

**Subcommittee on Border,
Maritime and Global Counterterrorism
of the
Committee on Homeland Security
United States House of Representatives
Testimony of
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Thank you, Chairwoman Sanchez, Ranking Member Souder, and distinguished Members of the Subcommittee. I am delighted to be here this afternoon and appreciate this opportunity to discuss the role the Department of State plays in the Visa Waiver Program (VWP) and the Electronic System for Travel Authorization (ESTA) under the new legislative requirements in Section 711 of "Implementing Recommendations of the 9/11 Commission Act of 2007" (the 9/11 Act).

While visiting Tallin, Estonia, in November 2006, President Bush announced his initiative to revamp and strengthen the VWP. As I have testified before, we welcomed the Congressional initiative in modernizing the VWP and the passage of the 9/11 Act last summer, particularly the additional VWP security measures. The new law not only strengthens the security framework of the program but it also creates a path for expansion of the VWP to include some of our closest allies. These enhancements will help secure U.S. borders and promote a safer international travel environment.

Together with our colleagues at the Department of Homeland Security (DHS), we strive constantly both to protect America's borders and to preserve America's welcome to legitimate international visitors. Section 711 of the 9/11 Act, "Modernization of the Visa Waiver Program," supports these efforts by making clear that the security provisions of the VWP must be enhanced before VWP participation can be extended to any additional countries.

With the advancement of both new security technologies and new security risks, we can and must ensure that for VWP participants and aspirant countries, we are able to assess the risks posed by individuals, not countries, as threats. The changes in the VWP in the 9/11 Act give us the tools to do this. The Department of State believes these enhanced security measures promote safer international travel.

I want to discuss briefly the role of the non-immigrant visa refusal rate in the context of VWP. Provisions requiring a non-immigrant visa refusal rate of less than three percent remain in the law, but the 9/11 Act gives the Secretary of Homeland Security a new waiver authority for countries with a refusal rate of at least three percent but less than ten percent in the previous fiscal year. This waiver authority is conditioned on a number of factors, including DHS implementation of the Electronic System for Travel Authorization (ESTA) and an air exit verification system, and the aspirant country's fulfillment of the enhanced security requirements of the new law. The Department of State monitors and reports on these visa refusal rates annually on our website at www.travel.state.gov.

For purposes of the VWP, the nonimmigrant visa refusal rate is based only on the number of visitor ("B") visa applications submitted worldwide, by nationals of

that country. (B visas are issued for short-term business or pleasure travel to the United States.) The Department adjusts the refusal rate to exclude the number of visa refusal cases that are overcome and subsequently issued. Adjusted visa refusal rates for nationals of current VWP countries reflect only visa applications submitted at U.S. embassies and consulates abroad. They do not take into account persons who travel to the United States without visas under the VWP. VWP country published refusal rates therefore tend to be higher than they would be if the VWP travelers were included in the calculation, since such travelers would in all likelihood have been issued visas had they applied.

The revised VWP legislation also gives the United States Government (USG) the means to increase security information-sharing with our closest allies. The USG is negotiating memoranda of understanding (MOUs) with all VWP governments, both existing and prospective. The USG now has signed MOUs with eight “VWP Roadmap” countries (The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia, and South Korea) and is negotiating one with Greece. We will negotiate similar agreements with current VWP countries next.

We are working closely on the second part of the MOU process, the expansion of information sharing with VWP members and aspirant countries. Terrorist and criminal information-sharing is a high priority. As part of State’s responsibility to obtain terrorist screening information from foreign partners, pursuant to Homeland Security Presidential Directive 6 (HSPD-6), we have signed agreements with five VWP countries and four “VWP Roadmap” countries. We are in varying stages of negotiations with twenty-five more countries, including seventeen VWP and six Roadmap countries, and we anticipate several more agreements will be signed within the next few months. The Secretary of State has delegated authority to negotiate

agreements to exchange criminal history information to prevent and combat serious crime jointly to DHS and DOJ. The successful conclusion of operational arrangements for an increased level of cooperation in both areas has been stimulated by the dialogue on VWP.

