

**America's New Welcome Mat:  
A Look at the Goals and Challenges of the US-VISIT Program**

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The United States Visitor Immigration Status Indicator Technology (US-VISIT) program is one of the most important and ambitious immigration program enhancements ever undertaken. Its implementation was accelerated in response to the terrorist attacks of September 11, 2001, but the fact that it will help prevent the entry of terrorists is not the only reason it is worth doing. When it is fully implemented, US-VISIT will also help ensure the integrity of the entire non-immigrant visa system by authenticating all travelers' identity and by recording both entries and departures. It will help us know that travelers are who they say they are and help ensure that they leave when they are supposed to.

Some skeptics have criticized the US-VISIT program, along with other post-9/11 improvements like SEVIS and NSEERS, for having a bifurcated mission. They ask, is it an anti-terrorism program, or an immigration enforcement program in disguise? The answer is, US-VISIT cannot be just one or the other; the two missions are inseparable.

We know that the 9/11 attacks were made possible in part due to failures in our immigration system, specifically our temporary visitor program. The 9/11 terrorists obtained visas they were not entitled to, they successfully used altered documents, and they overstayed their visas. Over the years, many of the terrorists we have caught have some immigration violation on their record, and virtually every immigration benefits program we offer has been exploited by terrorists (See *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States*, by Steven Camarota, Center for Immigration Studies, 2002).

But recognizing a terrorist at the border is a lot harder than recognizing some other forms of evil; you're not necessarily going to know it when you see it, despite our best efforts at profiling. Terrorists come in all shapes, sizes, and sexes, and may bear passports from any country, or drivers' licenses from any state or Canada. It is unrealistic to expect even the best intelligence agencies to stay ahead of their plans. For this reason, the best possible way to prevent the entry of terrorists into the United States is to have a well-functioning immigration system that is set up to deter, detect, and promptly remove anyone and everyone who lacks a legitimate purpose for being here, or who has overstayed their welcome. Such a system requires three things: superior technology, abundant human resources, and the policies to make effective use of both. The complete implementation of US-VISIT will bring us much closer to that ideal.

## **Benefits of US-VISIT**

The first way US-VISIT is helping is by authenticating the documents presented by regular non-immigrant visa bearers. By comparing biometric security features of machine-readable U.S. visas issued at consulates with the fingerprints and likeness of the bearer, immigration inspectors can more easily catch those using counterfeit documents and those fraudulently using legitimate documents. Biometrics also greatly reduce the number of false hits produced by our name-check system, which helps prevent innocent travelers with common names from being falsely identified as terrorists or criminals. This phenomenon has been a factor in the recent spate of flight cancellations from certain airports. We are already seeing results; the Department of Homeland Security (DHS) has reported that US-VISIT nabbed 30 wanted criminals in its first three weeks of operation.

The ability to verify identity is important and obvious. I would like to spend a little more time talking about the more revolutionary feature of US-VISIT, the departure recording system.

At the moment, in a dangerous international environment, we are operating a massive temporary entry system, admitting more than 190 million temporary visitors a year, with almost no information on the soundness of our visa issuance and admissions decisions. Meanwhile, we do know that there are at least 10 million illegal immigrants living in the United States. DHS estimates that at least 30 percent of them are probably visa overstayers. The General Accounting Office (GAO) says that figure is almost certainly understated, and probably significantly so. That means that we have made about three to four million visa and admissions mistakes. We have known that overstays have been a problem for at least 10 years, since the INS issued a report in 1994. Even so, over those years, we continued to issue non-immigrant visas at an accelerating pace and expanded the Visa Waiver Program.

Not only do we not know exactly how many overstayers there are, we have little idea where they came from, how long they have been here, what kind of visa they entered on. Are they mainly people who are eligible for green cards and jumping in line, products of our overbooked permanent immigration system? Probably many are. But undoubtedly many have motives less benign, whether economic or criminal. The point is we do not know. DHS does collect some information on visa overstayers when it processes applications for green cards and when it processes people for removal, but that information is not analyzed for the purpose of learning about overstayers. It has been 10 years since anyone at the immigration agency has made any attempt to analyze the overstay population beyond guessing at its size.

