

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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November 21, 2013

The Honorable Robert Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: For the hearing record, concerning the November 13, 2013 hearing on:
Implementation of an Entry-Exit System: Still Waiting After All These Years

Dear Chairman Goodlatte:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, requests that this statement be entered into the record on the hearing entitled "Implementation of an Entry-Exit System: Still Waiting After All These Years."

An entry-exit system at U.S. borders was originally conceived as a means to determine whether nonimmigrant visitors to the United States had departed the country within their authorized period of stay in order to ensure the integrity of our immigration system. An automated entry-exit system at all ports of entry was mandated in 1996, and a biometric exit system was required in 2001. While the entry portion of this system was implemented through the US-VISIT program in 2006, three major obstacles have continued to impede the full implementation of the exit component for the system: the impacts on the ports of entry, cost, and insufficiently developed technology.

Those issues still remain, and the Chamber believes that additional mandates and deadlines for implementation of biometric exit should not be enacted until the Department of Homeland Security (DHS) and Congress can be sure that appropriate, effective technologies can be deployed at ports of entry at reasonable cost and with as minimal impact to trade and travel at our borders as absolutely possible.

Impact on Trade and Travel

Implementation of an exit system must take into consideration the impact on trade and travel and the potential immigration benefits. The creation of any exit system must be designed with a concept of operations¹ that will take into account the need to preserve the value of our unique trade relationship with Mexico and Canada and international travel to the U.S. The U.S. conducts nearly \$1.2 trillion annually in trade with Canada and Mexico, resulting in over \$3.2 billion in trade daily with its North American neighbors. Trade with Canada and Mexico supports nearly 14 million U.S. jobs nationally – supporting tens of thousands of jobs in each of the 50 states.² Further, in 2012, the U.S. welcomed 66.6 million international visitors. Of those, approximately 29.6 million were from overseas markets, and 37 million were from Canada and Mexico, which directly supported about 1.1 million U.S. jobs and wages of \$27.7 billion.³

Further, an exit system should not increase congestion at our ports of entry beyond current levels, and the system should incorporate recent border improvements, such as dedicated commuter lanes and pre-registration of travelers, to reduce congestion. Today, border wait times at the five busiest southern border POEs average over one hour, which results in an average economic output loss of \$116 million per minute of delay. In 2008, these delays cost the U.S. economy nearly 26,000 jobs, \$6 billion in output, \$1.4 billion in wages, and \$600 million in tax revenue *annually*.⁴ At the air POEs 30 percent of overseas passengers wait in customs processing lines longer than 30 minutes, and time spent by visitors standing in an entry line, rather than spending money in our economy, costs travel-related businesses \$416 million each year.⁵

In addition to evaluating the impact on travel and trade, Congress and DHS must work with stakeholders through every step of developing an exit solution in order to help circumvent impact to legitimate commerce. Further, each mode of entry presents its own unique obstacles. The Chamber believes that the collection of biometrics at any POE is an inherently governmental function (similar to the collection of biometrics upon entry), and we have strong concerns against any efforts to force the private sector to bear the burden of collecting this information. Moreover, in the air environment, airlines and airports must be partners to ensure that an exit system does not further delay our nation's complicated system of air travel.

Additionally, airports, which are already required to furnish federal inspection areas for arriving passengers, must be engaged equally in the development and deployment of any exit

¹ Concept of operations can be defined as design and configuration of a solution within the existing process or required changes within that process to support the solution.

² See "NAFTA Triumphant: Assessing Two Decades of Gains in Trade, Growth, and Jobs", U.S. Chamber of Commerce, November 16, 2012.

<http://www.uschamber.com/sites/default/files/reports/1112_INTL_NAFTA_20Years.pdf>

³ "Gateway to Jobs & Growth: Creating a Better Traveler Entry Process," U.S. Travel Association, September 18, 2013. <<http://www.travelersvoice.org/sites/default/files/gatewaytojobsandgrowth2013.pdf>>

⁴ U.S. Department of Commerce International Trade Administration, "Improving Economic Outcomes by Reducing Border Delays: Facilitating the Vital Flow of Commercial Traffic Across the U.S.-Mexico Border," Accenture in association with HDR Decision Economics and Crossborder Group Inc., March 2008.

