

**INS FACSIMILE**

**Department of Justice
U.S Immigration & Naturalization Service
425 I Street
Washington, DC 22200
Office of Congressional Relations**

TO: I. Bueno; W. Patten

TELEPHONE:

FAX:

456-5581

(rene) 456-9140 (wendy)

PAGES INC. COVER: 7

FROM:

Michael Tovares
INS / OCR

TELEPHONE:

202-353-8843

FAX:

202-514-1117

COMMENTS:

VWPP contingency plan

TELEGRAPHIC MESSAGE

NAME OF AGENCY IMMIGRATION & NATURALIZATION SERVICE WASHINGTON, DC 20536		PRECEDENCE ACTION: URGENT INFO:	SECURITY CLASSIFICATION UNCLAS
ACCOUNTING CLASSIFICATION	DATE PREPARED APR 28 2000		FILE HQ 70/5.8
FOR INFORMATION CALL			
NAME: MARTY NEWINGHAM OFFICE OF PROGRAMS (HQINS)		PHONE NUMBER (202) 616-7992	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
THIS SPACE FOR USE OF COMMUNICATION UNIT			

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

SUBJECT: VISA WAIVER PILOT PROGRAM (VWPP)
CONTINGENCY PLAN

(WIRE #2)

1. THIS IS AN ACTION WIRE. THIS WIRE SUPERCEDES WIRE NUMBER 1, WHICH IS DATED APRIL 24, 2000.
2. IF THERE IS NO CONGRESSIONAL ACTION ON OR BEFORE APRIL 30, 2000 TO EXTEND THE VWPP OR TO MAKE IT PERMANENT, THE PROGRAM, WHICH PERMITS NATIONALS OF CERTAIN DESIGNATED COUNTRIES TO VISIT THE UNITED STATES WITHOUT FIRST OBTAINING A NONIMMIGRANT VISITOR VISA AT AN AMERICAN EMBASSY, WILL EXPIRE ON APRIL 30, 2000. THE IMMIGRATION AND NATURALIZATION SERVICE MUST BE READY TO ADDRESS THE ARRIVAL OF A LARGE NUMBER OF TRAVELERS WHO HAD PLANNED TO ARRIVE IN THE UNITED STATES IN MAY 2000.

TO:

MANAGEMENT
TEAMREGIONAL
OFFICE
DIRECTORSDISTRICT
DIRECTORS
(INCLUDING
FOREIGN)OFFICERS-IN-
CHARGE
(INCLUDING
FOREIGN)PORT
DIRECTORS
CARRIER
AFFAIRS
OFFICENATIONAL
FINES OFFICE
GLYNCO
ARTESIA

SECURITY CLASSIFICATION

PAGE NO.

NO. OF PGS.

1

6

UNCLAS

TELEGRAPHIC MESSAGE

NAME OF AGENCY		PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION		DATE PREPARED	FILE
FOR INFORMATION CALL			
NAME		PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
THIS SPACE FOR USE OF COMMUNICATION UNIT			
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)			
TO: 3. THE IMMIGRATION AND NATURALIZATION SERVICE WILL MAKE EVERY EFFORT TO FACILITATE THE ENTRY OF THOSE VISITORS WHO WOULD HAVE USED THE VWPP DURING A 30-DAY PERIOD BEGINNING MAY 1, AND ENDING AT 00:01 (EDT) MAY 30, 2000. OVER 50 PERCENT OF NONIMMIGRANT VISITORS WHO ARRIVE AT U.S. AIRPORTS APPLY FOR ADMISSION UNDER THE VWPP. THEREFORE, IF CONGRESS FAILS TO EXTEND THE PROGRAM OR MAKE IT PERMANENT ON OR BEFORE APRIL 30, CARRIERS ARE LIKELY TO TRANSPORT TRAVELERS TO THE UNITED STATES WITHOUT VISAS. 4. TO FACILITATE TRAVEL DURING THIS PERIOD, PORTS- OF-ENTRY (POES) SHOULD PAROLE FOR 90 DAYS ALL APPLICANTS WHO WOULD HAVE BEEN VWPP ELIGIBLE (IF THE PROGRAM HAD BEEN CONTINUED). THE PAROLE WILL BE GRANTED FOR THE PUBLIC BENEFIT.			
		PAGE NO. 2	NO. OF PGS. 6
		SECURITY CLASSIFICATION UNCLAS	

TELEGRAPHIC MESSAGE

NAME OF AGENCY		PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED		FILE
FOR INFORMATION CALL			
NAME	PHONE NUMBER		TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
THIS SPACE FOR USE OF COMMUNICATION UNIT			
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)			
TO: PURSUANT TO SECTION 212(d)(5)(A) OF THE ACT, THE POE PAROLE PROCEDURES APPEAR BELOW. A. THE ALIEN MUST COMPLETE BOTH THE FRONT AND BACK OF FORM I-94W PRIOR TO HIS OR HER APPLICATION FOR ADMISSION. B. IF THE ALIEN WOULD HAVE BEEN ADMISSIBLE UNDER THE VWPP, PLACE THE ADMISSION STAMP ON THE I-94W (ON BOTH THE ARRIVAL AND DEPARTURE PORTION): i. IN THE ADMISSION BLOCK, PLACE A LINE THROUGH THE WORD "ADMITTED" THAT APPEARS IN RED SECURITY INK AND WRITE THE WORD "PAROLED" IN ITS PLACE. PLACE THE SAME NOTATIONS IN THE ALIEN'S PASSPORT.			
		SECURITY CLASSIFICATION	
PAGE NO.	NO. OF PGS.	UNCLAS	
3	6		

TELEGRAPHIC MESSAGE

NAME OF AGENCY		PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION		DATE PREPARED	FILE
FOR INFORMATION CALL			
NAME		PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

ii. FOR THE PAROLED CODE, THE OFFICER SHOULD WRITE, "CP." CP IS THE CODE THAT CORRESPONDS TO THE PUBLIC BENEFIT PAROLE.

iii. UNDER CP, THE OFFICER SHOULD PAROLE THE ALIEN FOR 90 DAYS (UNLESS THE ALIEN WITHDRAWS HIS OR HER APPLICATION FOR ADMISSION, IS ORDERED REMOVED, PAROLED FOR PROSECUTION, ETC.). IN A CASE WHERE THE ALIEN IS DENIED ADMISSION AND RETURNED ABROAD OR PAROLED FOR ANOTHER REASON, DENOTE THE APPROPRIATE DISPOSITION RESULT IN BOTH THE ARRIVAL AND DEPARTURE BLOCK OF FORM I-94W.

iv. IN BOX 12, UNDER "GOVERNMENT USE ONLY", WRITE THE APPROPRIATE DISPOSITION CODE, "WT," "WB," "WD," "ER," "EF," ETC. NOTE THAT

SECURITY CLASSIFICATION

PAGE NO.

NO. OF PGS.

4

6

UNCLAS

TELEGRAPHIC MESSAGE

NAME OF AGENCY		PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION		DATE PREPARED	FILE
FOR INFORMATION CALL			
NAME		PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
THIS SPACE FOR USE OF COMMUNICATION UNIT			
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)			
TO: INADMISSIBLE ALIENS WILL BE SUBJECT TO WITHDRAWAL AND/OR EXPEDITED REMOVAL. THE "WR" CODE WILL NOT BE USED DURING THE EFFECTIVE PERIOD OF THIS WIRE. 5. TO INSURE UNIFORMITY, POES SHOULD ASSIGN A PERSON(S) TO ENSURE THE I-94WS FOR EACH FLIGHT ARE COMPLETED IN ACCORDANCE WITH THIS WIRE. (ESPECIALLY WITH RESPECT TO BLOCK NUMBER 12). THESE PROCEDURES WILL BE IMPLEMENTED BECAUSE: A. HUNDREDS OF THOUSANDS OF INTERNATIONAL TRAVELERS FOR BUSINESS AND PLEASURE WHO MIGHT HAVE ITINERARIES THAT INCLUDE A TRIP TO THE UNITED STATES WOULD BE UNABLE TO TRAVEL HERE BECAUSE THEY LACK A NONIMMIGRANT VISITOR VISA.			
		SECURITY CLASSIFICATION	
PAGE NO.	NO. OF PGS.	UNCLAS	
5	6		

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	FILE
FOR INFORMATION CALL		
NAME	PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

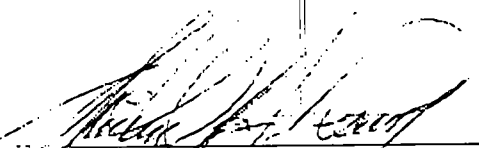
THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

B. THE ADVERSE ECONOMIC IMPACT ON THE
INTERNATIONAL TRAVEL AND TOURISM INDUSTRY
OF THE UNITED STATES WOULD BE SUBSTANTIAL.

6. DURING THE 30-DAY PERIOD, PARTICIPATING VWPP
TRANSPORTATION LINES WILL NOT INCUR ANY FINES
UNDER SECTION 273 OF THE IMMIGRATION AND
NATIONALITY ACT FOR TRANSPORTING PERSONS WHO
WOULD OTHERWISE HAVE BEEN ADMISSIBLE UNDER
THE VWPP.


MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

SECURITY CLASSIFICATION

PAGE NO.

NO. OF PGS.

6

6

UNCLAS

From: Lisa J. Macecevic on 03/29/2000 10:44:32 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: LRM LJM132 - - JUSTICE Report on HR3767 Visa Waiver Permanent Program Act

Following is LJM132--a DoJ letter concerning the permanent authorization of the Visa Waiver Pilot Program.

You previously received a State letter on the same subject (attached below for your reference).

HR3767 is scheduled for a full Judiciary Ctte markup TOMORROW morning. Therefore, please return any comments (on both letters) by 4:00 PM TODAY.

Thank you.

DoJ letter---->  - immigr04.let.wpd

State letter (sent under LJM120)---->  - viewsltrSmithbill.doc

----- Forwarded by Lisa J. Macecevic/OMB/EOP on 03/29/2000 10:48 AM -----

LRM ID: LJM132

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Wednesday, March 29, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Lisa J. Macecevic

PHONE: (202)395-1092 FAX: (202)395-3109

SUBJECT: **JUSTICE Report on HR3767 Visa Waiver Permanent Program Act**

DEADLINE: **4:00 PM Wednesday, March 29, 2000**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Attached is a DoJ letter concerning the permanent authorization of the Visa Waiver Pilot Program.