This dearth of information significantly handicaps our visa processing and inspections system. Their effective functioning depends on having some understanding of who the risky applicants are. Despite the practices in place at some consulates before 9/11, according to the law, to qualify, visa applicants must do more than simply be absent from the criminal watch list. They must have a legitimate and credible purpose for their visit, and they must show they are likely to return home. Without good information on

overstays it is difficult for consular officers to make that determination. More targeted scrutiny of visa applicants will benefit legitimate travelers too, as officials could then focus their attention on the most risky cases.

In addition to assisting in the adjudication of visas, the exit recording feature of USVISIT will help end the practice of using counterfeit foreign entry stamps or obtaining new passports to cover up an overstay.

The US-VISIT program will also enhance enforcement efforts beyond the port of entry. Interior enforcement is currently the weakest link in our immigration system. The data generated by US-VISIT will provide some guidance to DHS on the problem groups and categories. In addition, the system eventually will give leads on specific individuals. For the program to have a meaningful impact on enforcement, it is necessary that it generate actual enforcement activity; in other words, it is imperative that word get around that overstayers will no longer escape the attention of authorities. A recent GAO report noted that the current risk of an overstayer being identified and removed is less than two percent (see *Overstay Tracking is a Key Component of a Layered Defense*, Statement of Nancy R. Kingsbury, GAO report number GAO-04-170T).

Because US-VISIT is an electronic system, with the information collected directly from the visa, and not paper-based, like the I-94 system, where data had to be manually entered, there will be less delay in getting the information to enforcement officials. This does not necessarily have to mean that a Bureau of Immigration and Custom's Enforcement (ICE) agent's pager will go off at 12:01 a.m. on the day someone's visa expires. A more realistic scenario would involve dumping the US-VISIT confirmed overstay data into other law enforcement and immigration benefits databases, such as NCIC, CLASS, SEVIS, IBIS, and others, so that it will become much more likely that overstayers will be flagged and removed or denied further benefits.

### **Implementation of US-VISIT**

As we proceed with the implementation of the program, it is important that decisions made with respect to building the program – the order in which different groups or types of visitors are to be phased into enrollment – reflect both feasibility and potential benefits to be gained from their inclusion. The program will turn out to be a huge waste of time and resources if we do not progress much beyond where we are now. At some point, bigger steps will have to be taken, although I would like to suggest that these steps may not prove to be as big, bold and disruptive as some have claimed. Bearing in mind that the program is not only an anti-terrorism program and an immigration enforcement system, but is also intended to be a way to expedite travel for low-risk individuals, we must be careful not to try to just cover the easy cases. If we do, we may end up penalizing those who pose the least risk, since they will be the only ones in the program. Right now, by enrolling only regular NIV holders, US-VISIT is covering only a small fraction (10.5 million) of the total number of the admissions into the country (190 million). Ironically, that is even less than the number who were covered under the old I-94 system, which has been all but abandoned as a tracking system. The I-94 system

included both regular NIV-holders and about 33 million additional visitors from Mexico and Canada whose travel plans required additional documentation.

Much has been made of the fact that US-VISIT is not enrolling Visa Waiver Program (VWP) visitors, which accounted for about 14 million admissions a year. That certainly is a weakness, but I believe it is less of a problem than the decision not to enroll Mexicans at the land borders. For one thing, until biometric features are used by more countries, we cannot use US-VISIT to verify identity without issuing a biometric visa. The State Department is so behind in its staffing of the consulates as it is, there is absolutely no way they could manage to issue visas to all those who would need to travel anytime within the next five years. It makes much more sense to let the other countries spend the money on producing biometric documents that we can then utilize. In the meantime, with the implementation of Advance Passenger Information System and the new Arrival Departure Information System, we now have the ability to match entries and departures of most NIV and VWP visitors. Therefore, it seems less urgent to add VWP visitors to US-VISIT at this time.