⁵ "Gateway to Jobs & Growth: Creating a Better Traveler Entry Process," U.S. Travel Association, September 18, 2013. <<http://www.travelersvoice.org/sites/default/files/gatewaytojobsandgrowth2013.pdf>>

infrastructure which may require some reconfiguration of their facilities. At the land borders, the stakeholders are many – state and local governments; truckers, shippers, importers and exporters; employers and travelers; bridge and tunnel owners and operators; transportation and infrastructure planners; environmental regulators and advocates; and the governments of Canada and Mexico. Input from these stakeholders is imperative in determining a concept of operations that will have the least negative impact at the border.⁶

Further, the Chamber and its members have strong concerns with increasing fees on international travelers and on trusted traveler programs. Additional fees will only add to the long list of deterrents for international travel to the United States, which would impact the \$2 trillion international travel and tourism market. The private sector should not continue to be charged fees on top of their taxes to pay for a program that is clearly a federal responsibility.

Costs

In addition to the impact on stakeholders, DHS should also consider the costs of development and deployment of an exit system. Recently DHS testified that it has completed a full biographic entry-exit system at air and seaports, and, with new pilots with Canada and discussions with Mexico for data exchange, is well on the way to developing a biographic entry-exit system for land borders.⁷ DHS has indicated that they identify hundreds of potential overstays via their enhanced biographic system each day. While biometric technology may provide an additional layer of identity verification, we are unsure of how many additional visa overstays might be identified over the biographic system, nor whether that additional “layer” will reasonably justify the cost of instituting physical departure controls at our ports of entry.⁸ Further, biometric entry-exit matching will only be available for individuals who entered the United States since 2003, when US-VISIT began to implement biometric entry processes at all ports of entry. Individuals who entered the United States prior to this time will have no matching biometric entry, and continued improvement of biographic processes will be necessary.⁹

⁶The challenges of land border implementation will be discussed further later in this statement.

⁷ See Testimony of John Wagner, Acting Deputy Assistant Commissioner of Field Operations, U.S. Customs and Border Protection before the House Committee on Oversight and Government Reform, November 14, 2013, <http://www.dhs.gov/news/2013/11/14/written-testimony-cbp-house-oversight-and-government-reform-subcommittee-national>.

⁸ In his written testimony for this hearing before the Committee, DHS Assistant Secretary for Policy David Heyman noted that DHS is engaged in an effort to establish a “biographic baseline” of its entry/exit matching program to determine the success of future biographic enhancements and any biometric exit solutions. See, Testimony of David Heyman, p. 8-9. < <http://judiciary.house.gov/hearings/113th/11132013/Heyman%20Testimony.pdf>.>

⁹ A 2010 Backgrounder from the Heritage Foundation, “Biometric Exit Programs Show Need for New Strategy to Reduce Visa Overstays,” argues that while biometric exit would improve identification of those who may have overstayed their visas, the majority of undocumented aliens entering through Ports of Entry do so at the land border rather than airports. The report also notes that improved determination that an alien has overstayed does nothing more to ensure the removal of that alien than the current biographic system. Apprehension and removal will still require ICE personnel to investigate the current whereabouts of the individual (which may be months or years after the initial entry), and attempt to locate them for apprehension. As stated by Julie Myers Wood in her testimony, the effectiveness of any exit system is only as good as the resources devoted in doing something about those who overstay.

While costs associated with biometric technologies have decreased in the last 10 years, it is difficult to estimate the total cost of deployment of any solution until a fully-vetted concept of operations for an exit system at air and seaports is developed. It is difficult to imagine that any system that could include e-gates or kiosks located in close proximity to or at the jet ways would not involve infrastructure changes at the airports.¹⁰ Additionally, unstaffed installations may not capture biometrics correctly, causing errors in the data collected. To ensure the accuracy of data, additional personnel could be required, which could represent the largest potential cost for implementation of such a system.¹¹

Given these potential costs and the current fiscal environment, the willingness of policy makers to fully fund a universal biometric exit system is unknown. Congress has allocated requested funding to DHS for required pilot programs and reports in the past, but has neither fully costed nor appropriated funds for full deployment of a biometric exit system. It is arguable that DHS has never provided Congress with a full cost estimate, but given that to date there has not been a fully justified cost estimate, it is difficult to understand why, in a time when Congress is looking to cut spending, it would mandate that DHS deploy an undesigned, untested system so quickly and at an unknown cost.