You previously received a State letter on the same subject.

HR3767 is scheduled for a full Judiciary Ctte markup TOMORROW morning. Therefore, please return any comments (on both letters) by 4:00 PM TODAY.

Thank you.

DISTRIBUTION LIST

AGENCIES:

114-STATE - Paul Rademacher - (202) 647-4463
62-LABOR - Robert A. Shapiro - (202) 219-8201
52-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7760
83-National Security Council - Robert A. Bradtke - (202) 456-9221
29-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
118-TREASURY - Richard S. Carro - (202) 622-0650

EOP:

Steven M. Mertens
Debra J. Bond
Irene Bueno
Stuart Shapiro
Dawn M. Chirwa
Kirsten N. Pflomm
Christine J. Lindsey
Joseph G. Pipan
Steven D. Aitken
Leanne A. Shimabukuro
Wendy L. Patten
Elizabeth Gore
Broderick Johnson
Taneesha J. Johnson
Mark J. Schwartz
Ingrid M. Schroeder
Mary Jo Siclari
Gregory G. Henry
Charles W. Fox
Justine F. Rodriguez
Daniel F. Feldman

LRM ID: LJM132

SUBJECT: JUSTICE Report on HR3767 Visa Waiver Permanent Program Act

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

**TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454**

FROM: _____ (Date)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent To: _____

rademachpr@state.gov @ inet
dol-sol-leg@dol.gov @ inet
lrm@os.dhhs.gov @ inet
National Security Council LRM Recipients
dodlrs@osdgc.osd.mil @ inet
llr@do.treas.gov @ inet
Steven M. Mertens/OMB/EOP@EOP
Debra J. Bond/OMB/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
Dawn M. Chirwa/WHO/EOP@EOP
Kirsten N. Pflomm/WHO/EOP@EOP
Christine J. Lindsey/OMB/EOP@EOP
Joseph G. Pipan/OMB/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Leanne A. Shimabukuro/OPD/EOP@EOP
Wendy L. Patten/NSC/EOP@EOP
Elizabeth Gore/OMB/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Taneesha J. Johnson/WHO/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
Mary Jo Siclari/OMB/EOP@EOP
Gregory G. Henry/OMB/EOP@EOP
Charles W. Fox/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP
Daniel F. Feldman/NSC/EOP@EOP



U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515
Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 3767, the "Visa Waiver Permanent Program Act." We are pleased that H.R. 3767 permanently authorizes the Visa Waiver Pilot Program ("VWPP"). However, we have concerns with about several provisions contained in this bill and cannot fully endorse it as written. Generally, the time frames for provisions concerning automated databases appear to be overly ambitious. In addition, we believe this bill can be strengthened by the inclusion of certain provisions that are designed to ensure the future program meets the law enforcement and national security interests of the United States. The first section below contains comments that address our specific concerns with H.R. 3767. Following those comments, we offer additional measures that we believe would safeguard the integrity of the future visa waiver program.

Specific Bill Comments

Section 1 of the bill would make the Visa Waiver Pilot Program a permanent program. We support a permanent visa waiver program. However, we believe that a permanent authorization for the program should have provisions to strengthen its integrity. First, we believe Congress should provide added safeguards to protect the law enforcement and national security interests of the United States. Below, we offer several proposals intended to enhance the Government's law enforcement and national security interests with respect to visa waiver travel to the United States. In addition, we believe that the bill should include a provision permitting the Attorney General to suspend country participation temporarily in the waiver program.

In section 101(a)(2)(C), the word "period" should be inserted in the quotation after "program" and just before the parenthetical.

Section 201 of the bill would expand the definition of reciprocal privileges. The INS defers to the Department of State

on this issue.

Section 202(a)(2) of the bill would require each alien to possess a machine-readable passport no later than October 1, 2002. We support a the designation of a date certain, by which aliens would possess a machine-readable passport. However, the Attorney General, in consultation with the Secretary of State, should determine this date. The current internationally accepted standard should be strengthened to make machine-readable passports less susceptible to data reading errors, which may allow for more accurate data capture without significantly affecting costs. We also would endorse a provision which would allow the Attorney General, in consultation with the Secretary of State, to establish fraud resistance criteria to be incorporated into passports.

Section 202(b) requires each participant country to issue a machine-readable passport no later than October 1, 2001. We support a date certain for the issuance of machine-readable passports. However, we believe that the Attorney General, in consultation with the Secretary of State, should determine the date upon which a participant country should meet this condition. The reference to "[s]ection 217(c)" should be corrected to reference section 217(c)(2)(B).

Section 203(b) of the bill specifies that a visa application is the sole method to dispute denial of a waiver based on a ground of inadmissibility. Although we support requiring that an alien refused admission under the program apply for a visa in order to enter the United States, we are concerned about the clause that requires that the ground of inadmissibility be uncovered "through a written or verbal statement by the alien or a use of an automated electronic database required under subsection (a)(9)." This provision, as written, will unduly hamper immigration officers because facts evidencing an alien's inadmissibility are often uncovered through sources other than the alien's statements or an automated database check. For example, an alien's inadmissibility may be uncovered during a luggage search where documents secreted in a suitcase reveal that the alien has an overseas criminal conviction or that he is entering the United States to live and work permanently. In addition, reliable information from the alien's friend or family member may clearly evidence that the alien is traveling to the United States to reside permanently. With respect to the nonreviewability clause in contained in section 203(b) (prohibiting review of any denial of admission) , the current VWPP is designed to achieve the goal of nonreviewability except in asylum cases. The limited nonreviewability provision in this bill could be read to suggest that there is a right to administrative or judicial review in other non-asylum VWPP

denials.

Section 203(c) of the bill divests the Attorney General of authority to parole an alien for urgent humanitarian purposes. We strongly oppose this provision. Currently, the Attorney General may, on a case-by-case basis, parole an alien for urgent humanitarian reasons or for significant public benefit. Parole requests under the Visa Waiver Permanent Program likely will arise where parole is necessary for compassionate family or medical situations. Such emergencies fail to meet the public interest standard; rather, these circumstances meet the urgent humanitarian interest standard.

Section 204(b) also requires immediate rescission of country participation in the visa waiver program where any number of emergencies occurs. We propose amending the emergency rescission language (indicated in italics) to read, "In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines *would compromise* the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) *if designation of that country were not immediately rescinded*, the Attorney General shall immediately rescind the designation of the country as a program country."

Section 205(a) refers to an amendment made earlier in the bill by section 203(b)(2), but there is no 203(b)(2) in the bill. Perhaps, the drafters meant to refer to section 203(b).

Consult #1/5/10
Section 205(a) of the bill would require the development and implementation of an automated entry-exit control system at airports and seaports. We support this provision for airports but oppose it for seaports. The time frame, however, for developing such an airport system is unworkable, and no resources are authorized to implement this provision. Although we support an October 2004 deadline for developing this system, funding must be appropriated because such a system depends upon further database enhancements and the automated I-94 system.

Section 205(a) also would require air and sea carrier data collection. The data requirements under this provision should be compatible with our automated I-94 system to ensure that arrival records can be matched with departure records.

Section 205(a) of the bill would require an automated data sharing system. We support the provisions concerning data sharing with the Department of State. Appropriate funding to support this provision will have to be provided to both agencies.

ADDITIONAL PROPOSALS FOR A FUTURE VISA WAIVER PROGRAM

Initial Qualifications for the Permanent Program

All citizens of visa waiver countries benefit from being in the visa waiver program, regardless of where those citizens reside. Therefore, it is essential that worldwide nonimmigrant visitor visa refusal rates be used to determine which countries might initially qualify for the program. It is common practice for individuals who obtain fraudulent passports to apply for nonimmigrant visas outside the country identified by the passport.

As a distinct qualification criterion, we propose a United States border interception rate of less than .20 percent (2 out of every 1000), which would apply to applicants for admission who were not admitted at the initial port-of-entry. This criterion should include a method to account for the risk posed by third country nationals fraudulently using a participant country's passport at the time of application for admission at a United States port-of-entry.

Initial and Continuing Qualification

We would enhance our enforcement efforts by incorporating a mechanism to address lost, stolen, and missing passports, such as by requiring participants to report missing and stolen blank passports. Not all participating countries consistently provide complete and timely notification of lost or stolen blank passports. Without such notification, we cannot provide our immigration inspectors with the up-to-date information they need.

In the past, we have had some difficulty obtaining copies of foreign criminal convictions for use in immigration removal proceedings. We urge the Committee to add a provision that would require that participating countries provide certified copies of conviction and sentencing records for use in investigations conducted under the Immigration and Nationality Act.

Continuing Qualification

For continued qualification in the Program, we propose a nonimmigrant overstay estimation rate of less than 1.80 percent, when we have the ability to provide reliable overstay rates. As a distinct but related criterion, we favor provisions that would require a participant country to maintain a .20 percent, or lower, violation rate, that is, removals, credible fear or asylum referrals, voluntary departures, and, again, including violations by third country nationals using a visa waiver country passport.

This provision would help ensure that a participant's nationals do not abuse the visa waiver privilege either at the border or after admission. It would also stimulate a participant to protect the integrity of its passports. Together, these two criteria attempt to capture the current statute's overall violation rate of 2.0 percent.

We favor a separate provision that automatically would trigger review of a country whose passport is abused by third country nationals. This would enable the United States to review visa waiver privileges from any country unable to implement adequate controls over its passports and their issuance.

We urge removal of the probationary status provisions from the current statute. The current probationary provision simply provides sanction for a high-risk country to continue to participate in the program. Instead, we advocate provisions that would allow the Attorney General, with notification to the Secretary of State, to revoke or suspend a country's privilege under the Program to quickly address law enforcement or national security concerns. In today's world, we must be able to adjust to rapidly changing circumstances as quickly as possible. We also support a suspension provision in addition to the rescission provisions.

Thank you for the opportunity to express the Department's views. Please do not hesitate to call upon my office if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Robert Raben
Assistant Attorney General

IDENTICAL LETTER SENT TO THE HONORABLE JOHN CONYERS, JR., RANKING
MINORITY MEMBER

From: Lisa J. Macecevic on 03/23/2000 04:52:26 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: LRM LJM120 - - STATE Report on HR3767 Visa Waiver Permanent Program Act

Following is LJM120.

The attached letter is addressed to Rep. Lamar Smith. An identical letter will be sent to Rep. Sheila Jackson-Lee.

The bill text of HR3767 is attached for your reference.

