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**BEFORE THE**

**COMMITTEE ON GOVERNMENT REFORM**

**U.S. HOUSE OF REPRESENTATIVES**

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to be here today to discuss the findings of several of our office's recent reviews of homeland security issues related to the security of our nation's borders.

On August 25th, our office issued the inspection report, *An Evaluation of DHS Activities to Implement Section 428 of the Homeland Security Act of 2002.* In April 2004, we published *An Evaluation of the Security Implications of the Visa Waiver Program*. Copies of these reports have been provided to the Committee and are available to the public on our website. We currently are working on other border security inspections: of the US-VISIT program at land ports of entry, and of the successful use of stolen foreign passports to gain entry into the United States. We anticipate releasing these two inspection reports very soon.

## SECTION 428 REPORT

Let me begin with a description of our analysis of the Department of Homeland Security's (DHS) activities to implement section 428. We said in our report that "We recognize the enormous challenges faced by BTS in establishing itself and its new missions in such a short time. We further understand that many of the Section 428 requirements levied against BTS were unfunded." Mr. Chairman, what follows needs to be considered with those two caveats in mind.

Section 428 requires the Department of Homeland Security to assume certain specific visa related responsibilities and submit certain reports to Congress. Our inspection report documented that some of the responsibilities and reports were accomplished only after implementation deadlines had passed, and that most have not yet been completed at all.

At the outset, I would observe that DHS was not prepared to undertake these responsibilities and a strong argument can be made that the deadlines imposed by the statute may not have been realistic under the circumstances. We encountered organizational confusion regarding initial responsibility for some of the statutory assignments, later addressed by realignments of function reflected in the creation of an Office of International Enforcement within the Border Transportation Security directorate (BTS), and the assumption of responsibility for the visa security program by Immigration and Customs Enforcement (ICE). In addition, some forward progress was held in abeyance, unnecessarily in our view, pending the completion of a memorandum of understanding between the Department of State and DHS, which took until September 29, 2003, to consummate. Thus, although early planning for the international aspects of homeland security began in late 2002, even before enactment of the Homeland Security Act, implementation realistically did not begin until the Fall of 2003.
Let me now turn to the principal features of section 428 of the Act.

- **One of the most significant requirements of Section 428 is that DHS assign Visa Security Officers to Saudi Arabia to review all visa applications.**

Beginning in August 2003, BTS dispatched a series of officers to Saudi Arabia, on temporary duty (TDY) assignment to Embassy Riyadh and Consulate General Jeddah. I had the opportunity in March of this year to observe our officers at work in this challenging environment. We all heard the news last week that shots had been fired at an embassy vehicle and its passengers in Jeddah, and we are again reminded that our employees are undertaking risky as well as difficult assignments on our behalf.

Our careful reading of the legislation, section 428(i) leads us to conclude that the law required this be done "after the date of enactment", which was January 26, 2003. BTS disagrees with our interpretation of the Act's deadline for dispatching the officers, and tells us that they accomplished the task immediately upon completion of the inter-agency memorandum of understanding that was a practical precondition to such an assignment, even though the Act did not so require.

Additionally, we reported that the way in which the Visa Security Officer program is currently managed and funded prevents BTS from realizing the potential value of stationing VSOs at U.S. embassies and consulates to review visa applications.

The use of TDY officers in these positions will not achieve the full intelligence and law enforcement value that a permanently assigned visa security officer could add to the existing consular process. The TDY officers have not received specialized training in VSO duties or foreign language training. Further, the positions are not adequately funded, nor do they have adequate administrative support. Lack of long-term funding, for example, kept the TDY officers in hotels for months because houses could not be leased long-term for their use.

In our inspection report we also recommended that the visa screening process would be improved if the embassy's consular computer system was connected to the DHS computer systems at the National Targeting Center in Reston, Virginia. In March, we found that the visa security officers spent too much time serving as keypunch operators; they were entering biographic information about every visa applicant into DHS computers despite the fact that embassy staff had already keyed the same information into the State Department computers.

