



AIR TRANSPORT ASSOCIATION

■ **JAMES C. MAY**
PRESIDENT AND CEO

March 15, 2007

The Honorable Michael Jackson
Deputy Secretary
Department of Homeland Security
Nebraska Avenue Center, NW
Washington, DC 20528

Dear Secretary Jackson:

As you know, the Air Transport Association (ATA) and its member airlines have a well-established history of partnership with the Department of Homeland Security (DHS) in the implementation of security and passenger processing initiatives. Since September 11, this partnership has achieved many positive results. We are currently encountering a situation, however, where this process may be in jeopardy as it relates to the development and implementation of an exit control system by US-VISIT.

By way of background, under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress directed the U.S. government to implement an exit control system: ...Not later than 2 years after the date of the enactment of this Act, the Attorney General shall develop an automated entry and exit control system that will collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States... Since 1996, Congress has repeatedly tasked the government with the development of an entry/exit control system and, through subsequent legislation, firmly established the responsibility for collecting these records squarely with the government, not the airline industry. Recent events have raised our concern that an effort may be underway to shift in some way this responsibility to the airlines in an inefficient and burdensome manner without the benefit of mutual consultation.

On January 29, 2007, ATA was invited to a meeting at Transportation Security Administration (TSA) headquarters to discuss the DHS decision to move forward with the implementation of US-VISIT Biometric Exit at all airports and seaports. At that meeting, DHS said that it was seeking to work collaboratively with the industry to develop a viable solution to collect biometrics for all departing non-U.S. air and sea passengers. ATA welcomed this opportunity to provide input into this process and quickly engaged representatives of the airlines with significant expertise in developing innovative and efficient ways to process passengers while complying with security and other governmental requirements.

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The Honorable Michael Jackson
March 15, 2007
Page 2

We now have reason to believe that some elements within DHS intend to short circuit our consultations. Further, we understand that it is expected the process will move directly to a Notice of Proposed Rulemaking (NPRM) requiring the airlines to collect the biometrics at our check-in counters, placing the burden of compliance on the carriers at one of the most constrained points in the passenger processing sequence. In our judgment, such an approach would be extremely ill advised. I sincerely hope you will direct that the industry be fully engaged in a transparent effort to find a more practicable approach.

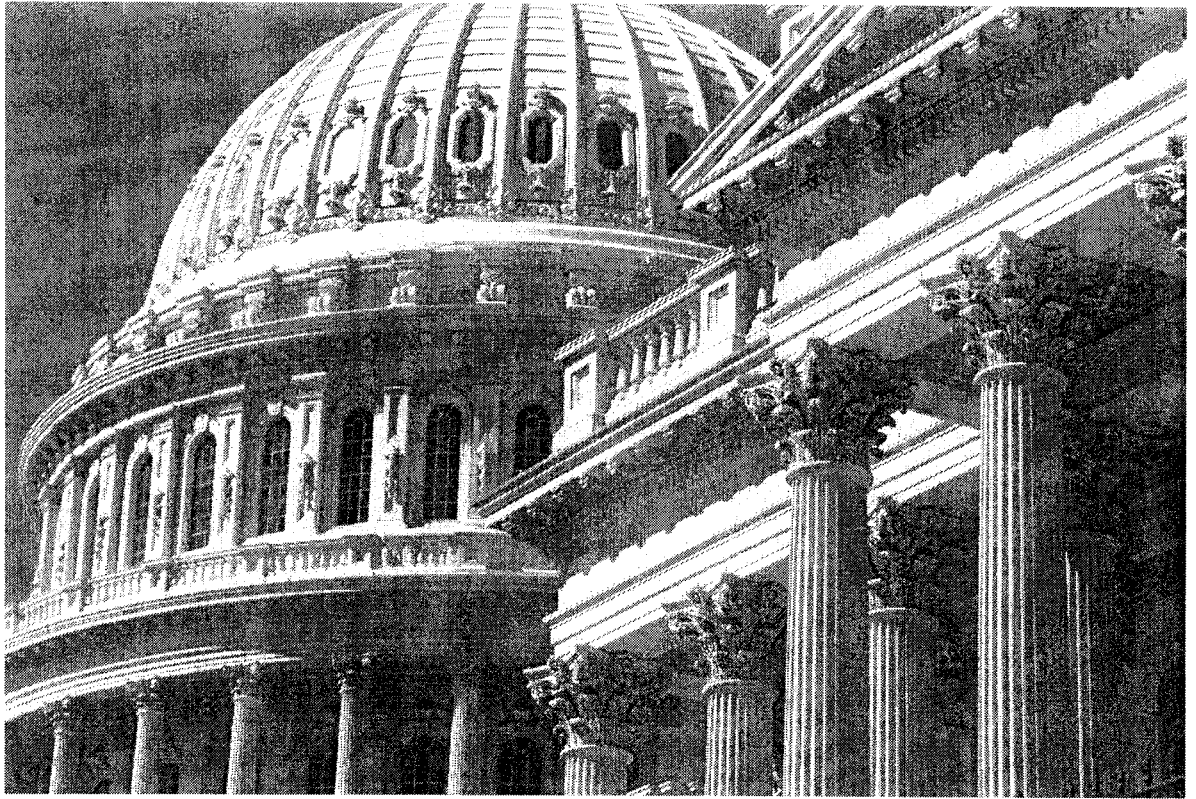
We are also concerned with the apparent initiative to link US-VISIT Biometric Exit with the Secure Flight/AQQ process also being developed along a separate track. While we welcome the move toward a "single window" approach, we would like to better understand how these seemingly distinct programs can be successfully integrated without creating unnecessary passenger processing delays. As you know we believe that fully integrated data collection processes, which eliminate duplicative and unnecessary interactions, are essential. Successful implementation of these processes demand industry/government partnership.