Please return comments by Wednesday, March 29th.

Thank you.

Letter--->  - viewsltrSmithbill.doc

Bill Text ---->  HR 3767 IH.do

----- Forwarded by Lisa J. Macecevic/OMB/EOP on 03/23/2000 04:56 PM -----

LRM ID: LJM120

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Thursday, March 23, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Lisa J. Macecevic

PHONE: (202)395-1092 FAX: (202)395-3109

SUBJECT: **STATE Report on HR3767 Visa Waiver Permanent Program Act**

DEADLINE: **5:00 PM Wednesday, March 29, 2000**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The attached letter is addressed to Rep. Lamar Smith. An identical letter will be sent to Rep. Sheila Jackson-Lee.

The bill text of HR3767 is attached for your reference.

Please return comments by Wednesday, March 29th.

Thank you.

DISTRIBUTION LIST

AGENCIES:

61-JUSTICE - Robert Raben - (202) 514-2141
62-LABOR - Robert A. Shapiro - (202) 219-8201
52-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7760
83-National Security Council - Robert A. Bradtke - (202) 456-9221
29-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
118-TREASURY - Richard S. Carro - (202) 622-0650

EOP:

Steven M. Mertens
Debra J. Bond
Irene Bueno
Stuart Shapiro
Dawn M. Chirwa
Kirsten N. Pflomm
Christine J. Lindsey
Joseph G. Pipan
Steven D. Aitken
Leanne A. Shimabukuro
Wendy L. Patten
Elizabeth Gore
Broderick Johnson
Taneesha J. Johnson
Mark J. Schwartz
Ingrid M. Schroeder
Mary Jo Siclari
Gregory G. Henry
Charles W. Fox
Justine F. Rodriguez

SUBJECT: STATE Report on HR3767 Visa Waiver Permanent Program Act

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

Please include the LRM number shown above, and the subject shown below.

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent To: _____

justice.lrm@usdoj.gov @ inet
dol-sol-leg@dol.gov @ inet
lrm@os.dhhs.gov @ inet
National Security Council LRM Recipients
dodlrs@osdgc.osd.mil @ inet
llr@do.treas.gov @ inet
Steven M. Mertens/OMB/EOP@EOP
Debra J. Bond/OMB/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
Dawn M. Chirwa/WHO/EOP@EOP
Kirsten N. Pflomm/WHO/EOP@EOP
Christine J. Lindsey/OMB/EOP@EOP
Joseph G. Pipan/OMB/EOP@EOP
Steven D. Aitken/OMB/EOP@EOP
Leanne A. Shimabukuro/OPD/EOP@EOP
Wendy L. Patten/NSC/EOP@EOP
Elizabeth Gore/OMB/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Taneesha J. Johnson/WHO/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
Mary Jo Siclari/OMB/EOP@EOP
Gregory G. Henry/OMB/EOP@EOP
Charles W. Fox/OMB/EOP@EOP
Justine F. Rodriguez/OMB/EOP@EOP

Dear Mr. Chairman:

We are pleased to take this opportunity to provide the views of the Department of State on H.R. 3767, the "Visa Waiver Permanent Program Act." The Department supports key concepts of the bill, such as a permanent visa waiver program (VWP), enhanced border security and datasharing, and use of machine-readable passports (MRPs). Our concerns lie with those provisions that could work against the more positive aspects of VWP -- promotion of US trade and tourism, enhanced foreign relations with participating countries, and more efficient government. Striking the proper balance between competing U.S. interests is an important goal for us in thinking about a permanent visa waiver program.

We agree that a permanent visa waiver regime requires certain safeguards to ensure that a country's continued participation in the program in no way threatens U.S. interests. H.R. 3767 proposes several measures to tighten up the existing program, including requiring VWP visitors to enter the U.S. with a machine-readable passport. The Department agrees with the need for stricter enforcement of MRP requirements, but finds the compliance dates in the bill far too restrictive. While there is no question that some VWP countries did not make MRP issuance a high enough priority, we expect all VWP countries to be issuing MRPs by 2003. Even countries with longstanding programs, however, will need more than two years to issue MRPs to all their citizens.

The U.S. itself does not issue MRPs to all its citizens because of the high cost of installing the required machinery at all consular posts abroad. (Currently about 1 percent of passports issued to U.S. citizens annually are not machine-readable.) Similarly, many VWP countries do not issue MRPs at all their overseas posts.

The Honorable
Lamar Smith, Chairman,
Subcommittee on Immigration and Claims,
Committee on the Judiciary,
House of Representatives

Another consideration is that passports are generally

valid for ten years, which means there will be a mix of passport types in circulation until all non-machine readable passports have expired and been replaced with machine-readable versions. Three percent of the 50 million U.S. passports currently in circulation are not machine-readable. These passports were issued before MRPs were available and have not yet expired. All VWP countries face a similar situation. We need to provide passport agencies in VWP countries sufficient lead time to plan for and respond to the increase in demand for MRPs that would occur under H.R. 3767. Ideally, we would grant countries ten years to issue MRPs to all their citizens. If this is not possible, we strongly urge that the compliance dates in the bill -- October 1, 2001 for issuance of MRPs and October 1, 2002 for all VWP travelers to enter on a MRP -- be changed to October 1, 2003 and October 1, 2008 respectively.

From a resource perspective, we are concerned about provisions for precipitous removal of a country from the program. We realize that border security concerns are behind these proposed measures, but want to be clear about the severe resource implications for the Department if a country suddenly loses its visa waiver status. Our immediate capacity to issue large numbers of visas in the affected country would be overwhelmed. The Department would require at least three years to reallocate permanent resources to a country that was suddenly removed from the program. We would have to rely on temporary duty (TDY) assistance and other types of more expensive staffing solutions in the interim.

The Department agrees that major destabilizing events inside a VWP country should have a bearing on that country's continued designation. We believe that this type of situation can be addressed through the general authority given the Attorney General under current law or as proposed under section 204(C)(i) of H.R. 3767. For foreign policy and operational reasons, we ask that any specific emergency situations listed in the bill be well defined. More specificity will facilitate diplomatic and interagency discussions and Department resource planning when a country appears to be heading for trouble.

Periodic reviews of a VWP country's performance are an important part of a permanent program. The VWP interagency group agrees on the need to monitor a country's performance and is looking at ways to incorporate this type of review into its protocol. The Department finds the automatic rescission clause of the reporting requirement unnecessary and unduly harsh on the affected VWP country. If sanctions

are necessary, they should be directed at the party creating the delay in the required report.

Thank you for your consideration of these matters. A permanent visa waiver program that promotes the full range of US interests -- border security, enhanced foreign relations with friends and allies, increased trade and tourism, and more efficient government -- is a high priority for the Department. We would be pleased to continue working with the Congress on provisions of concern in H.R. 3767.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Drafted: CA/VO/F:JLJacobs 3-1160
3/15/00 voshare/vofp/jacobs/viewsltrSmithbill

Cleared: CA:MRyan (ok)
CA:MHarty (ok)
CA/VO:Nsambaiew
CA/VO:Mpatterson (ok)
CA/VO/L:HEOdom (ok)

CA/P:Chuggins (ok)

H:Jmartin

H:Sjacobs

HR 3767 IH

106th CONGRESS

2d Session

H. R. 3767

To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act.

IN THE HOUSE OF REPRESENTATIVES

March 1, 2000

Mr. SMITH of Texas (for himself, Ms. JACKSON-LEE of Texas, Mr. MCCOLLUM, Mr. GOODLATTE, Mr. CANADY of Florida, Mr. FRANK of Massachusetts, and Mr. SCARBOROUGH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Visa Waiver Permanent Program Act'.

TITLE I--PERMANENT PROGRAM AUTHORIZATION

SEC. 101. ELIMINATION OF PILOT PROGRAM STATUS.

(a) IN GENERAL- Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended--

(1) in the section heading, by striking 'PILOT';

(2) in subsection (a)--

(A) in the subsection heading, by striking 'Pilot';

(B) in the matter preceding paragraph (1), by striking 'pilot' both places it appears;

(C) in paragraph (1), by striking 'pilot program (as defined in subsection (e))' and inserting 'program';

(3) in subsection (b), in the matter preceding paragraph (1), by striking 'pilot';

(4) in subsection (c)--

(A) in the subsection heading, by striking 'PILOT';

(B) in paragraph (1), by striking 'pilot';

(C) in paragraph (2)--

(i) by striking 'subsection (g)' and inserting 'subsection (f)'; and

(ii) by striking 'pilot';

(D) in paragraph (3)--

(i) in the matter preceding subparagraph (A), by striking '(within the pilot program period)';

(ii) in subparagraph (A), in the matter preceding clause (i), by striking 'pilot' both places it appears;

(iii) in subparagraph (B), by striking 'pilot';

(5) in subsection (e)--

(A) in the matter preceding subparagraph (A), by striking 'pilot';

(B) in subparagraph (B), by striking 'pilot';

(6) by striking subsection (f) and redesignating subsection (g) as subsection (f); and

(7) in subsection (f) (as so redesignated)--

(A) in paragraph (1)(A) by striking 'pilot';

(B) in paragraph (1)(C), by striking 'pilot';

(C) in paragraph (2)(A), by striking 'pilot' both places it appears;

(D) in paragraph (3), by striking 'pilot'; and

(E) in paragraph (4)(A), by striking 'pilot'.

(b) CONFORMING AMENDMENT- Clause (iv) of section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)(iv)) is amended--

(1) in the clause heading by striking 'PILOT'; and

(2) by striking 'pilot'.

TITLE II--PROGRAM IMPROVEMENTS

SEC. 201. EXTENSION OF RECIPROCAL PRIVILEGES.

Section 217(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(2)(A)) is amended by inserting ', either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions,' and 'to extend'.

SEC. 202. MACHINE READABLE PASSPORT PROGRAM.

(a) REQUIREMENT OF ALIEN- Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)) is amended--

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following:

'(3) MACHINE READABLE PASSPORT- On and after October 1, 2002, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.'

(b) REQUIREMENT OF COUNTRY- Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)) is amended to read as follows:

'(B) MACHINE READABLE PASSPORT PROGRAM-

'(i) IN GENERAL- Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the international accepted standard for machine readability.

'(ii) DEADLINE FOR COMPLIANCE FOR CERTAIN COUNTRIES- In the case

of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country--

`(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2001; and

`(II) shall satisfy the requirement of clause (i) not later than October 1, 2001.'.

