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INTRODUCTION

Good morning, Chairman Davis and Members of the Committee. Thank you for the opportunity to present the progress the Border and Transportation Security Directorate (BTS) has made in implementing Section 428 of the Homeland Security Act of 2002 (the Act) and in securing the homeland by improvements to U.S. visa and passenger vetting policies.

The 9/11 Commission has reported that the visa issuance process was exploited to accomplish the September 11 attacks on the United States. The Commission recommended that the US government consider new approaches to combating vulnerabilities in the visa system. BTS has been working with the Departments of State and Justice to address United States' security interests in the visa issuance process, to ensure that visas are issued only to those eligible consistent with applicable law and, where necessary, to implement appropriate changes to visa policy. We have also worked to integrate visa issuance policy into the larger spectrum of programs designed to secure air travel and ports of entry and to implement the US-VISIT entry-exit system.

Section 428 of the Act assigns the Department of Homeland Security (DHS) very specific visa security functions. The Act authorizes:

- DHS to assign officers to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security [Section 428(e)(1)]
- Assigned DHS officers to conduct specific functions at those posts [Section 428(e)(2)]
 - Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of visa applications
 - Review visa applications
 - Conduct investigations with respect to consular matters under the jurisdiction of the Secretary
 - Participate in the terrorist lookout committee operating a post

In addition, Section 428 requires that on-site DHS personnel review all visa applications in Saudi Arabia [Section 428(i)].

While as the IG notes the Act mandates that DHS develop performance standards to be used when the Secretary of State evaluates the performance of consular officers, according to the MOU, performance standards for evaluating consular officers must be developed in consultation with the Secretary of State.

The Act further authorizes DHS to establish permanent positions at overseas diplomatic or consular posts and directs such personnel to participate in the terrorist lookout committee operating at post. Finally, the Act exclusively vests the Secretary of Homeland Security “with all authorities to issue regulations with respect to, administer, and enforce the provisions of the [INA], and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas...”¹ These authorities relating to visa issuance are to be exercised through the Secretary of State, according to the Act. In addition, they are exercised in accordance with a Memorandum of Understanding between the Department of State and DHS signed by Secretary Ridge and Secretary Powell on September 29, 2004.

BTS ACCOMPLISHMENTS

BTS is responsible for overall policy oversight in DHS’s implementation of Section 428 pursuant to the Memorandum of Understanding. Secretary Ridge has assigned operational responsibility to the Visa Security Unit (VSU) established within Immigration and Customs Enforcement’s Office of International Affairs (ICE/OIA). Policy development for visa security matters has been assigned to my BTS Office of Policy and Planning, working where appropriate with U.S. Citizenship and Immigration Services and reporting to Under Secretary Asa Hutchinson.

Visa Security Unit

BTS has made substantial progress in implementing Section 428. Among our organizational accomplishments, BTS has:

- Recruited and trained temporary detail officers to initiate operations in Saudi Arabia.
- Recruited a headquarters staff serving long-term details.
- Developed a headquarters organizational structure and assigned functional responsibilities.
- Developed position descriptions for both headquarters staff and Visa Security Officers.
- Conducted planning sessions to guide continued program development over the next 12 months.

Operationally, BTS has:

- Established and maintained visa security operations at two posts in Saudi Arabia, which review 100% of the applications in that country.
- Established initial visa security review procedures and built a database to track visa security review workload.
- Evaluated, with DOS Bureau of Consular Affairs, and selected five overseas posts for the next expansion.

¹ The Homeland Security Act reserves authority over the Executive Office for Immigration Review to the Attorney General.

- Conducted site assessments at the selected posts and met with the Ambassadors and senior officers at each post.
- Submitted NSDD-38s for the selected posts to the Department of State on June 29, 2004.
- Developed a detailed implementation plan to establish visa security operations at the selected posts.
- Recruited experienced DHS officers to serve temporary assignments as Visa Security Officers overseas.
- Developed a refined training program for the next Visa Security Officers to be deployed.
- Established a headquarters procedure for in-depth vetting of subjects of interest identified through visa security activities.
- Held intensive review sessions with returned Visa Security Officers to evaluate procedures and identify detailed requirements for system automation.
- Begun developing an enhanced database to support the Visa Security officers' work overseas.
- Prepared reports to Congress, as assigned by DHS.