Thank you for your thoughtful consideration of our concerns. I would, of course, be happy to discuss this matter with you if that would be helpful.

Sincerely

A handwritten signature in black ink, appearing to read "James E. ...". The signature is written in a cursive style with a large, sweeping initial "J" and a long, horizontal tail that curves downwards at the end.

US-VISIT/Exit Program



Statement of James C. May
President and CEO
Air Transport Association of America, Inc.
before the
Subcommittee on Border, Maritime and Global Counterterrorism
of the
House Committee on Homeland Security

June 28, 2007



AIR TRANSPORT ASSOCIATION

Madam Chairwoman and members of the subcommittee, thank you for providing me the opportunity to appear before you today to discuss the US-VISIT/Exit Program.

This is the second decade of the congressional mandate to the executive branch to develop a system to record the entry and exit of foreign visitors. Congress has repeatedly signified in half-a-dozen laws since 1996 that this system was to be a governmental responsibility. Indeed, until only a few months ago, the Department of Homeland Security (DHS) had acted accordingly. The indications of that have been unmistakable. US-VISIT/Entry, which was implemented in early 2004, is an entirely governmental program. Moreover, the recently concluded US-VISIT/Exit Pilot Program was also exclusively governmental.

DHS and the airlines closely collaborated in developing both the US-VISIT/Entry Program and the US-VISIT/Exit Pilot Program. We repeatedly offered to work with DHS to develop a permanent US-VISIT/Exit Program and were assured that we would have the opportunity to continue our collaboration with DHS. We looked forward to that. Those pledges, however, have not been fulfilled. DHS recently informed us that it had decided, regrettably without prior consultation, to require airlines to collect the biometric information for US-VISIT/Exit.

This is very bad news for airline customers and it will get worse for them in the future. Airlines are increasingly offering their customers the opportunity to check in before they get to the airport, through online and other communications technology. Customers appreciate the ease of pre-airport check in and, consequently, airlines are working to minimize airport-based transactions. This is 21st century customer service – more precisely, customer-demanded service. DHS, in contrast, envisions a system of continued airline physical interaction with every customer at the airport. This is not where the airline industry is headed, and the gulf between the capabilities of emerging technology and the retarding effect of DHS policy will only widen over time. The industry should not be forced to abandon its broadening efforts to harness technology that promises to ease the air traveler's experience.

In January 2004, I testified before the then-Subcommittee on Infrastructure and Border Security just as US-VISIT/Exit was beginning to be tested at 12 airports-of-entry around the United States. I said at that time, and reiterate today, that the Air Transport Association (ATA) members support the Department of Homeland Security in its efforts to create and implement US-VISIT. I also said then, and reiterate today, that airlines should not be involved in the collection of biometric data for the exit element of the program. That position is faithful to a decade-long congressional design that the government be responsible for both exit and entry information collection, and it will assure airlines the freedom to develop even more innovative ways to improve passenger check in.