SEC. 203. DENIAL OF PROGRAM WAIVER BASED ON GROUND OF INADMISSIBILITY.

(a) IN GENERAL- Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)), as amended by section 202, is further amended by adding at the end the following:

`(9) AUTOMATED SYSTEM CHECK- The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.'.

(b) VISA APPLICATION SOLE METHOD TO DISPUTE DENIALS OF WAIVER BASED ON GROUND OF INADMISSIBILITY- Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), as amended by section 101(a)(6), is amended by adding at the end the following:

`(g) VISA APPLICATION SOLE METHOD OF DISPUTING GROUND OF INADMISSIBILITY FOUND IN AUTOMATED SYSTEM- In the case of an alien denial a waiver under the program by reason of a ground of inadmissibility uncovered through a written or verbal statement by the alien or a use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.'.

(c) PAROLE AUTHORITY- Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) is amended--

(1) in subparagraph (A), by striking `subparagraph (b)' and inserting `subparagraph (B) or (C)'; and

(2) by adding at the end the following:

`(C) The Attorney General may not parole into the United States an alien who has applied under section 217 for a waiver of the visa requirement, and has been denied such waiver by reason of a ground of inadmissibility uncovered through a written or verbal statement by the alien or a use of an automated electronic database required under section 217(a)(9), unless the Attorney General determines that compelling reasons in the public interest with respect to that

particular alien require that the alien be paroled into the United States.'.

SEC. 204. EVALUATION OF EFFECT OF COUNTRY'S PARTICIPATION ON LAW ENFORCEMENT AND SECURITY.

(a) INITIAL DESIGNATION- Section 217(c)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(C)) is amended to read as follows:

 '(C) LAW ENFORCEMENT AND SECURITY INTERESTS- The Attorney General, in consultation with the Secretary of State--

 '(i) evaluates the effect that the country's designating would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

 '(ii) determines that such interests would not be compromised by the designation of the country; and

 '(iii) submits a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate regarding the country's qualification for designation that includes an explanation of such determination.'.

(b) CONTINUATION OF DESIGNATION- Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)) is amended by adding at the end the following:

'(5) WRITTEN REPORTS ON CONTINUATION QUALIFICATIONS; DESIGNATION RESCISSIONS-

 '(A) PERIODIC EVALUATIONS- The Attorney General, in consultation with the Secretary of State, periodically (but not less than once every 5 years)--

 '(i) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

 '(ii) shall determine whether any such designation ought to be continued or rescinded under subsection (d); and

 '(iii) shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate regarding the continuation or rescission of the country's designation that includes an explanation of such determination and the effects described in clause (i).

 '(B) AUTOMATED RESCISSION- On and after October 1, 2005, any program country with respect to a report described in subparagraph (A)(iii) has not been submitted in

accordance with such subparagraph during the preceding 5 years shall be treated as if its designation had been rescinded under subsection (d).

`(C) EMERGENCY RESCISSION-

`(i) IN GENERAL- In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Attorney General shall immediately rescind the designation of the country as a program country.

`(ii) DEFINITION- For purposes of clause (i), the term `emergency' means--

`(I) the overthrow of a democratically elected government;

`(II) war (including undeclared war, civil war, or other military activity);

`(III) disruptive social unrest;

`(IV) a severe economic or financial crisis; or

`(V) any other extraordinary event that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States).

`(D) TREATMENT OF RESCISSION- For purposes of this section, a country whose designation is rescinded under subsection (d) or subparagraphs (B) or (C), and the nationals of such country, shall subsequently be treated as if such designation had never been granted, and the country may be designated again under paragraphs (1) and (2) on the same basis as any country that has never previously been designated.'

SEC. 205. USE OF INFORMATION TECHNOLOGY SYSTEMS.

(a) IN GENERAL- Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), as amended by section 203(b)(2), is further amended by adding at the end the following:

`(h) USE OF INFORMATION TECHNOLOGY SYSTEMS-

`(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM-

`(A) SYSTEM- Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives by sea or air at a port of entry into the United States and is provided a waiver under the program.

`(B) REQUIREMENTS- The system under subparagraph (A) shall satisfy the following requirements:

`(i) DATE COLLECTION BY CARRIERS- Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

`(ii) DATA PROVISION IN CARRIERS- Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

`(iii) CALCULATION- The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

`(C) REPORTING-

`(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD- Not later than January 30 of each year (beginning with the year 2003), the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year.

`(ii) SYSTEM EFFECTIVENESS- Not later than October 1, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

`(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

`(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to rescind or continue the designation of a country as a program country.

`(2) AUTOMATED DATA SHARING SYSTEM-

`(A) SYSTEM- The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

`(B) REQUIREMENTS- The system under subparagraph (A) shall satisfy the following requirements:

`(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS
CONDUCTING INSPECTIONS AT PORTS OF ENTRY- Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program--

`(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

`(II) information on whether the alien who ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

`(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS- The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

`(iii) MAINTAINING RECORDS OF APPLICATIONS FOR ADMISSION- The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

`(I) The name of each immigration officer conducting the inspection of the alien at the port of entry.

`(II) Any information described in clause (i) that is obtained from the system by any such officer.

`(III) The results of the application.'.

(b) CONFORMING AMENDMENT- Section 217(e)(1) of the Immigration and Nationality Act (8 U.S.C. 1187(e)(1)) is amended--

(1) in subparagraph (B), by striking `and' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting `, and'; and

(3) by adding at the end the following:

`(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).'

END

STATEMENT OF
ASSISTANT SECRETARY MARY A. RYAN
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

February 10, 2000

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you to give the views of the Department of State on the nonimmigrant visa waiver program. Although still officially designated as a “pilot,” the program is more than eleven years old. During that time it has provided all of the benefits I believe Congress intended: increased travel, tourism, and business for the American economy; enhanced relations with participating countries; and greater efficiency and productivity for the United States government.

Mr. Chairman, in 1998 the travel and tourism industry was once again the nation’s leading services export. According to travel industry data, 46.4 million foreign visitors to the United States generated \$91.3 in direct expenditures and contributed \$18.7 billion to the industry’s trade surplus that year. These visitors directly sustained one million jobs for working Americans and indirectly supported millions more. Eighty-eight per cent of all overseas arrivals from the top ten inbound markets in 1998 were from countries in the visa waiver program. The most recent statistics from the Immigration and Naturalization Service reflect that more than 14 million foreign nationals entered under the VWPP, accounting for 55 per cent

of all business and pleasure travelers. In addition to stimulating tourism and commerce, the waiver program has allowed the U.S. Government to deploy scarce resources much more efficiently. The integrity of the nonimmigrant visa issuance system has been greatly enhanced by our ability to re-direct those resources to better equip and train our personnel.

While recognizing that there may be some needed adjustments, which I will mention in a moment, the overall view of the Department of State is that this program has been and will continue to be an enormous success. Therefore, I would ask that you give serious consideration to renewing this program for multiple years, or even making this extremely beneficial program a permanent part of our immigration system.

~~over INS~~
agree?

The waiver program, known officially as the "Visa Waiver Pilot Program (VWPP)," was enacted into law in 1986. In 1988, the United Kingdom and Japan became the first participants following certification to the Congress by the Attorney General that the prerequisite automated data arrival and departure system was operational and that a visa waiver information form had been produced. On the basis of several periodic renewals, the original three-year program has been in effect ever since. Although Congress originally limited the program to eight countries, it eventually lifted that cap and twenty-nine nations are now included. Greece's anticipated eventual participation would bring the total to 30.

When I appeared before you in June 1997, I spoke of the positive aspects of the program and why I believed it deserved your continued support. I described how the waiver of the visa requirement had stimulated tourism and business travel to the United States, thereby creating thousands of new jobs. I emphasized how the criteria for admission of countries into the program insured the security of our borders by giving all relevant agencies a voice in the nominating process. I spoke of the fact that the waiver program had enabled the Department of State to reallocate scarce resources from low-fraud visa waiver countries to countries with high-

volume and a high incidence of fraud, thus helping to insure greater protection for our borders.

I informed the Committee that a waiver applicant seeking entry at our border is checked through the Immigration and Naturalization Service (INS) lookout system, just as a visa applicant is checked through the Department's lookout system and that a waiver applicant is subject to the same rules for exclusion as any visa applicant. I also informed you that the data-sharing efforts of the Department and the INS allowed access to each other's records for this purpose, and we continue to pursue way to further enhance our data-sharing efforts. Finally, I advised you that, were the program to end, not only would business and tourism suffer, but the cost of reallocating State Department personnel and resources to visa waiver countries would be very high. Mr. Chairman, it is the opinion of the Department of State that what I described to you in 1997 is just as true today, and more so.

I say "more so" because since I last spoke to you, four new countries, Uruguay, Singapore, Portugal and Greece, have been designated as visa waiver countries, although Greece is not yet an active participant. Experience teaches us that the beneficial impact from these new participants in additional tourism and business and associated savings to the government will be considerable. According to ^{INS} ~~U.S. Immigration and Naturalization Service~~ statistics, 55% of all business and pleasure travelers arriving in the U.S. utilize the VWPP. That totaled approximately 14.3 million travelers in 1997, the most recent year for which INS statistics are available, and is a major contributing factor to the current account surplus enjoyed by the U.S. in the travel and tourism sector. Not only would these economic benefits be lost if the program were to end, but current estimates are that the cost to the U.S. Government to re-establish operations in waiver countries would exceed \$130 million.

Further, since 1997, the Department of State and the Department of Justice have greatly improved the procedures under which countries are nominated and selected for participation in

the waiver program. At the request of the Attorney General, who has the authority to designate new participating countries, an interagency protocol was adopted to set standards for nomination, review and selection of countries. Significantly, the Protocol calls for several actions to be taken prior to selection of a country by the Attorney General. These include a requirement for a 90-day advance notification by the Department of State to the Attorney General of intent to nominate, and a review of the proposed nomination by all interested elements of the Department of Justice. Following a formal nomination, an interagency team conducts an on-site visit to the country in question to obtain information on its immigration procedures. A trip report is prepared and used by the interagency group in making its recommendations to the Attorney General.

The new protocol was recently tested with the round of nominations for the four countries I have previously mentioned. In general, we believe it worked well, especially under the pressure of considering four countries almost simultaneously. In any event, the joint committee that wrote and adopted the protocol continues to meet to discuss and adopt refinements to it.