DHS IG Report on Section 428

DHS's Office of Inspector General (IG) recently issued its final report entitled, "An Evaluation of DHS Activities to Implement Section 428 of the Homeland Security Act of 2002." The report describes the Inspector General's assessment of Section 428 implementation to date and identifies twelve (12) recommendations to enhance implementation of DHS' Section 428 responsibilities. The IG's recommendations are a valuable management tool for our purposes and span five general topics that I would like to briefly review:

- Personnel selection and training
- The selection of posts for visa security operations
- The status of implementation of some of DHS' Section 428 responsibilities
- The status of funding and its implications for operations
- The scope of Saudi visa security review mandated in Section 428

However, my most important point today is with regard to BTS/ICE's response to the IG Report, reproduced in Appendix B of the final report (Management Comments), where we updated the IG on the progress made on implementation since the initiation of the IG inquiry in fall 2003. BTS largely concurred with the IG's recommendations and has addressed or is in the process of addressing all of them. We are pleased that, based on BTS' work, the IG at Appendix C of the final report (OIG Evaluation of Management Comments) has designated all of its recommendations closed or resolved.

Personnel Selection and Training

Currently, VSU's Visa Security Officers (VSOs) are journeyman law enforcement officers with an average of 18 years experience. VSOs are responsible for a range of visa security functions: visa security review, investigations under Section 428, training of consular officers, consular evaluation, and application of tactical intelligence to identify and intercept mala fide applicants

and schemes. In the context of visa security review specifically, VSOs supplement the consular adjudication process with law enforcement and counter-terrorism expertise. As experienced immigration enforcement officers, the VSOs possess expert knowledge of inspections, investigations, and adjudications policies and procedures as well as a sophisticated knowledge of immigration law and regulation. In addition to their other responsibilities, VSOs provide technical assistance to other USG officials at post and to domestic law enforcement agencies and, in addition, conduct appropriate law enforcement liaison with host country officials.

BTS has developed a staffing model for posts and has defined selection criteria for VSOs. These criteria include: law enforcement expertise, including investigations; counterterrorism experience; fraud document detection; immigration law knowledge; experience working overseas in a diplomatic and interagency environment; and language training. BTS has and will continue to select the best-qualified personnel to accomplish this mission.

VSU is currently refining the VSO training program established with the initial deployment last fall. This interim program builds on the officers' existing skills acquired from their respective law enforcement academies and from their careers in law enforcement. It provides refreshers and country or culture-specific instruction in such topics as impostor detection, terrorist tactics, fraud document detection, and interview techniques. It is designed to ensure that VSOs can be successful in their work in a diplomatic environment and as representatives of the United States. The VSU is also working with the ICE Office of Training to develop permanent modules for VSO training.

Status of Implementation of Some Section 428 Responsibilities

The IG expressed interest in the status of two Section 428 responsibilities:

- The development and delivery of homeland security training for consular officers; and
- The development, in coordination with DOS, of performance standards to evaluate consular officers.

With respect to the training for consular officers, BTS views consular training as encompassing both formal and informal training activities. BTS is now developing a formal training program for consular officers in consultation with ICE Office of Training. Informal training occurs routinely at the two Saudi posts and will continue to be a critical form of consular training as the VSP expands. Informal training involves day-to-day interactions between Visa Security Officers (VSOs) and individual consular officers. The VSOs share their law enforcement expertise and immigration experience with the consular officers to guide their interviews and refine document review methods. Informal training also generates valuable input to VSU about the types of formal training consular officers may need.

With regard to the development of performance standards for DOS's use in evaluating consular officers, BTS views its role as an auditing function of DOS's own evaluation practices. VSU recognizes that its recommendation of performance standards as a basis for such an audit is dependent upon developing a sophisticated understanding of basic consular officer training, of how consular officers currently are evaluated, and of operating practices and skill sets at multiple

posts. In the future, BTS will deploy additional VSOs to the posts and send VSU staff to DOS training. This will enable VSU to work with DOS to develop performance standards in FY2005.