As our report indicated, when we visited the embassy in Riyadh we saw thousands of old visa applications that had been submitted before September 11, 2001, and were now being archived. We were told that there had been no examination of these files by law enforcement or intelligence agencies. Embassy officers opined that a review of the applications might uncover information of intelligence or law enforcement value. Analysis, for example, might identify young Saudi males who may have been associates, or may have come from the families, tribes, or villages of the hijackers. DOS has moved many of the visa applications to archives in the United States, but large numbers remained at that time in temporary storage in Riyadh's visa section.

Our interviews with DHS, FBI, and intelligence officials in Riyadh confirmed that no thorough examination of pre-September 11 visa records has been made. They said that combing through these thousands of old applications for possible commonalities with the hijackers would require a very large amount of time and would be an unwise diversion from their higher priority counterterrorism efforts already under way.

We therefore recommend that the Under Secretary for Border and Transportation Security evaluate the possible benefit of analyzing the existing visa applications, coordinating with DOS, the FBI, and other federal agencies, as necessary, before making a determination about whether, or how, to proceed to analyze the applications.

- **A second requirement in Section 428 of the Act is that DHS assign employees to other diplomatic and consular posts at which visas are issued, unless the Secretary determines that such assignment at a particular post would not promote homeland security. DHS is further required by the Act to submit to Congress an annual report describing the basis for each determination not to assign DHS employees to a diplomatic or consular post.**

Our review found that expansion of the Visa Security program to other countries has not yet been funded, and only basic planning for assigning the next group of officers has occurred. Moreover, as of March 2004, the department had not established formal written criteria to select additional countries where VSOs will be assigned. BTS told us that the selection process involves evaluating current intelligence, historical connections to terrorism, visa volume, and several other factors to decide where the next visa security offices will be opened. While the visa security program eventually could have many offices around the world, the department has not determined how many offices will eventually be created, or where, or when.

After reviewing our draft report in June 2004, BTS has now provided our office with a list of selection criteria for future Visa Security offices. They consider the list "law enforcement sensitive" information, and have requested that we not reprint it in our report; neither will I discuss it here today.

Our report states that the department did not meet the November 25, 2003, deadline for submitting its first required report to Congress on the rationale for not assigning VSOs to U.S. embassies and consular offices. BTS submitted the annual report for OMB review on June 6, 2004. As of August 1, 2004, the annual report had not been presented to Congress. Our office has reviewed the draft and believes that it did not meet the full intent of the Section 428 (e)(1) requirement, which requires a report "that describes the basis for each determination … that the assignment of an employee of the Department at a particular diplomatic or consular post would not promote homeland security." While the draft report describes current visa security operations and discusses the general criteria used to select future Visa Security Unites (VSU) sites, it does not describe the specific information BTS used to select the next five VSU sites or, for example, why these sites promote homeland security more than other sites. Further, it does not describe why other sites were not selected.

We also believe that the report could usefully have presented to Congress the costs of deploying VSOs to the next five selected sites. BTS contends throughout its response to our inspection report that funding is a major impediment to fully complying with all Section 428 requirements. Yet, in its report to Congress, BTS does not describe the details of this significant funding requirement. We suggested to the department that before the final annual report is issued to Congress BTS address these two concerns.

- **A third responsibility 428 imposes is to provide DHS employees with training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.**

We reported that BTS had not yet devised or initiated training to instruct DHS employees assigned to U.S. embassies and consular posts in foreign languages, interview and fraud detection techniques, and foreign country conditions. When we visited the Visa Security Offices in Riyadh and Jeddah, we saw first-hand how limited those officers who could not read or speak Arabic were. Many of the passport stamps and supporting documents the VSOs needed to examine were in Arabic, and many of the visa applicants being interviewed, and the Saudi immigration officers with whom our VSOs needed to work, did not speak English. Language training is mentioned specifically in the Act and in the State-DHS Memorandum of Understanding, and it is imperative that the VSOs sent abroad in the future be able to read and speak the languages of the host country.