Still, the Department of State recognizes that, as with virtually all other programs of this size and importance, improvements in the system are needed.  not everything has gone precisely as we would have wished. The machine-readable passport requirement is one such matter. Countries wishing to participate in the program must have or agree to institute a machine-readable passport program. The great majority of participating countries have such a program. We have pressed the few that do not have machine-readable passports to complete their development of such programs as quickly as possible. Our most recent formal request to these few countries was made in October 1999, and this week, we have consulted again on this matter. Since then, one of the four countries has provided a timeline for issuance of machine-readable passports. We will continue to pursue

this issue vigorously with the others. Meanwhile, we recommend that the program be amended to require the actual issuance of machine-readable passports as a precondition, without exception, for all countries that are selected in the future to participate in the visa waiver program.

agent?

We understand too that there may be concern over the possibility that a participating country might suddenly undergo a destabilizing occurrence that could raise questions about its continued participation in the program, regardless of the most current data on visa refusals or overstay. We are certain that reasonable approaches can be found to deal with this type of situation. We would want any solution found in this regard to take into account the logistical and financial difficulties likely to be encountered by the Department of State by a sudden reimposition of a wide-scale visitor visa requirement. We would need the Congress's help in providing significant additional resources on an urgent basis to re-staff and re-configure our consular sections if a country were suddenly removed from the visa waiver program.

There are questions that have come directly to our attention as well. Currently, many countries participating in the visa waiver program permit our own American diplomats to enter their countries on short-term consultative visits without visas. Several, including a large majority, have asked for reciprocal treatment. We wish to give it to them. However, given the specificity in the Immigration and Nationality Act and our long-standing practice that official visitors to the United States be documented with appropriate visas, we have been reluctant to do so absent specific statutory authority. Therefore, I would ask that the Committee consider amending the program to authorize the Secretary of State, at her discretion, to permit non-accredited diplomats and other official visitors from waiver countries to enter the United States for short-term consultations under the waiver program. I want to assure the Committee that we

agent?

believe this is a matter of diplomatic reciprocity, and we would not invite requests to extend the waiver program to other categories of nonimmigrant travelers.

Mr. Chairman and Members of the Committee, we would be more than happy to discuss the matters I have raised or any others concerning the visa waiver program at your convenience. However, given the obvious importance and success of the program and the very brief time left before its current extension expires, I would ask that you not delay its renewal. To reiterate what I said at the outset of my remarks, the visa waiver program has been a resounding success for more than a decade and, I believe it is deserving of continuation.

This concludes my statement. Again, thank you for this opportunity to present our views to you. I will be happy to answer any questions you may have.

Frank E. Jones

TESTIMONY OF

ELISA L. LIANG
ASSOCIATE DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

before the

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

Regarding

THE VISA WAIVER PILOT PROGRAM

February 10, 2000

Mr. Chairman, it is a pleasure to appear before this Subcommittee to discuss with you the process that the Departments of Justice and State have developed to implement the Visa Waiver Pilot Program.

As you know, section 217 of the Immigration and Nationality Act is the statutory basis for the Program. It authorizes the Attorney General and the Secretary of State to establish the Visa Waiver Pilot Program under which nationals of a foreign country may visit the United States visa-free for ninety days or less, if that country meets certain objective criteria and the Attorney General determines that the participation of the country into the Program will not adversely affect United States law enforcement interests. While the legislation defines the objective criteria, it does not define those law enforcement interests. The Attorney General therefore directed the preparation of procedures to provide a methodology to evaluate countries against the objective criteria and to define and assess law enforcement criteria and therefore better enable the Attorney General and the Secretary of State to carry out their statutory responsibilities. Toward that end, an interagency working group comprising representatives of various components of the Departments of State and Justice prepared an "Interagency Protocol for Adjudicating VWPP Nominees," which provides the road map for the nomination and approval of countries to participate in the Program.

The process begins with the Secretary of State's conducting a preliminary evaluation of a prospective nominee. The evaluation addresses the country's visa refusal rates according to the formula provided in the statute. It also discusses the patterns of visa fraud or other abuse for the previous five years. Finally, it provides a discussion of the current conditions in the country under consideration, focusing on the stability of the government and a preliminary assessment of the effects of a country's participation in the Program on U.S. national security.

This evaluation is conducted by the Department of State based on information provided by the U.S. Embassy and other State Department agencies and offices that have information relevant to the evaluation. It is designed in principle to meet the foreign policy responsibilities of the Secretary of State and allow her to conduct a preliminary assessment of the country's participation based on foreign policy considerations. If the evaluation suggests that the country is a suitable candidate, the Secretary will provide a written notice to the Deputy

Attorney General and the Commissioner of the Immigration and Naturalization Service (INS) a notice of her intent formally to nominate the country for full participation in the Program.

Upon receipt of the notice of the Secretary's intent to nominate a country, the INS and other Department of Justice components review the Secretary's assessment to determine whether there are any law enforcement concerns that militate against the country's being nominated. This assessment is based on information that the agencies have relating to crime patterns, visa abuse, or other law enforcement information to which the Department of State might not necessarily be privy. If the Department of Justice does not object to a formal nomination within ninety days of the Secretary of State's notice of her intent to nominate a country, the Secretary may then submit a formal nomination in writing to the Attorney General.

The formal nomination triggers a more formal evaluation of the country. Upon receipt of that nomination, the INS establishes an interagency team to conduct a site visit to the nominee country. The team will be made up of representatives of both the INS and the Department of State, as well as representatives of law enforcement agencies such as the FBI and the DEA. This team meets with the staff of the U.S. Ambassador to the nominee country to discuss in detail the current trends in nonimmigrant and immigrant travel to the United States, focusing on the processing of visa, including volume of applications, refusal rates, reasons for refusals, and similar concerns. They will also discuss issues relating to document fraud, law enforcement cooperation between the country and the United States, and specific conditions in the country relating to law enforcement concerns, such as alien smuggling and narcotics. Finally, the assessment team will explore the current general conditions in the country, such as the economy and demographic trends, such as employment or any conditions that might impact on the country's stability, such as the existence of social unrest or the existence of separatist movements. Consideration of these factors is necessary to assess whether conditions in the country might provide a catalyst for emigration to the United States or other countries that would warrant concern that the Visa Waiver Pilot Program might be subject to future abuses.

The assessment team will also consult with officials of the nominee

country's government to discuss its programs for ensuring security of its passport and visa offices and production facilities. They will also address the country's immigration laws and policies, including that country's practices concerning detention and removal of illegal aliens, as well as its overall law enforcement programs to address narcotics, terrorism, and organized criminal activities. Among the specific issues examined is the state of law enforcement training and readiness in the areas of immigration and border control. Finally, the assessment team will actually travel to ports of entry, border control points, and document production and issuance facilities to evaluate first-hand the security and integrity of the country's passport, visa, and identity document issuance process.

The site visit by the INS-led interagency team is a time-consuming but critical component of the protocol. It provides an opportunity for a detailed examination of the actual conditions in the nominated country to better enable the INS and other agencies to assess whether the current conditions in the country or the law enforcement situation pose the potential for abuse of the Program such as to promote visa-free entry into the United States of persons who might threaten our law enforcement interests.

Upon the completion of the site visit, the INS produces a written evaluation of the country and a preliminary recommendation whether the Attorney General should approve the nomination. The evaluation and recommendation are sent to the Department of State and law enforcement components for their review and comment. This provides a final opportunity for those components to provide an assessment of the overall law enforcement relationship between the United States and the nominee, with the benefit, of course, of the results of the on-the-ground evaluation, and to identify any concerns that might continue to exist regarding the effect of the country's participation in the Program on U.S. law enforcement interests.

At the conclusion of the process, the Attorney General notifies the Secretary of State of her decision on the nomination. The decision might range from outright approval to disapproval, or it might be a conditional approval upon the occurrence of specified conditions.

We used this protocol for the first time last year when the Secretary of State

nominated four countries, Singapore, Portugal, Uruguay, and Greece, for participation in the Program. The simultaneous evaluation of four countries was a daunting task, as you might imagine, but it provided an invaluable test bed for the protocol. Each of the countries received a detailed review and analysis by the experts in both Departments, and while our interagency group is still evaluating the process we used based on the Protocol, the consensus is that the process worked as intended and served the interests of both Departments well. In the end, all four countries were admitted for participation, though conditions were placed on Greece before full participation can become a reality.

I hope this brief description provides a useful background against which you can exercise your oversight responsibilities concerning the Visa Waiver Pilot Program. I would be happy to respond to any questions you might have.

What about our effort to address fraud,
a missile coming through, whether should be
reauthorized as a pilot or permit.

INTERAGENCY PROTOCOL FOR ADJUDICATING VWPP NOMINEES

INTRODUCTION

The purpose of this protocol is to establish a methodology for the Secretary of State to nominate, and the Attorney General to approve, countries' participation in the Visa Waiver Pilot Program (VWPP). The following milestones are the essential components of the methodology:

- Notification by the Department of State (DOS) to the Department of Justice (DOJ) that the Secretary of State intends to nominate a country to participate in the VWPP, in writing, at least ninety days in advance of formal nomination.
- Simultaneous review and comment on the intended nomination by all involved DOJ components (LEAS, CRM, OIPR).
- Formal nomination, in writing, by the Secretary of State to the Attorney General.
- On-site visit of the nominee country upon receipt of the formal nomination by the Attorney General.
- Preparation of an interagency working group (IWG) recommendation, which shall be prepared based on the a summary of all components' reviews and comments, as well as the report of the on-site visit that relates its findings with respect to the immigration procedures in the nominated country.
- Formal action by the Attorney General on the Secretary of State's nomination.

BACKGROUND

Title 8 U.S.C. 1187 [Section 217 of the INA] provides that in order to qualify for designation as a VWPP country, the country must meet the following objective conditions:

- (a) Low nonimmigrant visa refusal rate:
 - (1) Refusal rate for the previous two-year period was less than 2% of total nonimmigrant visitors, and nonimmigrant visa refusal rate for either of two previous years was less than 2.5% of total nonimmigrant visitors; or
 - (2) Nonimmigrant visa refusal rate for the previous full fiscal year was less than 3%;

- (b) Reciprocal visa waivers for U.S. citizens; and
- (c) Machine-readable passport program (has the program or "is in the process of developing" such a program).

In addition, the Attorney General must determine "that the United States law enforcement interests would not be compromised by the designation of the country."

Because requirements (a), (b), and (c) are dependent on a determination of the experience with the nominee country, the Department of State (DOS) shall establish that these requirements have been met.

