and security for Americans as well as the many visitors who come to the U.S. every year.*

In 2007, Congress mandated that the Department of Homeland Security (DHS) biometrically track the exit of all foreign visitors from U.S. airports by June 30, 2009. DHS was unable to meet the mandate by the deadline, putting the Visa Waiver Program (VWP), whose continued expansion is linked to achieving the air exit deadline, in a stalemate.

DHS has completed a pilot program to test the feasibility of two types of biometric exit tracking systems. The pilot demonstrated that the cost compared to the added security from a biometric exit system, which measures fingerprint data, as opposed to a biographic system, which compares a visitor's personal information provided at entry with the information provided at exit, does not support the need for a biometric approach to exit. Armed with these results, it is time for Congress to decide whether it wants to implement a biometric exit system, or whether another approach would be more appropriate.

Talking Points

- Congress had required the Department of Homeland Security to biometrically track the departure of all foreign visitors exiting through U.S. airports by June 30, 2009. By doing so, Congress has endangered the Visa Waiver Program—the expansion of which was tied to the air exit mandate.

- More than $1 billion has been spent trying to make a biometric system work—with few results.

- Approximately 40 percent of all visitors to the U.S. overstay their visas, however, only 1 percent of Visa Waiver Program visitors overstay their visas.

- Foreigners who overstay their visas are not a problem to be ignored; but throwing logic and sound fiscal responsibility out the window is a poor approach.

- Congress should reassess the need for biometric exit and search out options for improving the current system and establishing international agreements to provide identical data without the need for additional tax dollars.

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The Exit Problem

Enforcing the law and ensuring that foreign visitors leave the country as scheduled while continuing to make the U.S. a welcome place for foreign travelers is an important balance to maintain. Millions of people from around the globe visit the U.S. each year. These individuals come to the United States to vacation, do business, or visit relatives. The U.S. economy benefits greatly from these visitors—foreign travelers to the United States spent $100 million in 2008.[1]

While most visitors leave by the time their visas expire, about 40 percent, possibly more, overstay their visas.[2] The problem with these "overstays" is twofold. First, overstays perpetuate the illegal immigration problem by using the visa process to break the law to remain in the U.S. Second, a small percentage represent a very real national security risk to the United States. In fact, at least six of the 9/11 hijackers were visa overstays.[3]

The Move Toward Biometrics. The exit of foreign travelers has long been tracked through biographic means, but not consistently or to any degree of accuracy. "Biographic" tracking requires foreigners entering the United States to fill out the Customs and Border Protection (CBP) I–94 non-immigrant visa form providing information such as name, date of birth, passport number, and place of residence within the United States. Upon arrival on U.S. shores, the traveler gives the top half of the form to a CBP agent. The bottom half, which contains the same information, is kept by the traveler and collected later at departure by agents of the airline or shipping line, or Canadian or Mexican authorities in the case of land border exits. The barcodes from the top and bottom are matched, and

the traveler is recorded as exiting the country. This system, however, does not result in 100 percent matching for the following reasons:

- **Compliance**. There is no compliance mechanism that forces travelers to submit the bottom portion of their I-94 forms when leaving the United States. Because of a lack of shared databases and other logistical challenges, if an individual arrives, say, by air, but leaves through a land port of entry, CBP has no way to track this exit.[4]

- **Accuracy**. When travelers lose the bottom portion of their form, they are permitted to fill out a new one (which has a different barcode) and submit it upon exiting, thus making it nearly impossible for the government to match that exit record with the previous entry form. Furthermore, matching entry and exit data through I-94 forms is problematic because DHS cannot effectively check for a change of status for an alien. For example, if a person enters the country on a temporary work visa, such as the H-2B, but is then granted a Green Card, that person will not have to exit the country until his green card expires. However, at this point, records would indicate that he has overstayed his original visa regardless of the status change and is in the country illegally.

- **Fraud**. The I-94 form is also susceptible to fraud. There is no way of ensuring that the name on the form is that of the actual traveler or that that traveler is actually exiting the country. An alien can submit the bottom of the I-94 form and would be on record as exiting the country; however, that person could submit someone else's form, or could simply not board the plane or ship and stay in the country illegally, without the government knowing.[5]

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1. Discover America Partnership, "A Blueprint to Discover America," January 31, 2007, p. 7, at *http://www.tia.org/resources/PDFs/Gov_affairs/Blueprint_to_Discover_America.pdf* (January 8, 2010).