Need for Testing and Evaluation

As stated above, the design and configuration of any biometric exit solution within the current departure process, or determining required changes to that process at ports of entry to support the solution,¹² will be critical to evaluating its costs and impacts. For this reason, DHS should be given the resources and time necessary to test and evaluate various potential exit solutions to determine the most effective and cost efficient and least disruptive concept of operations for the various modes of travel – air, sea and land. New mandates and deadlines that are unreasonable and do not take into consideration the time needed to properly test and evaluate solutions before deployment have the potential to cause serious disruptions to travel and trade at our ports of entry, costing millions of dollars to the economy.

Assistant Secretary Heyman stated in his testimony that CBP and DHS Science & Technology are currently undertaking a program to test and evaluate various technologies for the air environment, and more importantly, concepts of operations around those technologies, at a

¹⁰ The jet way is the only location at international airports for a biometric exit solution that will ensure that once identified, the traveler actually boards the aircraft for departure. This is the same reason that CBP requires the final airline passenger departure manifests are sent immediately prior to closure of the cabin doors. Other potential recommended placements, including at TSA checkpoints, do not ensure that the passenger does not later depart the airport without boarding the aircraft (or a different passenger departs with the claimed identity). CBP noted these issues in its evaluation of the 2009 airport pilots.

¹¹ Kephart proposes cost savings from decreased reliance on CBP Officers to oversee an exit solution, using e-gates and/or kiosks. However, many air Ports of Entry (POEs) are currently understaffed for their role in processing passengers for entry. Any personnel needed for an exit solution must be additional personnel hired and deployed, rather than redeployed from processing admissions. Currently, personnel costs comprise at least 80 percent of the CBP budget, and therefore, costs associated with additional personnel for the number of exit configurations needed for the total number of international departure gates would likely be a significant cost factor for an exit solution. In the 2009 exit pilot, the jet way pilot staffed with CBP officers required seven officers per gate.

¹² Also known as a concept of operations.

new airport test facility. We applaud DHS for recognizing the need to test new technology before possibly implementing it in the field at the airports. Rushing a solution before it is thoroughly vetted and tested in order to meet an arbitrary deadline is a recipe for chaos.

This testing and evaluation must be conducted *before* pilots are implemented at any actual airport or seaport. Proposals in legislation to pilot these new technologies first at the nation's largest and busiest ports are illogical. The purpose of a pilot is to test a new process, technology, or operation to determine its effectiveness and impact. Impacts and glitches are expected in pilots in order to make changes and improvements prior to full deployment. The largest and busiest ports already experience long lines – delays and congestion are extensive, and flight connections are already some of the tightest. Small changes to the current flow of travelers can have significant impacts on delays and processing times. Rather than deploying to the largest ports first in an effort to cover as many travelers as quickly as possible, any exit solution should be phased in beginning with smaller locations until it is determined that the solution will be workable at the largest facilities.

The Land Border is Different

Perhaps the most important point to make regarding biometric exit is to re-emphasize that any solution developed for air or seaports will be fundamentally different from that required for the land borders. At airports and most passenger-processing seaport facilities, passengers are in controlled environments with specific flows and processes for departures, and traveler data is available long before a traveler arrives at the facility. However, the land border ports of entry have no existing exit controls and, for most travelers, no advance information prior to their arrival at the port of entry.

Most land POEs also already face severe space constraints. The 2002 Data Management Improvement Act (DMIA) task force found that about 70 percent of land POEs already had less than three-quarters of the space they needed – making it very difficult to construct new traffic lanes and facilities for an exit system.¹³ Many POEs are also limited by geological structures, transportation infrastructure, or private land.¹⁴ While some of the busier land POEs have been updated over the years, many smaller POEs remain unchanged from 20 to 30 years ago; major projects like the San Ysidro POE remain unfinished due to a lack of annual appropriations. In addition, due to various statutes and regulations, including the requirements of the National Environmental Protection Act (NEPA), any new construction for exit facilities at land borders would require extensive evaluation and study before it could begin.