THE NOMINATION PROCESS

A. Department of State

1. The Department of State initiates the nomination process by notifying the Deputy Attorney General (DAG) and the Commissioner of the Immigration and Naturalization Service that the Secretary of State intends to recommend that the Attorney General designate a country to participate in the Visa Waiver Pilot Program. Identification of the nation to be nominated by the Secretary of State should be provided to the DAG at least ninety days before the Secretary of State submits the actual nomination to the Attorney General.
2. In its written notification to the DAG and the Commissioner, the Department of State shall provide the following information:
 - a. Totals (actual raw numbers) of the number of nonimmigrant visas granted, as well as denied, for the two categories cited in the statute for the stipulated fiscal years. These figures should be provided for each post located within the nation under consideration.
 - b. Commentary on patterns of visa abuse, fraud, and smuggling at the post(s) located in the country being nominated. This should include any information available for the preceding five years. The commentary should discuss not only fraud committed by nationals of the country under consideration, but also fraud or criminal activities perpetrated by third country nationals, resident or transiting the nation, who impersonate or who are likely to impersonate nationals of the country being nominated.
 - c. Information regarding visa abuse, fraud, and smuggling by nationals of the

nominee country which are being encountered at other posts. For example, while the nation may be policing itself well within its own borders, its nationals may be travelling to third countries and perpetrating fraud there. Honorary consuls assigned overseas may be compromising the integrity of the national passport.

d. Current conditions in the country, with particular attention to the following areas:

(1) DOS shall certify that the nominee has, and is expected to maintain, a stable government which exercises strict control over the acquisition of citizenship.

(2) DOS shall provide an assessment of the impact of VWPP participation on U.S. national security, e.g., potential for abuse by nominee country's nationals (or by individuals who can impersonate such nationals through altered or fraudulently obtained documents evincing that country's nationality) who may be involved in terrorism, organized crime, or alien, narcotics or strategic weapons smuggling.

3. The Secretary of State will submit the formal nomination to the Attorney General not less than ninety days after the initial notification specified in paragraph 1.

B. IMMIGRATION AND NATURALIZATION SERVICE (INS)

Upon nomination of a country for VWPP status, the INS, with input from, and participation by other interested agencies, as necessary, will conduct a site visit to review the various immigration, nationality, and enforcement policies in the nominee country. The site visit will include the following:

1. Meetings with American Embassy staff¹ to discuss:

(a) Trends in nonimmigrant and immigrant processing, including volume, refusal rates, types of applicants most likely to be refused, reverse migration trends, if any.

(b) Third country national (TCN) applicants for nonimmigrant and immigrant

¹ In particular, LEA attache or liaison officers with responsibility for the nominee country should participate in any site visits conducted by the INS as part of this protocol.

visas, including transient and resident TCNs, treatment of TCNs by the host government, volume of TCN applicants, refugees and asylees.

(c) Fraud problems, including document fraud, impostors, corruption, alien smuggling, narcotics trafficking, U.S. Government and host country countermeasures and cooperation.

(d) General social, economic, political and demographic trends and conditions, including employment, ethnic minority problems, separatist or independence movements.

(e) Level of host country cooperation with U.S. immigration and law enforcement agencies, including participation in multilateral law enforcement, information-sharing, and training efforts.

(f) Likelihood of significant legislative changes that could negatively impact host country immigration, citizenship, and nationality laws.

2. Meetings with appropriate officials of the nominee country to discuss² the inspection of arriving and departing aliens and nationals; detection of fraudulent and altered documents; prosecution of users of fraudulent or altered documents; incidence of alien smuggling, third country nationals transiting, and deterrence employed; handling of asylum and refugees; acquisition of citizenship through naturalization; types of passports

² Such officials might include those who would serve roughly in counterpart positions to: the Executive Associate Commissioners for Programs and Field Operations; the General Counsel or Deputy General Counsel; the Assistant Commissioners for Inspections, Naturalization, Investigations, Intelligence, Border Patrol; the Director(s) of Refugee and Asylum Affairs; the Port Directors for the major international airport(s), and for at least two major land border port(s) and a major seaport (if any); the Director of the Forensic Document Laboratory; Director(s) of the Administrative Units/Police who issue passports and national identity cards.

³ Standards for determining identity and nationality at overseas issuing (consular) posts should be as rigorous as within the nation itself.

⁴ Document security can be viewed primarily in terms of the integrity of the documents produced and the security of the issuance process, i.e., ensuring that only the correct individuals receive documents. The quality of the materials, the production techniques used to produce documents, the physical security of the materials, the equipment, and work areas used in document production are the major concerns in ensuring document integrity.

In the issuance process, the major concern is the ability to identify the applicants and

issued, issuance procedures within the country and at overseas posts (if lost or stolen)³; any breaches of document security⁴ or issuance (theft of blank passports, measures to recover them and deter their future use, measures to prevent future theft); timely submission of reports of lost or stolen blank passports; fraudulent document detection and deterrence; security screening of arriving and departing passengers at air, land, and sea ports of entry; handling of lookouts and INTERPOL red list; detention and removal of excluded or deported aliens; interior enforcement programs; efforts against organized criminal activity by alien residents; terrorism and security issues; and law enforcement officer training, particularly in the areas of immigration and border control.

3. Meetings with appropriate Foreign Ministry officials who can answer policy questions concerning the issuance of nationality documents abroad, and other issues parallel to U.S. Department of State functions.

4. Meetings with appropriate representatives of the entities (companies and government bureaus) responsible for the design, printing, manufacture, and security of the nominee country's passports and national identification cards (documents used to secure the passport).

C. DEPARTMENT OF JUSTICE

The following components of the Department of Justice should provide input to the vetting process as indicated.

1. **Criminal Division** The Criminal Division will provide an assessment of the overall law enforcement relationship with the nominee country against the following factors:

documents they present as proof of nationality and identification. The ability to identify positively depends upon the number and type of identity documents required of applicants, the data collected and maintained on the document or in the file, the ability of the issuing personnel to verify the authenticity of the documents with the original issuers, and the ability of issuing personnel to spot fraudulent documents and impostors.

Appended to the protocol is a list of Proposed Minimum Security Standards for VWPP Passports prepared by the INS Forensic Document Laboratory (FDL). FDL shall periodically review and update the list, as necessary, for use in assessing adequacy of countries' passport security.

³ Standards for determining identity and nationality at overseas issuing (consular) posts should be as rigorous as within the nation itself.

- a. Viable extradition relationship with the United States, preferably based upon a modern extradition treaty that covers all major offenses and that obligates the parties to surrender nationals.
- b. Willingness to consider other legal means of rendition in the absence of extradition, such as expulsion or deportation of fugitives to the United States.
- c. Viable mutual legal assistance relationship with the United States, preferably based upon a mutual legal assistance treaty or, in the alternative, on domestic laws that provide for a full range of evidential assistance in criminal matters.
- d. Multilateral law enforcement cooperation --
 - (1) Party to relevant international treaties and conventions (e.g., 1988 Vienna Narcotics Convention, the several anti-terrorism conventions);
 - (2) Participation in and support for anti-crime initiatives sponsored by the United Nations, the European Union, the Council of Europe, the Group of Seven and The Eight, the Organization of American States, or other relevant multilateral organizations.
- e. Police-to-police cooperation --
 - (1) Active and responsive member of INTERPOL;
 - (2) Cooperation with U.S. law enforcement personnel assigned to host country (e.g., FBI Legal Attache, DEA Country Representative, Immigration Officer);
 - (3) Operational cooperation with U.S. law enforcement as demonstrated by joint investigations, coordinated arrests and asset seizures, provision of criminal intelligence, and personnel exchange programs.
- d. Domestic legal infrastructure for combatting organized crime, such as laws permitting: court-ordered electronic surveillance; undercover operations; use of cooperative witnesses and confidential informants; and the prosecution of criminal organizations and their members (e.g., "enterprise theory").

e. Immigration-to-immigration cooperation --

(1) Cooperation in timely issuance of travel documents and acceptance of the country's nationals who are being removed from other countries.

(2) Expeditiously provide travel documents for national to allow their removal or deportation. One method would be through a "Single Journey Document" that may be issued in accordance with Annex 9 of the Convention on International Civil Aviation. The provision provides, "[T]he last Country in which a passenger previously stayed and most recently travelled from is invited to accept him/her for re-examination when he/she has been refused admission to another country."

(3) Timely submission of reports of lost or stolen blank passports.

f. To deter immigration and nationality fraud, there should be national criminal penalties for passport, nationality and document fraud and alien smuggling, and law enforcement efforts to prevent or follow up on fraud and alien-smuggling attempts.

2. Law Enforcement Agencies. All DOJ law enforcement agencies should provide current information concerning the nominee country relative to the following:

a. The extent to which ongoing or planned operations might be adversely affected by the site visit or by any other aspect of the proposed nominee's inclusion in the VWPP.

b. Pertinent historical patterns or trends regarding emerging ethnic criminal groups, narcotics trafficking, alien smuggling, terrorism, fraud, harboring, asylum fraud, third country national abuse of the country as a staging area, official corruption, significant tendency towards employment violations by nationals of the country; or threats to U.S. national security.

c. The degree of cooperation received from officials of the proposed nominee country involved in mutual efforts against transnational crime and criminals.

3. Office of Intelligence Policy Review (OIPR). OIPR will request, on behalf of the Attorney General, that the Intelligence Community provide an analysis, based on the current intelligence, of the impact that VWPP participation by the nominee country will have on the national security of the United States.

APPENDIX

PROPOSED MINIMUM SECURITY STANDARDS FOR VWPP PASSPORTS

Prepared by
INS Forensic Document Laboratory

The following minimum security features are required for a passport to be accepted in the U.S. VWPP:

1. The passport must conform to ICAO machine readable standard.
2. The photograph and biographical data shall be covered by a laminate, which must include at least one of the following security features:
 - Optical Variable Device (OVD) attached under the laminate's adhesive.
 - Unique serial number.
 - Punched, perforated, embossed, or laser-engraved unique number, initials, or seal on the laminate.
 - Ultraviolet security feature under the adhesive.
 - Printed security design.
3. During production of the passport, a printed or perforated passport number is added to the cover, photograph and biographical, and observation (amendments) pages.
4. All interior pages contain a watermark.
5. An ultraviolet security feature is on all interior pages.