2. James Jay Carafano, "Checking Out! A Proposal for Land Border Exit Checks to Improve Visa Management," Heritage Foundation *WebMemo* No. 1909, April 30, 2008, at *http://www.heritage.org/Research/HomelandSecurity/wm1909.cfm*.

3. "Identity and Immigration Status of 9/11 Terrorists," The Federation for American Immigration Reform, February 2004, at *http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecentersc582* (January 4, 2010).

4. Joint Statement for the Record by Robert A. Mocny, director US–VISIT Program and Robert Jacksta, executive director of Traveler Security and Facilitation, Office of Field Operations, U.S. Customs and Border Protection, before the House Subcommittee on Border, Maritime, and Global Counterterrorism, June 29, 2007.

DHS has attempted to close the gap on some of these problems by automating the I-94 process. In 2005, CBP created the Automated Passenger Information System (APIS).[6] APIS transmits data collected from flight manifests of arriving and departing international flights to CBP agents. The data received contains the same passenger information found on a passport, and is transmitted to CBP before passengers board the airplane. Airlines may submit flight manifests in different manners. One option is to submit the complete manifest at least 30 minutes before closing the aircraft doors; another option is to submit individual data as passengers check in for their flight. CBP must receive all names of passengers before the plane closes its doors. While APIS use has become mandatory, the U.S. still does not have complete compliance (96 percent) by all air carriers, marking a failure in communication and enforcement.

In 2003, DHS made the first move toward a more biometric system (involving the matching of fingerprints). DHS established the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) program in order to consolidate and better collect entry and exit data (both biometric and biographic) of individuals traveling to the United States by air, land, and sea.

DHS completed half of this mandate by implementing biometric entry systems at 119 airports, 19 seaports, and 154 land ports of entry (POEs). This biometric entry information is stored in the Automated Biometric Identification System (IDENT) database. IDENT currently stores approximately 100 million fingerprints of foreign individuals, and has played a supportive role in detecting visa, passport, and identity fraud by foreigners attempting to enter the United States. DHS has not, however, been able to complete the much more difficult task of deploying a full biometric exit system at air, sea, and land ports of entry.

Congress Gets Frustrated

Frustrated by a perceived lack of progress on the change to a biometric exit system, Congress passed the Implementing the Recommendations of 9/11 Commission Act of 2007, which required that DHS fully implement a biometric air exit system by June 30, 2009. This requirement was further tied to the continuing ability of the Secretary of Homeland Security to waive the visa refusal rate requirements—the percent of visas denied by the U.S. State Department—of countries that want to participate in the Visa Waiver Program, thereby allowing them to more readily join the program.

The VWP allows pre-screened citizens of member countries to travel to the United States without a visa. Previously, in order to qualify for this program, countries had to have a visa refusal rate of 3 percent or lower, among other requirements. However, with the 2007 act came the new measure that as long as DHS met the biometric exit mandate, a country was to be allowed to join the program with a refusal rate of up to 10 percent. This enabled many American allies to enter the program that would ordinarily not be able to meet the 3 percent requirement—however, this higher refusal rate is directly tied to DHS meeting the full implementation of biometric air exit.

The reality is that only 1 percent of Visa Waiver Program visitors overstay their visas and remain in the country illegally.

The reason for tracking the biometric exit requirement onto VWP expansion was Congress's perception at the time that the VWP was a breeding ground for overstays. The reality, however, is that only 1 percent of VWP visitors become overstays, making the biometric air exit mandate of little direct relevance to the VWP. While Congress certainly was correct to be concerned about overstays, this mandate tied together expansion of the VWP with the unrelated need for better exit data. This is unfortunate given the fact that the VWP is a valuable program and its lack of expansion is a tremendous setback for public diplomacy, national security, and economic growth. Specifically, the VWP:

5. *Ibid.*

6. *Ibid.*

- **Adds Security**. The VWP increases U.S. security by providing pre-approved travel for VWP travelers—which ensures that the U.S. government knows more about foreign travelers before they enter the country. Furthermore, member countries are required to share information about U.S.-bound travelers who might pose a security threat, and are also required to meet minimum common security standards.[7]

- **Promotes America's Image.** The VWP generates important public diplomacy benefits. Member countries see membership in the VWP as a sign of trust by the United States. Imparting trust to allies makes them more likely to work with the U.S. on particular policies or actions.[8]

- **Boosts the Economy**. When foreign travelers come to America, they rent cars and hotel rooms, dine in restaurants, and shop in stores—purchases that contribute to the U.S. economy.