LEGISLATIVE HISTORY OF THE ENTRY/EXIT INFORMATION COLLECTION SYSTEM

The entry/exit information collection system has always been a federal responsibility, dating back to when Congress first assigned the task to the Attorney General in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law No. 104-208) ("IIRIRA"). Section 110 of IIRIRA directed the Attorney General to develop an automated entry and exit control system to collect the records of arrival and departure from every non-U.S. citizen entering and leaving the United States. This automated system would match the arrival records with the departure records, enabling the Attorney General to identify visa overstays. In addition, the automated system was expected to report on the number of departure records collected by country of nationality, the number of departure records matched to arrival records by country of nationality and classification as an immigrant or nonimmigrant, and the number of travelers who arrived as nonimmigrants, or under the Visa Waiver Program, who failed to depart the country at the end of the authorized period of stay.

In June 2000, Congress amended Section 110 of IIRIRA in the Immigration and Naturalization Service Data Management Improvement Act (Public Law No. 106-215) ("DMIA"), which set forth specific dates and other requirements for the Attorney General to follow in introducing an automated entry/exit system. In addition, DMIA mandated the establishment of a task force comprised of both government and private-sector groups to evaluate how the Attorney General could effectively carry out Section 110 of IIRIRA and how the United States could improve the flow of traffic at its ports of entry through

enhancing or modifying information technology systems. ATA was appointed to this task force by the Attorney General.

In October 2000, the Visa Waiver Permanent Program Act (Public Law No. 106-396) was enacted. It directed the Attorney General to develop and implement an entry/exit control system for Visa Waiver Program travelers.

Following the events of 9/11, Congress enacted the USA PATRIOT Act (Public Law No. 107-56) in October 2001. Sections 414 and 415 of the Act specifically addressed visa integrity and security, and the participation by the Office of Homeland Security in the entry/exit development and implementation process. In addition, the PATRIOT Act added two considerations: the "utilization of biometric technology" and "the development of tamper-resistant documents readable at ports of entry" to the entry/exit process.

Finally, in 2002, Congress enacted the Enhanced Border Security and Visa Reform Act (Public Law No. 107-173), which reiterated the requirements of the PATRIOT Act for an entry/exit process and directed the Attorney General to fund the development and implementation of the program.

Each of these acts unmistakably contemplated that the executive branch would be responsible for exit duties. None specified that the airline industry was to be brought into that process. Given the urgency with which Congress has approached the issue of entry and exit information collection, most recently expressed in section 7208 of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law No. 108-458), that is a very telling omission. DHS – quite simply – does not have a congressional mandate to force airlines to assume a function that Congress for over a decade has intended federal border control authorities to perform.

US-VISIT

Following the creation of the Department of Homeland Security, the responsibilities of the Attorney General to develop and implement an entry/exit program transferred to DHS and the Undersecretary for the Office of Border and Transportation Security, Asa Hutchinson. Under his leadership, the US-VISIT Program Office began development and deployment of Entry.

US-VISIT Entry: In my January 2004 testimony, I complimented DHS, the US-VISIT Program Office and the Bureau of Customs and Border Protection (CBP) for working together and cooperatively with the airline industry to implement Entry. Their attention to careful planning, in full consultation with all interested parties was first rate.

My January 2004 testimony also emphasized the need for DHS to adhere to the planned schedule for deploying US-VISIT at the northern and southern land borders. Though DHS has implemented Entry for those border crossers who are sent to secondary, deploying an Exit strategy has been postponed for the foreseeable future. While we are pleased to work with DHS and our national security leaders to participate in these programs, until US-VISIT – both Entry and Exit – is deployed nationwide at all border crossings, the system will not be optimally effective in enhancing our national security.

The inability of DHS to fully deploy US-VISIT at our land borders raises an important overall question. Why insist on the collection of biometrics at all, if DHS will never truly be able to cross reference who is entering and leaving the United States through this program? Airlines are already required by law to transmit biographical passport information to DHS for every arriving and departing international passenger. If these records are accurately matched – which I believe DHS is doing today – doesn't this satisfy the need to know who is overstaying their visas?