TESTIMONY OF

MICHAEL D. CRONIN

ACTING ASSOCIATE COMMISSIONER FOR PROGRAMS

IMMIGRATION AND NATURALIZATION SERVICE

before the

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

of the

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

regarding

THE VISA WAIVER PILOT PROGRAM

FEBRUARY 10, 2000

Thank you very much, Mr. Chairman, members of the subcommittee. I welcome the opportunity to testify on the Visa Waiver Pilot Program.

Development and Expansion of the Visa Waiver Pilot Program

In 1986, Immigration Reform and Control Act (IRCA) incorporated the Visa Waiver Pilot Program into the Immigration and Nationality Act. The Program's purpose was twofold: (1) to facilitate low-risk travel to the United States and (2) to allow the Secretary of State to conserve and reallocate consular resources. Prior to implementation, the statute required the Attorney General to develop an automated system that would properly track the arrival and departure of nonimmigrants.

Under the current Program, visitors for pleasure or business from countries designated by the Attorney General, in consultation with the Secretary of State, who meet the express statutory criteria, may enter the United States without a visa for a period of ninety days. They are required to waive in writing any right to review of an immigration officer's determination that they are inadmissible or removable from the United States. They may only contest removal on the bases of either an application for asylum or an application for withholding of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They are also required, if arriving by air or sea, to travel on a transportation line that is signatory to an agreement with the Immigration and Naturalization Service permitting the line to transport passengers under the Program, and they are required to possess a round-trip or onward ticket.

The four criteria for inclusion of countries in the Program are

- (1) that they offer reciprocal privileges to United States citizens;
- (2) that they have had a nonimmigrant visa refusal rate of less than 3 percent for the

previous year;

(3) that they certify that they issue, or are in the process of developing, a machine-readable passport; and

(4) that the Attorney General makes a determination that inclusion of the country in the Program does not pose a law enforcement risk to the United States.

The Act further provides that the Attorney General, in consultation with the Secretary of State, may refrain from including any country in the Program or remove a country for any reason, including national security.

Applicants for admission under the Program must complete a form I-94W, answering questions regarding their admissibility to the United States and executing the waiver noted above. Immigration officers, who are aware that these individuals have not been screened through a visa process, must examine them. Officers check the names and passport numbers of these applicants against the lookout database. Officers may also open and pursue any appropriate line of inquiry to make a determination concerning the individual's admissibility.

Between 1988 and 2000, the Program grew from 1 to 29 participating countries. In fiscal year 1998, there were over 17 million arrivals under the Program.

The Existing Program

The Visa Waiver Pilot Program has grown tremendously and has proven extremely popular with nationals of visa waiver countries and with the travel and tourism industry. The Program has made it easier to travel to the United States. The Program has also produced new challenges for the Immigration and Naturalization Service. Although the Program has significantly reduced consular workload and facilitated travel to the United States, it has increased the burden placed

on inspectors at the ports-of-entry.

Since I last testified on the Program in June 1997, we have improved our lost and stolen passport recording system. We have also expanded our port-of-entry lookout queries in an effort to intercept more passengers traveling on fraudulent passports. Notwithstanding such improvements, the Visa Waiver Pilot Program is attractive to prospective illegal entrants for the same reasons it is for the legitimate traveler. This is a matter of some concern.

Application for admission into the United States under the Visa Waiver Pilot Program can be made with nothing more than a passport; there is no need for a visa or the consular screening that would accompany visa issuance. Consequently, fraudulent document vendors and alien smugglers have targeted the passports of visa waiver countries. As the Department of State has increased the fraud resistance of the U.S. nonimmigrant visa, so too has the attractiveness of using a visa waiver country passport increased for third country nationals seeking illegal entry into the United States.

The attraction of smugglers, document vendors, and illegal immigrants to visa waiver country passports is encouraged by several factors, including limited security features present in some passports, the existence of multiple passport-issuing authorities, and weak controls to protect issuance procedures in some visa waiver countries. In the latter case, access to blank visa waiver country passports eliminates the need to eradicate existing biographic information, thereby simplifying the document vendor's job and reducing the risk of detection. This presents serious security and law enforcement concerns.

The vast majority of visa waiver program visitors enter the United States through airports.

Between 1992 and 1999, while international airport traffic increased by 43 percent and staffing

To address these problems, INS will continue to . . .

by 45 percent, the number of our enforcement actions increased by 135 percent. By comparison, land border traffic is up 4 percent, staffing up 74 percent, and enforcement up 46 percent over the same period.

Let me take a moment to update you on what we have been doing to address the issue of overstays. When I last testified before this subcommittee, I stated that we hoped to implement improvements to the Nonimmigrant Information System (NIIS) to capture nonimmigrant overstay numbers. I regret to report that tracking nonimmigrant overstays has continued to pose difficulties. Since 1997, we have taken significant steps to improve NIIS, including the establishment of an oversight and maintenance group. We also produced an informational booklet for carriers that stresses the importance of completing arrival and departure forms and forwarding them to INS. Additionally, we have been working with our contractors to reduce the number of data-entry errors. However, these measures have not proven sufficient to generate statistically valid overstay data.

We are therefore continuing our efforts to deploy a new system, the Arrival Departure Information System (ADIS), to address the challenge of matching arrival and departure records. Since 1997, we have been field-testing an Automated I-94 System that will capture data for use in ADIS. Between May 1997 and December 1999, we collected 204,631 automated Form I-94 departure records at the four participating U.S. airports. Of those records, we matched 99.1 percent of the automated departure records collected to the corresponding arrival records, of which ninety percent were entering under the Visa Waiver Pilot Program. We anticipate that the collection of reliable, complete arrival/departure data will become increasingly possible as this system expands and as we gain the cooperation and participation of airlines.

Mr. Chairman, even with the many challenges we have encountered, the INS supports a renewal of the Visa Waiver Pilot Program; not the present Program extended, but an improved program that builds upon the lessons learned from the current pilot program. Several critical issues must be addressed to ensure a Program that safeguards both the security and economic interests of the United States. We believe that such a Program can be built on objective standards that will protect the integrity of this program and look forward to working with you in that regard.

We will continue to work closely with the Department of State to improve the overall function of the Visa Waiver Pilot Program.

This concludes my testimony and I will be happy to respond to any questions.

H:MPNEWING: visa waiver: TestCronin3.doc

November 3, 1999

Ms. Gail B. Manning
Director
National Conference of Lieutenant Governors
The Council of State Governments
Post Office Box 11910
Lexington, Kentucky 40578-1910

Dear Gail:

Thank you for passing along the resolution of the National Conference of Lieutenant Governors supporting permanent status for the United States Visa Waiver Pilot Program. I appreciate your update, and I've shared your correspondence with members of my staff.

Sincerely,

BILL CLINTON

BC/SH/DC/efr-pw (Corres. #7011037)
(bcpf)
10.manning.gb

cc: w/copy inc. to Irene Bueno, 217-R-OEOB
cc: IGA, 106 OEOB





NATIONAL CONFERENCE OF LIEUTENANT GOVERNORS

(606) 244-8171

August 11, 1999

The Hon. William Clinton
President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500



Dear Mr. President:

On behalf of the National Conference of Lieutenant Governors, I am sending you the enclosed resolution adopted during the Annual Meeting in Providence, Rhode Island.

Making the Visa Waiver Pilot Program permanent would stimulate tourism, business travel, trade and commerce. Your attention to the request for support of congressional action would be greatly appreciated.

Sincerely,

Gail B. Manning
Director

enclosure

AUG 16 1999

Resolution
of
The National Conference of Lieutenant Governors
supporting permanent status for the
United States Visa Waiver Pilot Program

WHEREAS, the federal Visa Waiver Pilot Program allows citizens of 26 participating foreign countries to travel without a visa to the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, and the U.S. government has approved the addition of four countries to this program; and

WHEREAS, the Visa Waiver Pilot Program is designed to provide citizens of foreign countries -- primarily business executives and tourists -- the ability to travel to the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, for short stays without visas; and

WHEREAS, the Visa Waiver Pilot Program encourages international tourism, business travel, trade, and commerce in the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, that is highly beneficial to the economy of the country and individual states; and

WHEREAS, the Visa Waiver Pilot Program was initiated July 1, 1988, to encourage and facilitate travel to the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, by tourists considered too little a risk to require immigration procedures and to reduce the administrative burden on overseas U.S. consulates of processing visa applications of foreign nationals; and

WHEREAS, the Visa Waiver Pilot Program has proved to be beneficial by encouraging U.S. tourism, business travel, trade, and commerce and reducing unnecessary administrative burdens; and

WHEREAS, the Visa Waiver Pilot Program has already saved U.S. taxpayers close to \$200 million; and

WHEREAS, because of its increasing worthiness, the Visa Waiver Pilot Program has been reauthorized several times; and

Page 2/Visa Waiver Resolution

WHEREAS, in 1998 the U.S. Congress extended the Visa Waiver Pilot Program two years until April 30, 2000; and

WHEREAS, under existing law it will be necessary to extend the Visa Waiver Pilot Program again in the year 2000, and repeatedly into the future; now

THEREFORE, be it resolved that the National Conference of Lieutenant Governors urges the Congress to make the Visa Waiver Pilot Program permanent in order to stimulate tourism, business travel, trade and commerce; and

THEREFORE, be it resolved that this resolution shall be dispatched to the President of the United States, the Vice President of the United States, the U.S. Department of State, and appropriate Members of Congress and congressional committees.

Adopted this 12th day of June 1999
by the NATIONAL CONFERENCE OF LIEUTENANT GOVERNORS

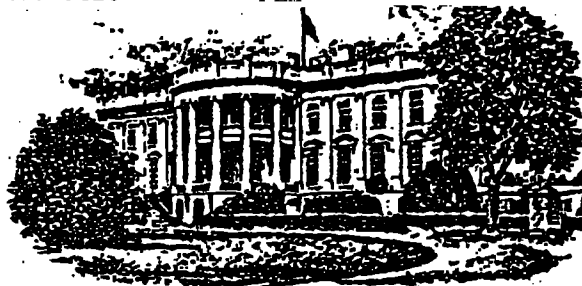
Sponsoring members:



LIEUTENANT GOVERNOR LORRAINE T. HUNT
STATE OF NEVADA



LIEUTENANT GOVERNOR MAZIE K. HIRONO
STATE OF HAWAII



THE WHITE HOUSE
WASHINGTON

FACSIMILE / MEMO FROM: Renée Sagiv
OFFICE OF PRESIDENTIAL LETTERS AND MESSAGES
OLD EXECUTIVE OFFICE BUILDING, ROOM 93

VOICE: (202) 456-5519 FAX: (202) 456-5426

NUMBER OF PAGES (INCLUDING COVER): 5

DATE: 9/27

TO: ~~Gene Chough~~ Irene Buena

VOICE: 65566

FAX: 67431

☐ FOR YOUR ACTION

☒ INCOMING LETTER(S) FROM: Gail Manning
RE: visa waiver pilot program

☒ FOR YOUR REVIEW / APPROVAL

☒ PER MY E-MAIL OR VOICE-MAIL MESSAGE TO YOU

☐ PER YOUR REQUEST

ADDITIONAL COMMENTS:

Thanks for your help!