Mandate Not Reached

The deadline for biometric air exit passed and DHS was unable to meet the mandate. On May 28, 2009, less than two months before full implementation of biometric air exit was supposed to be achieved, DHS launched two pilot locations for biometric exit: one at Hartsfield-Jackson Atlanta International Airport and one at Detroit Metropolitan Wayne County Airport. These pilots were conducted by DHS personnel, not by air carriers—who will likely be the ones to actually implement such a policy when the program becomes fully operational. The pilot was set up in the following manner to test two different biometric collection strategies, technologies, and locations:

- In Atlanta, the pilot biometric system was conducted by TSA officials at the security checkpoint, using a handheld device that scanned two fingerprints of the individual as he exited.

- The Detroit location employed a biometric system, which was used at the actual gate of the airplane. At this location, CBP officers were administering the fingerprint collections.

In addition to these two recent pilot programs, DHS has also performed 15 other pilot tests of biometric exit systems, testing various exit check locations and technologies. However, the results of these pilots indicate that the program is nowhere close to being ready for implementation.

A Cost-Benefit Analysis. The best way for Congress to assess the way forward for biometric exit is to look at the security benefit gained for the cost added and compare this to the biographic system already in place.

Cost. To date, DHS has spent $1.3 billion implementing the entry portion of US-VISIT. DHS has estimated that over 10 years, exits could possibly cost anywhere from $3.1 billion to $6.4 billion depending on (1) at what location the biometrics will be collected and (2) whether air and sea carrier personnel will perform the task as opposed to DHS personnel. These cost estimates do not include the two new models tested in the most recent pilot programs.

Furthermore, biometric exit could pose a cost to the private sector if the biometrics are collected at the check-in counter and therefore operated by the airlines. Significant disagreement remains over who should be responsible for implementing biometric

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checkpoints: the government or private industry. Each location has its pros and cons. Biometric exit at the check-in counter would mean air and sea carriers would have to collect fingerprints. Not surprisingly, industry has been less than enthusiastic about

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7. Jena Baker McNeill, James Jay Carafano, James Dean, and Nathan Alexander Sales, "Visa Waiver Program: A Plan to Build on Success," Heritage Foundation *Backgrounder* No. 2282, June 12, 2009, at *http://www.heritage.org/Research/HomelandSecurity/bg2282.cfm*.

8. *Ibid.*

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participating in the collection of their customers' fingerprints because it creates more work, costs money, and poses privacy issues for the airlines. If air exit is conducted at the security checkpoint, fingerprints will be collected by TSA officials.

Either way, the problem remains that the traveler may fail to board the plane and leave the United States after passing through the exit procedure. By conducting exit procedures at the actual gate, agents can ensure that the traveler does physically depart the U.S. But for this to occur, DHS would have to hire enough CBP agents to collect fingerprints at each gate on every international flight—an added expense to taxpayers. Lastly, there is an option to rebuild airport infrastructure to create a separate exit section for international travelers. This would be the inverse of the entry system, where international travelers must go through the customs line in the U.S. in addition to the customs line in their country of origin. Yet, it would also be one which adds significant additional cost.

Even if DHS makes a final decision on where and how to conduct biometric exits, and can accomplish this for air and sea travel, there is a major problem accomplishing this goal at land border exits. US-VISIT's goal is for DHS to conduct exit checks at air, land, and sea. The sea element has proved relatively easy to implement. Currently, there is no plan or strategy for land-border biometric exits. DHS faces major infrastructure deficiencies and a potential disruption of commerce if it attempts to record land exits. There is a possibility that radio-frequency identification (RFID) technology would allow the U.S. to record the exit of a vehicle as it passes through the border, but that technology is still in the development stages.