- **The fourth responsibility mandated by Section 428 is that DHS develop homeland security training programs for consular officers.**

Our report also notes that the required "homeland security training" for consular officers is not further defined in the Act and BTS officials we interviewed had differing interpretations of what might be appropriate. BTS has not yet developed a plan to provide homeland security training to consular officers to make them more likely to spot factors that would deter them from issuing a visa to someone who might be a terrorist.

- **The fifth responsibility is to develop performance standards to be used when the Secretary of State evaluates the performance of consular officers.**

Our report states that the department has not established performance standards to evaluate consular officers. While the State-DHS Memorandum of Understanding contains coordination mechanisms to be used by the departments to consult with each other on Section 428 issues, it does not contain substantive provisions regarding development of performance standards.

- **Sixth: the Act requires that DHS study the role of foreign nationals in the granting and refusing of visas and other documents authorizing entry of aliens into the United States, and submit a report to Congress.**

The department failed to meet the November 25, 2003, submission deadline for the report. A draft was sent to State in December 2003 for comments. In February 2004 the draft was released to the Office of Management and Budget for review. The final report was delivered to Congress in July 2004. The report concludes that foreign nationals do not present a threat to the integrity of the visa process, that internal controls are robust and effective, and that the costs of replacing foreign nationals overseas with American employees would be astronomical. Our office has not had the opportunity to validate these findings independently.

- **Finally, the Act mandates that DHS submit a report to Congress, jointly with the Secretary of State, on the implementation of subsection (e), which relates to the assignment of DHS employees to embassies abroad, and conveying any legislative proposals necessary to further the objectives of subsection (e).**

During the course of our fieldwork for this inspection, we were unable to find any official who had any knowledge of who would prepare this report, or when, or what it might be expected to contain.

Our inspection report contains 12 recommendations. BTS has concurred with eleven and is making progress towards implementing improvements. On the twelfth recommendation, our office found that the counter-arguments BTS provided were reasonable and persuasive, and we closed the recommendation.

One important issue we highlighted in our report is the difficulty a domestic agency faces trying to manage an international workforce under the constraints of the Civil Service personnel system. We noted that the former INS sometimes found it difficult to control which employees were assigned where overseas, and for how long, and to guarantee the employees overseas appropriate jobs back home when their overseas tours were completed. In our report we noted that several agencies that wrestled with this in the past, such as the Departments of Agriculture and Commerce, have developed a foreign service of their own under enabling legislation from the Congress. We pointed out that legacy responsibilities and the new Visa Security Officer obligation meant that DHS would in the future have a significant and dispersed overseas workforce. We suggested that DHS study the personnel management techniques used by other agencies with global workforces and evaluate ways to facilitate the overseas rotation and domestic return of DHS employees.

## THE VISA WAIVER PROGRAM REPORT

Turning now to the Visa Waiver Program: the VWP enables most citizens of 27 participating countries to travel to the United States for tourism or business purposes for 90 days or less without obtaining a visa. The program has always involved a balancing of the security risks against the benefits to commerce, tourism, foreign relations, and the workload of the Department of State (DOS). The fundamental premise of the program is that millions of persons, about whom we know little, can be exempted from the Department of State's ever more rigorous visa procedures and permitted to board U.S.-

bound planes where, at a port of entry, they will be very briefly interviewed by a DHS employee before being allowed to enter the U.S. (Only about ten percent of the VWP admissions take place at our land borders.) Zacharias Moussaoui and Richard Reid traveled to the United States using the Visa Waiver Program.[1]

There were approximately 13 million VWP admissions to the United States in 2002 and 2003. These represent only three percent of all admissions to our country. Travelers with visas comprise another five percent of the total. U.S. citizens and U.S. permanent residents were 55 percent of the total, and the rest – 37 percent – were Canadians and Mexicans, who are exempted from the visa requirement by other U.S. laws.

Our office looked carefully at VWP security issues and made recommendations to strengthen it. We found timeliness and accuracy problems when stolen passport data was entered into lookout systems, failures to check lookout systems when passports were presented, and disorder in the management of the stolen passport program. We found that the lost and stolen passport problem is a critical security problem associated with the visa waiver program. Our country is vulnerable because gaps in the treatment of lost and stolen passports remain. To be specific:

- DHS does not have a process to check new lost and stolen passport information against existing entry and exit information to determine the scope of fraudulent use of visa waiver passports.