With that in mind, a strong case can be made for including Mexican laser visa (Border Crossing Card) holders in US-VISIT sooner rather than later. Earlier this week, James Williams, the US-VISIT program director, confirmed that Mexican laser visa holders are not scheduled to be included. This is a big mistake, and one that threatens to significantly compromise the value of US-VISIT. This is so not because Mexicans as a group represent a greater security threat to our country than any other group. It is a mistake because the land border entry system, especially the southern border, is a loose sieve that is exploited by all kinds of illegal aliens, including terrorists.

As mentioned earlier, we don't know a lot about the illegal immigrant population, but we do know that Mexicans represent the largest number of illegal aliens in the country (about 70 percent). We know from green card adjustment data, old INS reports, and academic studies that they represent a significant share of the overstays. The refusal rate can be as high as 30 percent in some consulates, which is much higher than the VWP country refusal rates. We know that the border crossing cards are being abused with near impunity. Not only are they one of the most frequently counterfeited U.S. documents, but even the genuine documents are used fraudulently. They are openly available for rent in the street markets of Juarez and other cities. We also know that terrorists, such as Lebanese Hezbollah operative Mahmoud Youssef Kourani, indicted last year in Detroit, have been smuggled in from Mexico in the past, perhaps with the support of Mexican diplomats, such as the consul fired from her post in Lebanon last year. We cannot expect that this laxity toward fraud and deceit will be overlooked by terrorists any more than it is overlooked by any other prospective illegal immigrant.

At four to five million people, the population of border crossing card holders is much more manageable than either the regular NIV or the VWP cohorts, but the significance for immigration enforcement is potentially much greater. At the very least, we should be able to proceed relatively easily with the identity verification aspect of US-VISIT. Since 2001, all Border Crossing Cards have included biometric features, a project

that was undertaken at considerable effort and expense. Now, all we need to do is install the scanning machines at all of the border checkpoints so that they can actually be read by our border inspectors. Currently, the cards are being swiped very inconsistently, perhaps only 50 percent of the time. A large share of pedestrians are checked, but only a few of those traveling by car are asked to show their cards.

We must eventually develop a way to record exits as well. It is widely accepted that many laser visa holders have overstayed, but we have no information on exactly how widespread that problem is. Again, this should not be too daunting a task. If the state of New Jersey can figure out how to collect money from 30 million people a month who pay tolls with an EZPass without getting out of the car (and they've been doing it for the last 10 years), we should be able to figure out how to enable five million people a year to check out at the border without too much trouble.

We have much good solid experience from which to draw when considering options for addressing the security and management issues of US-VISIT, to ensure that the program does not have the effect of choking off legitimate travel and commerce, and DHS and State are already working on these. Programs like NEXUS, SENTRI, and overseas pre-inspections have all been shown to help minimize the impact of new security measures on lines at the ports of entry. Increased staffing would also help. On the other hand, policies like the "wait time mitigation strategy", where DHS officials can suspend the US-VISIT program if the lines at the airport get too long, are potentially dangerous over the long term, and must be discouraged, if not forbidden.

Above all, it is important to remember that US-VISIT provides a valuable service to foreign travelers and the American people alike by helping ensure the safety of international travel. By extension this also benefits the travel industry; after all, that is the industry that stands to lose the most in the event of another attack, or if travel is perceived to be unsafe. As the higher education community learned from the SEVIS experience, remaining in denial about the need or feasibility of a fully-implemented US-VISIT program is truly counterproductive. Continuing to operate our non-immigrant visitor system blindly, without knowing the scale or source of the document and overstay problems, and with few consequences for the violators, is most definitely not an option.

## **DISCLOSURE**

The Center for Immigration Studies is a subcontractor on a project for the U.S. Census Bureau evaluating the quality of immigrant data collected in the American Community Survey. The \$220,000 18-month contract was signed in 2003.