US-VISIT Exit: As with the entry process, we appreciated the open communications we had with DHS in the development and deployment of the Exit Pilot. Unfortunately, the Exit Pilot was never developed with the same rigor as was used to develop and deploy Entry. Rather than rely on a mandatory process analogous to Entry, DHS designed the Exit Pilot as a voluntary program, assuming departing foreign visitors would know that they were expected to either locate on their own randomly placed airport kiosks

and “check out” or have US-VISIT employees collect the biometrics using a handheld device at departure gates as passengers were trying to board a departing flight.

After almost two years of testing at twelve airports, DHS was supposed to share its Exit Pilot Report with the airline industry. We understand that such a report was sent to the Secretary of DHS in December of 2005.

We are still waiting to see that report.

After almost a year of silence, ATA was contacted in December 2006 and told that DHS was ready to begin discussions with the industry to jump-start the US-VISIT/Exit process. In January of this year, ATA was invited to participate in an industry wide meeting hosted by US-VISIT, CBP and the Transportation Security Administration (TSA) to discuss how DHS could work in partnership to develop an Exit solution that would meet the legislative mandates but fit within the industry’s evolving business processes. The assurances of cooperation we received at the January meeting were emphasized several more times in subsequent meetings.

After specifically being told that DHS/US-VISIT would be seeking our input, we learned that DHS had made a unilateral decision to force the airlines to collect a biometric within our check-in process. In addition, DHS advised the industry that it planned to issue a Notice of Proposed Rulemaking (NPRM) to offload its responsibility for this program to the airline industry. In choosing that course, DHS has disregarded the two-year-long Exit Pilot Program by selecting an option that it has never tested.

DHS says that this unilateral decision was made because it best fits into a “business plan.” Who’s business plan? What criteria were used to make this decision? Was Congress consulted prior to the decision being made? Why wasn’t the industry consulted?

Moreover, DHS claims that it has been consulting with the airline industry and that they are working with us to develop an Exit strategy. Regrettably, this is not the case. Perhaps had that occurred, we would not be here today.

AIRLINE INDUSTRY PASSENGER SERVICE CONCERNS

In addition to its unexplained departure from clear, unbroken legislative policy, DHS’ decision will impose new burdens on airlines and their customers at airports, at a time when carriers are working hard to simplify, and thereby ease, passenger check-in processes. The check-in process of today is *not* static; it is evolving and increasingly migrating away from the airport setting.

Today, approximately 30 percent of passengers check in online and that proportion is growing. Because of its popularity and efficiency, airlines are implementing procedures and spending significant revenue to expand their off-airport check-in capabilities to include the use of PDAs and cell phones.

Injecting an at-airport physical process, which the DHS decision will do, into this customer-driven, electronic environment will be a costly step backward for both passengers and airlines. This will create lengthier lines at airline check-in counters and kiosks, which will mean delays for customers, irrespective of their citizenship.

DHS says that collection of the biometrics at check in will only add one or two seconds to the check-in process. This calculation does not track the experience of collecting biometrics during the Entry process, which takes between 10 to 15 seconds when it is being preformed by a trained CBP officer. Outbound air travelers, of course, will not possess that expertise.

Finally, and perhaps more importantly, the U.S. Government will be abdicating its role in the immigration/security process and, thereby, jeopardizing the integrity of that process.

POSSIBLE ALTERNATIVE

DHS' decision to forgo employing either of the methods that it tested in the Exit Pilot Program complicates the situation. Nevertheless, a solution is readily available to DHS. Some point in the security screening at the airport of a departing foreign visitor offers the most logical location for collection of biometric information. The Transportation Security Administration has been responsible for screening for over five years; the agency has complete control over it. TSA has presumably examined the most efficient ways to adjust that process. Adding biometric information collection to that process can be accomplished seamlessly. Indeed, TSA's plan to assume control of identification document and ticket verification at airport security check points would facilitate the speedy processing of passengers subject to the US-VISIT/Exit Program.

ATA's support for an Exit solution designed in conjunction with TSA security screening dates back to our appointment on the Data Management Improvement Task Force. In the December 2002 DMIA Task Force Annual Report to Congress, the Airport Subcommittee Report specifically states that "the passenger exit process, which will be a new component of U.S. international travel, must be given consideration specific to its operational impact on aviation and existing facilities." That observation is as pertinent today as it was four and a half years ago.

CONCLUSION

ATA and its member airlines support a US-VISIT exit strategy that will enhance the U.S. immigration process, while at the same time not jeopardizing airline business developments intended to improve the travel experience for passengers.