By statute, DHS has the lead for the VWP program and works in close coordination with the Department of State on all aspects of the program. The Department of State must consult with DHS regarding the designation of a VWP program country. We formally document this through the Secretary of State's nomination of a country for consideration for VWP membership. We are the primary conduit for guidance on VWP issues to our posts abroad. State Department officers at these posts, in turn, are the primary interlocutors with host governments, the travel industry, the media and public on issues related to VWP. We provide input on DHS's evaluations of a VWP aspirant country's law enforcement, immigration, and security cooperation, as well as during DHS's statutorily-mandated country reviews for both initial and continuing participation in the VWP. We have participated in the negotiations throughout the year with the "roadmap" countries on the VWP accession process, and have given them guidance on meeting the new statutory requirements.

We are fully engaged with DHS on the implementation of their ESTA, the electronic system through which VWP travelers will apply on-line for pre-approval to board a plane or ship bound for the United States. Those travelers denied an ESTA are instructed to make an appointment at their nearest embassy or consulate to apply for a visa. DHS has provided us with data that indicate that the number of ESTA denials will likely be less than one percent. We have used that data to project potential workload changes at VWP member country and aspirant posts. We anticipate that we would generally be able to absorb an increase in workload of one

percent without additional resources in most VWP countries with the exception of Japan and the United Kingdom, which send the largest numbers of VWP travelers to the United States. Even in the United Kingdom and Japan, only minor adjustments to resources would be needed to handle the workload caused by an ESTA denial rate of one percent or less, as predicted by DHS.

We worked closely with the Government Accountability Office (GAO) on their recent report on workload planning for VWP. We are doing contingency planning for ESTA denial rates much higher than those predicted by DHS and have looked at the resource requirements for rates of two and three percent. We agree with the GAO that an ESTA denial rate of above three percent could cause greater difficulty at some of our larger posts, but all of the models we have seen from DHS indicate that a refusal rate that reaches even one percent is unlikely. The Department already responds to staffing needs with a flexible and responsive workforce, and these increased staffing needs for this purpose can be met with the various staffing tools and strategies already in use, both in the short term, and in the long term. We will closely monitor post workload as ESTA is implemented and adjust resources and temporary assistance as needed. We will also send posts additional guidance about managing their applicant streams to assist those who are denied ESTAs and need to apply for visas. We have worked closely with DHS in the planning process for ESTA and will continue this collaboration. DHS has indicated they would consult closely with us on the need for changes to ESTA operations if screening outcomes are significantly different from those predicted.

We realize that with ESTA being a new and unknown process, some people may choose the surety of having a visa in their passport instead of applying for an

ESTA. However, the number of people who take this approach – and the size of the resulting workload increase – will depend largely on public perception of the certainty, effectiveness, convenience, and cost of the ESTA program. Therefore, we have worked closely with DHS, CBP, and Commerce to create a widespread and robust outreach program. ESTA information is posted on embassy websites in both English and local languages, and is prominently featured on our public website, www.travel.state.gov with a link to CBP's official ESTA website. We have conducted significant press and travel industry outreach through our embassies abroad. Embassy public affairs sections, consular sections, and DHS offices abroad are collaborating to hold meetings with and make presentations to travel stakeholder groups and news media. Staff members are utilizing DHS/CBP's fact sheets and sample screens of ESTA to communicate not only that ESTA will increase the security the program provides for all travelers, but also that ESTA is user-friendly, quick, and secure. We have been monitoring our posts for increases in volume from 'just-in-case' applicants, and have yet to see any significant up tick in applications.

We are working hard to ensure that the visa process is a complement to the ESTA process. We have coordinated with our colleagues in CBP and DHS as the ESTA system has been planned and are ensuring that we expand State's already robust information sharing arrangements with DHS to include ESTA information. DHS advises that our consular officers will be able to see whether an applicant for a visa has been denied an ESTA, and why. This will assist us in determining eligibility for a visa. There may be cases when the visa interview resolves the reason for the ESTA denial and therefore the traveler will qualify for a visa. In other cases, the applicant may need to apply for a waiver of ineligibility. And in a few cases, that person may not be allowed to travel to the United States. It is important to clarify that

the visa process is an entirely separate process from the ESTA process; travelers denied an ESTA would not be able to resolve their ESTA case at an embassy or consulate. What they will be able to do is apply for a visa, at which time we will include the ESTA information to assist us in determining eligibility.

In closing, the Department appreciates Congress' passage of the VWP provisions in the 9/11 Act. We see the new requirements as a positive means to strengthen the security of visa-free travel, permit some of our close friends and allies to join the VWP, and thereby enhance our cooperation and ties with those countries over the long term. The Department is committed to working with our partner agencies and with this Committee toward that goal. I will be happy to answer your questions.