In addition to the infrastructure challenges, the technology challenges at the land borders are also greater. Land border ports are primarily designed to process vehicles, not individuals. Some ports of entry (not most) also have developed specific indoor facilities to process pedestrians, and while some of these facilities have recently been redesigned to more approximate the arrivals area at major airports, many still are simply large waiting rooms wedged into existing facilities. However, as stated above, these structures only exist for entry to

¹³ I served on the DMIA taskforce for its duration from 2001 to 2005.

¹⁴ GAO-07-248, December 2006.

the country – upon departure, most travelers encounter no physical inspection presence or infrastructure – they simply continue traveling at highway speeds past a sign that tells them when they have crossed the physical border. Because there are currently no exit controls at the land border, *any* new requirements for travelers to slow or stop will inherently cause delays and backups.

Furthermore, we are unaware of any technology that has been tested and can verify the biometrics of multiple passengers in a moving vehicle. Nor are we aware of technology that can determine whether any specific individual in a vehicle might require biometric exit verification or not (to date there are no proposals to collect biometrics on United States citizens upon departure). Or whether there is technology that can detect the biometrics of additional individuals concealed in a vehicle attempting to evade exit verification. All biometric technologies currently in place at ports of entry require compliance by the traveler and proximity to the biometric reader of several feet at most.¹⁵ In addition, the environment at the land borders presents significant challenges for many technologies. Temperatures at southern border ports of entry can range from freezing to well above 100°F.¹⁶ At the northern border temperatures dip below -40°F in some locations. Therefore, any proposed technology and/or personnel solutions for the land border must be tested and evaluated, using existing DHS land border test facilities, before any deployments are made to actual ports of entry.¹⁷

The benefits of any exit deployments to the land borders must be weighed against all potential costs. Initially, information sharing with our continental neighbors, Canada and Mexico, holds the best hope for obtaining biographic exit information at the land border with little to no disruption to travel and trade.

¹⁵ Ms. Kephart, in her testimony, suggests building on existing trusted trader and trusted traveler programs at the land borders. It is true that participants in these programs must provide their fingerprints (and irises if they use the air portion of the programs) to CBP to participate in the program, and the systems use RFID readers in their trusted traveler documents at the ports of entry to pre-position their data for the inspecting officer. However, there currently are no facilities for verification of biometrics at the land border vehicle or commercial primary processing lanes. Individuals' identities are validated by visual inspection by the officer against their travel document and the photograph in their program record called up for the officer on the primary inspection client screen. There is currently no embedded biometric data in the trusted traveler's document itself, and therefore, without a physical biometric capture upon departure, no biometric match would be able to be made for even this population.

¹⁶ In 2009, at two land POEs United States Citizenship and Immigration Services implemented a pilot program for H-2A (agriculture) and H-2B (seasonal) temporary visa holders. Upon the visa holder's last departure from the U.S. the individual had to turn in their I-94 card and input their biometrics into a kiosk at the POE. This program was discontinued in 2011 and deemed unsuccessful due to lack of compliance and implementation issues (kiosks started melting in the sun). 76 Fed. Reg. 60518-60519, September 29, 2011. <http://www.gpo.gov/fdsys/pkg/FR-2011-09-29/html/2011-24716.htm>

¹⁷ Additionally, like the airports, it makes no logical sense to pilot any deployment at the largest and busiest land border ports of entry first. Average wait times at the US-Mexico border for entry to the United States are over one hour currently, with frequent waits of several hours during peak times for many of the largest ports. If departure wait times reached even a fraction of this time, it would cause not only substantial disruption to travel and trade, but multiply the current environmental and pollution impacts of the thousands of idling and slowed vehicles at the ports.

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Conclusion

While the creation of a biometric exit system to enable the United States to better determine whether foreign nationals have complied with their terms of admission to the United States is a laudable goal, as the previous discussion demonstrates, there are serious and valid reasons why such a system has not yet been put in place. The Chamber does not believe that such a system is impossible to implement, but we maintain that a thorough evaluation of the benefits of such a system to the integrity of our immigration laws must be weighed against the potential costs of implementing the program and the impact to legitimate travel and trade at our borders before plotting a path forward.

We thank you for your consideration of these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Randel K. Johnson", with a long horizontal flourish extending to the right.

Randel K. Johnson
Senior Vice President
Labor, Immigration and
Employee Benefits

cc: Members of the Committee on the Judiciary