

# ISSUE BRIEF

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## Biometric Exit Improvement Act: Wrong Solution to Broken Visa and Immigration System

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Several Members of Congress recently released the Biometric Exit Improvement Act in an effort to enhance the U.S.'s security and immigration system. However, the law triples down on a costly policy that adds little real security.

Instead of feel-good but ineffective strategies, Congress should reconsider the biometric exit requirement and push the Administration to faithfully execute the U.S.'s existing immigration laws.

**Biometric Exit Has Consistently Not Been Implemented.** The requirement for an integrated entry-exit system has been in place since the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. In the following years, several other bills were passed that called for an entry-exit system, with increasing requirements for biometric technology, leading to the creation in 2003 of US-VISIT, a program focused on developing a biometric entry-exit system.

The Intelligence Reform and Terrorism Prevention Act of 2004 explicitly required and called for the acceleration of US-VISIT's efforts to create an automated biometric entry and exit data system. While the Department of Homeland Security (DHS)

made progress on the entry portion of US-VISIT, the exit system largely went nowhere.

Congress repeated its demand for a biometric exit system in 2007, setting a deadline of 2009. That deadline came and went with only two small pilot programs. Since then, DHS has continued its slow move to meet this requirement in what the Government Accountability Office (GAO) has called "a long-standing challenge for DHS."<sup>1</sup>

The Biometric Exit Improvement Act would be at least the third law to call for a biometric exit system in the past two decades, and it is unlikely that this act of déjà vu would accomplish anything more than the past two requirements did.

**Cost Ineffective.** DHS has argued that the costs of a biometric exit system prohibited its implementation. Recently though, estimates have fallen to as low as \$400 million for air and sea ports of entry, though they do not include land ports of entry or certain ongoing operational costs.<sup>2</sup>

Even if DHS managed to create a biometric system at these lower numbers, however, such costs do not buy the U.S. much more security. Since the mandate was first created, the U.S. has developed many other intelligence tools that are effective at tracking terrorist travel. Furthermore, a biometric exit system does little to help stop those who fail to register an exit—i.e., overstay their visas. The system merely tells officials that an overstay has occurred, not if it is a false positive, a national security risk, or just an honest mistake.

Importantly, DHS does not have the resources or the desire to enforce existing immigration laws and pursue all those who overstay their visas, instead focusing on criminal and national security threats.

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Indeed, in July 2013, the GAO found that DHS had over 1 million potential overstays that it will not investigate or take action against because those cases do not meet its “enforcement priorities.”<sup>3</sup> Without the capability and resolve to act on visa overstays, a biometric entry-exit system would largely be an expensive data collection operation.

In most cases, a *biographic* system—based on names, country of citizenship, and other details on individuals’ backgrounds—would be just as effective as a biometric one but at a fraction of the cost. Take for example Faisal Shahzad, the Times Square bomber, who, after being placed on a terrorist watch list, was apprehended trying to flee the U.S. on an international flight less than two days after his failed plot in 2010. Whether dealing with a national security concern or an act of illegal immigration, a biographic system is far more cost-effective than a biometric one, though both ultimately depend on action from DHS and other law enforcement organizations to be truly effective.

**Avoiding the Pitfalls of the Senate Immigration Bill.** The Obama Administration has consistently chosen to use its “prosecutorial discretion,” budget requests, and other flexible interpretations of immigration law to decrease the effectiveness of immigration enforcement. While the Administration claims record deportations and that the border has never been more secure, counting gimmicks, the U.S.’s anemic economic growth, and other factors make these claims misleading at best.<sup>4</sup> Given that the Obama Administration will not enforce existing immigration laws, any additional laws and requirements would likely be met with the same disregard.

The Biometric Exit Improvement Act is sufficiently flawed on its own by tripling down on the mistakes of the past, but it could be made even worse. There are rumors that this flawed bill will be combined with H.R. 1417, a faulty border security bill. If combined, these bills could provide cover for a mass amnesty of illegal immigrants by going to conference with S. 744, the bill passed by the Senate. S. 744 grants amnesty to

millions of illegal immigrants, despite the failure of a similar amnesty in 1986. Amnesty undermines the rule of law and encourages future illegal immigration by telling would-be illegal immigrants that the U.S. will eventually excuse illegal immigration.

**Getting Immigration and Exit Systems Right.** There is a need for reform of the U.S.’s entry-exit system, as well as the broader immigration system, but the Biometric Exit Improvement Act would likely make both worse. Instead of repeating the mistakes of the past and conferencing with a highly flawed Senate immigration bill, Congress and the Administration should:

- **Rethink the biometric exit mandate.** The biometric exit system has so far yet to be created despite at least two laws requiring its implementation in the past decade. Though not as costly as once thought, implementing a biometric exit system would still cost a substantial amount and would not result in meaningful improvements in security, making this program cost-ineffective. Congress and the Administration should instead continue to refine and expand the biographic portion of the exit system, as it is easier to implement and is far more cost-effective.
- **Enforce existing immigration laws.** The main problem facing the U.S. immigration system is not a lack of new laws but insufficient enforcement of existing ones. From workplace enforcement measures to working with local law enforcement, there is a great deal that the Administration could do to fix the U.S.’s broken immigration system if it only had the resolve and resources to enforce the law. This also means working through the budgeting process to increase funding for appropriate counterterrorism and immigration organizations so that they can fulfill their objectives.

**Toward Real Immigration Reform.** While it is commendable that the House is taking a

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1. U.S. Government Accountability Office, *Overstay Enforcement: Additional Actions Needed to Assess DHS’s Data and Improve Planning for a Biometric Air Exit Program*, GAO-13-683, July 2013, pp. 41-43, <http://www.gao.gov/assets/660/656316.pdf> (accessed October, 4 2013).

2. Jance Kephart, “Biometric Exit Tracking: A Feasible and Cost-Effective Solution for Foreign Visitors Traveling by Air and Sea,” Center for Immigration Studies, September 2013, <http://cis.org/biometric-exit-tracking-feasible-and-cost-effective> (accessed October 7, 2013).

3. GAO, *Overstay Enforcement*, pp. 41-43.

4. Andrew Stiles, “The Deportation Lie,” *National Review*, April 19, 2013, <http://m.nationalreview.com/article/346043/cooking-books-deportation-stats#!> (accessed October 8, 2013).

piece-by-piece approach to its immigration bills, this in itself does not make any particular bill helpful or unhelpful. In the case of the biometric exit, the Obama Administration's lack of enforcement of immigration laws is not a reason in itself to give up on current laws. Rather, this is a flawed policy that should be revised, and the Administration should be enforcing existing law much more than it is now.

The Biometric Exit Improvement Act follows a faulty approach that has not worked for a decade or

more. Congress and the Administration should seek real reforms that result in actually enforcing existing laws.

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