- There continue to be problems with how the United States obtains lost and stolen passport information from visa waiver program participating governments and a need for a more regularized collection of such information. In at least one foreign country visited during our fieldwork, we observed substantial uncertainty over how to report thefts of its passports to our country.

- Even when lost and stolen passport data is properly reported to the U.S. and entered into U.S. lookout systems, some passports reported as stolen may still be used to enter the United States. We have confirmed that stolen passports have been used to enter the United States, even after September 11, 2001.

- In cases where inspectors identify stolen VWP passports presented by applicants who are denied entry, the fraudulent documents sometimes are returned so that the travelers may use them to return to their country of origin.

Our report contained 14 recommendations for corrective action in response to the vulnerabilities we observed in the program. Subsequent to the issuance of our report, the Border and Transportation Security (BTS) directorate has responded to our report and agreed to take corrective action in response to each recommendation.

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[1] Habib Zacarias Moussaoui used a French passport to enter the country on February 23, 2001, whereupon he began flight training in preparation for the September 11 attacks. Richard Reid used a British passport on December 22, 2001, to board a flight to the US on which he attempted to detonate explosives concealed in his shoes.

The most significant corrective action responsive to the concerns stated in our report is the processing of visa waiver travelers through U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT). As implemented in December 2003, US-VISIT excluded visa waiver travelers from its scope. We strongly recommended that visa waiver travelers be added to the US-VISIT program because of the additional screening, biometric identification, and exit control features it offers. On April 21, 2004, DHS Secretary Ridge announced that BTS would begin to process visa waiver travelers through US-VISIT "…by September 30, 2004." We believe the Department is on track with its plans to meet this deadline.

A second and equally important concern from our report was the ill-defined process by which information about a country's stolen and lost passports are reported and disseminated among other countries. I should note that this is a two-way street, and our government has never had a systematic method to inform other governments of the passport numbers of the U.S. passports that have been reported lost or stolen. We were therefore pleased to learn six weeks ago of the new INTERPOL plan to consolidate and regularize reporting of lost and stolen passports. This initiative should be of great benefit when fully implemented to permit automatic checking from the checkpoint or port of entry when all nations participate. It will likely require many years before full implementation of the INTERPOL stolen passport database, however, and therefore the United States still needs to take the steps we have outlined to reduce our vulnerability.

Our report also reported that the statutorily required country reviews were delinquent, a deficiency that has since been corrected. We expect that the country review reports will be released in October.

Even with the completion of the corrective actions we recommended, the visa waiver program will always pose some security risk. As we said in our report, "The visa is more than a mere stamp in a passport. It is the end result of a rigorous screening process the bearer must undergo before travel." By the end of the visa interview DOS has collected and stored considerable information about the traveler and the traveler's planned journey. Consular Affairs has introduced biometric features into its visas, shares data from its visa records with DHS port of entry systems, and significantly increased the percentage of applicants subject to a careful interview – State now interviews approximately 70 percent of all applicants, we were recently informed. In contrast, the visa waiver traveler is interviewed for the first and only time at the POE, the time devoted to each examination is brief, and little information about the traveler is collected and maintained. Moreover, the POE inspector has less familiarity with the language and documentation of the traveler than would a consular interviewer during the visa process.

During the course of our review of the visa waiver program, we obtained information that stolen blank passports from other countries were later used to enter the United States, sometimes on multiple occasions. On the basis of this information, I asked that our Office of Inspections, Evaluations, and Special Review begin a review into this information. We do not comment on ongoing work, but we can advise you that the

review has obtained additional documentation that, while still subject to further analysis, strongly suggests that stolen passports can be used successfully to enter the United States today. We will report to you on the further results of this review as soon as we are able.

**Conclusion**

Mr. Chairman, this concludes my prepared statement. Again, I appreciate your time and attention and welcome any questions you or Members of the Committee might have.