- Renée

Dear Ms. Manning:

Thank you for passing along the resolution of the National Conference of Lieutenant Governors supporting permanent status for the United States Visa Waiver Pilot Program. I appreciate knowing your views, and I've shared your correspondence with members of my staff.

Best regards.

Sincerely,

BC



314618

NATIONAL CONFERENCE OF LIEUTENANT GOVERNORS

(606) 244-8171

August 11, 1999

The Hon. William Clinton
President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

On behalf of the National Conference of Lieutenant Governors, I am sending you the enclosed resolution adopted during the Annual Meeting in Providence, Rhode Island.

Making the Visa Waiver Pilot Program permanent would stimulate tourism, business travel, trade and commerce. Your attention to the request for support of congressional action would be greatly appreciated.

Sincerely,

Gail B. Manning
Director

enclosure

AUG 16 1999

Resolution
of
The National Conference of Lieutenant Governors
supporting permanent status for the

United States Visa Waiver Pilot Program

WHEREAS, the federal Visa Waiver Pilot Program allows citizens of 26 participating foreign countries to travel without a visa to the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, and the U.S. government has approved the addition of four countries to this program; and

WHEREAS, the Visa Waiver Pilot Program is designed to provide citizens of foreign countries -- primarily business executives and tourists -- the ability to travel to the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, for short stays without visas; and

WHEREAS, the Visa Waiver Pilot Program encourages international tourism, business travel, trade, and commerce in the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, that is highly beneficial to the economy of the country and individual states; and

WHEREAS, the Visa Waiver Pilot Program was initiated July 1, 1988, to encourage and facilitate travel to the United States and the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands, by tourists considered too little a risk to require immigration procedures and to reduce the administrative burden on overseas U.S. consulates of processing visa applications of foreign nationals; and

WHEREAS, the Visa Waiver Pilot Program has proved to be beneficial by encouraging U.S. tourism, business travel, trade, and commerce and reducing unnecessary administrative burdens; and

WHEREAS, the Visa Waiver Pilot Program has already saved U.S. taxpayers close to \$200 million; and

WHEREAS, because of its increasing worthiness, the Visa Waiver Pilot Program has been reauthorized several times; and

Page 2/Visa Waiver Resolution

WHEREAS, in 1998 the U.S. Congress extended the Visa Waiver Pilot Program two years until April 30, 2000; and

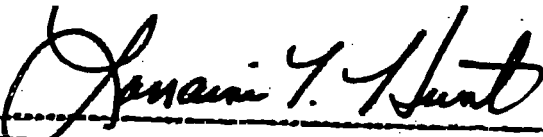
WHEREAS, under existing law it will be necessary to extend the Visa Waiver Pilot Program again in the year 2000, and repeatedly into the future; now

THEREFORE, be it resolved that the National Conference of Lieutenant Governors urges the Congress to make the Visa Waiver Pilot Program permanent in order to stimulate tourism, business travel, trade and commerce; and

THEREFORE, be it resolved that this resolution shall be dispatched to the President of the United States, the Vice President of the United States, the U.S. Department of State, and appropriate Members of Congress and congressional committees.

Adopted this 12th day of June 1999
by the NATIONAL CONFERENCE OF LIEUTENANT GOVERNORS

Sponsoring members:



LIEUTENANT GOVERNOR LORRAINE T. HUNT
STATE OF NEVADA



LIEUTENANT GOVERNOR MAZIE K. HIRONO
STATE OF HAWAII

Irene Bueno

 07/02/99 11:54:23 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc:

Subject: Visa Waiver Pilot Program - NY Times Article

As you requested, I followed up with INS on the article that appeared in the NY Times on Monday, 6/28 concerning a DOJ Inspector General report that found that the Visa Waiver Pilot Program (VWPP) has been subject to fraud.

DOJ and INS is responding in few ways including:

(1) The Attorney General has charged the Executive Office for National Security (EONS) working group which includes INS, DEA, FBI and the Dept of State to review the Visa Waiver Pilot Program (VWPP) and to develop recommendations to strengthen the current program that will likely include a legislative proposal. These recommendations are expected in a couple of weeks.

(2) providing more information to INS inspectors at ports of entry about passport fraud and information on terrorists and criminals that are provided by other agencies.

I will continue to work with DOJ and INS on developing this proposal.

Please let me know if you would like a copy of the talking points they sent to me.

Visa Waiver Pilot Program (VWPP) – Talking Points – 6/28/99

- In 1996 Congress gave the Attorney General responsibility for approval of VWPP nominations. This is a new process. Prior to 1996 the Secretary of State nominated and approved nominations to the VWPP, with approvals considered in consultation with the Attorney General. To ensure program integrity, when the Attorney General assumed this expanded role, she charged the Executive Office for National Security (EONS) within the Department of Justice (DOJ) with reviewing the program, particularly as it relates to law enforcement and national security issues, and to make recommendations for improvements.
- The EONS working group, which consists of DOJ components, including INS, DEA and the FBI and the Department of State, has made significant progress in reviewing the existing program, including the development of a new process to review newly nominated countries.
- The VWPP review process is designed to meet the Attorney General's obligation to ensure that law enforcement concerns regarding each country nominated are identified and addressed. This extends to site visits to the nominated countries by subject matter experts and a careful review of all the factors relating to the nomination. This provides an increased level of scrutiny and review over the previous procedures.
- The EONS review process has been successful in identifying areas where improvements should be made before a nominated country fully participates in the VWPP, including passport control and issuance procedures.
- The DOJ Inspector General's findings regarding the VWPP are fully known to INS. The INS concurs that additional steps must be taken to provide a greater level of information available to inspectors at our ports of entry regarding travelers who apply for admission, particularly regarding passport-related information. The INS is actively exploring how to accomplish this given the limits of existing information systems.
- The DOJ, through the EONS working group, is continuing its review of the entire VWPP statutory framework. Once this review is completed the DOJ will provide suggestions for strengthening the program.
- International alien smuggling organizations are on the rise and becoming the major pipeline through which illegal aliens enter the United States. They use any and all means, whether via visa waiver or other methods, in migrant trafficking operations. DOJ and INS are committed to deterring and dismantling alien smuggling cartels, and have successfully crippled two such organizations in "Operation Seek and Keep" and "Operation Over the Rainbow".
- The INS has not relaxed its inspection process and continues to scrutinize each applicant for admission to the United States reviewing all available information, including that information regarding terrorists and criminals provided by other agencies.

Visa Program Is Seen to Aid Illegal Entry

Scrutiny Is Relaxed, Leading to Abuses

By The New York Times

WASHINGTON, June 26 — A program that allows some visitors to the United States to enter without visas is helping criminals and terrorists and increasing illegal immigration, according to an internal investigation at the Department of Justice.

The agency's inspector general found that the Immigration and Naturalization Service had not done enough to end abuses of the Visa Waiver Pilot Program, which allows people carrying passports from any of 26 nations to visit the United States for up to 90 days without obtaining a visa. The program has been in place since 1988.

The program, which was intended to cut down on paperwork in admitting large numbers of visitors from a small number of countries, is strongly supported by trade groups and the tourism industry. In 1997, 14.5 million visitors entered the United States under the visa-waiver program, coming from Britain, Japan, Germany, Italy, Sweden, Ireland and Brunei, among other countries. To qualify, visitors must not be deemed likely to violate terms of the program or represent a security risk.

But Michael R. Bromwich, the inspector general, said, "Our review found that terrorists, criminals, smugglers and others have attempted to enter the United States using stolen blank passports from a visa-waiver country or by altering or counterfeiting these passports." He testified about his office's report at a Congressional hearing in May. The report was released to the public early this month.

Few countries reported problems with passport theft before participation in the program, immigration officials said. But the agency estimates that more than 100,000 blank passports have been stolen in the last several years.

When investigators looked at a sample of 1,067 blank passports reported stolen from visa-waiver nations in 1997, almost 4 percent matched passports successfully presented for entry into the United States.

Extrapolating from that sample, the auditors suggested that thousands of people might have used stolen passports in this way.

Immigration inspectors interviewed for the report said terrorists and criminals believed they would receive less scrutiny and have a better chance of avoiding interception if they entered the United States under the visa-waiver program.

A man later convicted in the bombing of the World Trade Center tried to enter the United States in 1992 with a fraudulent Swedish passport. He was briefly detained and then deported. In 1998, an Irish man who admitted membership in the Irish Republican Army was denied entry when inspectors learned that he was also a member of the Real I.R.A. — a terrorist group that has broken away from the I.R.A. And in 1988, the immigration service in New York discovered a trend in which Nigerian drug couriers were substituting their photos into passports from Britain in order to smuggle narcotics into the United States.

The visa-waiver program also makes it easier to immigrate illegally to the United States, investigators said. Because the program eliminates the need to obtain visas, visitors from participating nations avoid the screening that consular officers normally perform. As a result, inspectors at ports of entry now bear most of the responsibility for stopping illegal immigrants. But the inspectors have, on average, less than one minute to check and make their decision on each visitor.

The I.N.S. has said it generally supports the findings in the report, but it points to several factors that are out of its control. For example, another agency, the State Department, nominates countries for the visa-waiver program, and participating countries have their own standards for issuing passports, and reporting them stolen.

Michael A. Pearson, the executive associate commissioner for field operations at the I.N.S., said there was no built-in mechanism for dealing with security breakdowns.

"The program's lack of appropriate law enforcement standards mandating compliance or removal from the program has only increased as the program has been expanded," Mr. Pearson wrote in his response to the inspector general's review. "Regrettably, the statute and standards for law enforcement concerns have not evolved with the expansion, and we are now in the position of operating this program, which was predicated on low risk, in a high-risk environment."

The inspector general recommended that the I.N.S. build a complete database on stolen passports from countries that participate in the program and make sure that border agents check all passport numbers against the database.

The New York Times

MONDAY, JUNE 28, 1999