Security-Added. At first glance, tracking the exit of foreign nationals makes perfect sense in terms of security—making it easier to track terrorist travel and easier to monitor visas for immigrants and foreign tourists. However, having information when a dangerous or suspicious individual leaves the United States is much less beneficial, and less of an immediate law-enforcement concern, than possessing real-time information to allow CBP or other law enforcement the opportunity to arrest such a person *before* he boards a plane.

While fingerprinting technology is available and is becoming easier to use, the largest drawback to all of the available methods for collecting exit data—from a handheld machine to a portable kiosk—is that none of them operates in real time. The traveler's information is stored in the devices and it is not uploaded to databases until the end of the officer's shift. Because the information regarding the traveler is not cross-checked with databases while the traveler is in front of the officer or carrier agent, it makes biometric exits less useful for most law enforcement functions. By the time any valuable data, such as security risk or immigration status, would be discovered, the person will have already left the country.

The real need for exit data is for immigration purposes. A majority of the illegal aliens in the United States are overstays, those who entered the United States legally and failed to leave once their visas expired. Having a biometric exit system would be helpful in determining those who have stayed past their visa date and in better identifying the illegal aliens. It would also be used to determine if foreigners applying for visas have overstayed prior visas.

Biometric exit at air and seaports, however, would not solve this problem. First and foremost, the overwhelming majority of the illegal aliens in this country travel through land ports of entry, not airports or seaports. DHS, therefore, would not be able to determine whether a person on a visa is still in the country because such a large population is unaccounted for. Further, without aggressive enforcement of immigration laws, this biometric exit system would merely be a very expensive way to obtain data on illegal immigrants—without using it to solve the problem.

Breaking the Stalemate

Comparing the risks, costs, and benefits of a biometric exit system demonstrates that while there is some benefit gained from tracking this data, the costs and manpower associated with such a system simply outweigh the benefits. There seems to be a better way for tracking the exit of individuals that would cost less and would be more helpful to the U.S. government. Such a strategy should:

- **Reassess the Need for Biometric Exit.** Congress should reassess whether it wants to invest in the air biometric exit system. Letting it and the VWP sit in limbo is not an appropriate way to handle policy. If Congress decides that it has put in place an unworkable mandate, it needs to recognize it as such and find something that is workable. Congress should examine both biometric and biographic aspects to finding a solution, and should look for ways to work with international partners to obtain data that reduces the number of overstays.

- **Implement Voluntary Exit Systems for Work Visa Participants.** Exit data is most crucial for those who are in the United States on work visas. These individuals are more often than not the ones seeking to evade the law and stay in the United States permanently. Having biometric exit specifically for this category allows the federal government to assess whether immigrant workers have followed the constraints of their work visa and can be reissued a new visa in the coming year. At land borders, those exiting the United States with a work permit should be able to voluntarily register their departure with CBP at any point of exit.

- **Improve Advance Passenger Information System.** There is currently a 96 percent compliance rate by airlines of sharing passenger flight manifests with CBP. APIS is the best source of data to determine whether VWP countries are falling under the 3 percent marker, and DHS must work to increase this compliance rate. Improving this biographic approach is more cost effective because it decreases the need for more substantial upgrades in infrastructure and does not push cost on the private sector.

- **Increase Research on Biometrics.** DHS should research better methods of collecting biographic and biometric data in real time. The benefit of exit data is being able to apprehend wanted individuals *before* they sneak outside borders and beyond U.S. law enforcement reach.

- **Decouple the VWP from the biometric air exit mandate.** Regardless of what Congress decides to do, it should decouple VWP from the biometric mandate. The overstay rate from foreign travelers under the VWP is about 1 percent and punishing VWP members for high overstay rates of others does not get to the heart of the problem.

- **Encourage other countries to share their entry data.** By obtaining entry data from other countries, the U.S. can match this entry data with its own entry data to obtain an entry-exit result without the need to implement a biometric exit system throughout the United States.

Certainly, the problem of foreign visitors who overstay their visas is not a problem to be ignored. But throwing logic and sound fiscal responsibility out the window is a poor approach. Congress should reassess the need for biometric exit systems and search out options for improving the current system, providing opportunities for voluntary biometric exits, and exploring international agreements that would provide identical data without the need for additional tax dollars.

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