Selection of Posts for Visa Security Operations

The IG inquired about DHS' methodology for selecting posts for deployment of visa security operations. Given global risk, BTS has developed site selection criteria that consider a range of quantitative and qualitative information to assess the overall risk and need for visa security operations at a given post.

A key step in the selection process involves a site assessment of posts considered to be candidates for visa security operations that is coordinated with DOS Bureau of Consular Affairs and the Office of Rightsizing. During such visits, BTS and the Consular Affairs representative consult with the senior officials at the posts, including the Ambassador, the Deputy Chief of Mission, the Regional Security Officer, the Legal Attaché, and Department of Defense personnel. Through these discussions, BTS collects data about the conditions in the country, which informs the site selection process.

Based on information from the intelligence community, country-specific and law enforcement information, and the site assessments conducted by BTS and Consular Affairs, DHS has selected five posts for the next assignment of VSOs.

Status of Funding

The IG recommended that DHS establish a funding mechanism for visa security operations. The President's budget includes \$10 million to establish the VSU, which includes funds to establish a headquarters office and SAO capability; training for consular affairs officers and the permanent establishment of overseas offices in Saudi Arabia and perhaps other locations later in FY 2005.

Scope of Saudi Visa Review

Section 428(i) mandates DHS review of all visa applications submitted in Saudi Arabia. The IG initially had suggested that DHS propose Congress modify this provision but now concurs with BTS' position. BTS does not propose to ask Congress for a modification, because BTS believes that all visa review is valuable to screen for systemic vulnerabilities in the visa process.

Status of Current Visa Security Operations

BTS currently has visa security operations in place in Saudi Arabia. Those operations began in October 2003. Between October 2003 and August 2004, DHS Visa Security Officers (VSOs) in Saudi Arabia reviewed approximately 19,000 visa applications. The VSOs and consular officers have developed very cooperative and collaborative working relationships. The VSOs review all applications after the consular officers have completed their adjudication and made a tentative decision whether to issue or deny the visa. Additionally, the VSOs routinely are asked by the consular officers for assistance during the adjudication process, for example: to review an application, to clarify a question of immigration law, to review suspect documents, and to clarify

or interpret derogatory information received about the applicant. In addition to ensuring rigorous scrutiny of visa applications, this practice provides an opportunity for on-the-job training of these junior consular officers to build on their current skills to screen for mala fides through enhanced interview techniques, imposter detection, and fraud document identification.

In summarizing this presentation of the implementation of section 428 procedures, I want to address two key areas of concern, that of information sharing with the Department of State and the Security Advisory Opinion Process.

Information Sharing with Department of State

In the context of visa security operations, VSU has worked cooperatively with Department of State to ensure that VSU and the VSOs are provided the information necessary to perform their Section 428 responsibilities as agreed to in the MOU. The VSOs in Saudi have arranged with consular officials to receive daily electronic transmissions of visa applicant biographic data to streamline the VSOs review activities. As the program expands, BTS envisions a more formalized and integrated system to facilitate the sharing of visa information between the two agencies, potentially using the current CCD architecture as a basis.

Security Advisory Opinion Process

BTS is developing a plan to participate in the Department of State's Security Advisory Opinion (SAO) process. The SAO process provides an interagency review of visa applications selected because of defined risk criteria (established under various SAO category designations) or because they otherwise warrant further scrutiny (based on consular officer discretion). BTS has proposed assigning four officers to the SAO process. These officers may be assigned to relevant offices, including Consular Affairs' Visa Office, to act as an initial point of contact in case resolution, leveraging DHS assets to assist in resolving problem cases. The officers will review overall SAO activity, processes, and patterns to identify areas requiring greater focus, to recommend improvements in information flow among the participating agencies, and to identify recommended refinement of visa policy based on changing needs.

Visa Policy

With respect to visa policy, under the Homeland Security Act and the Visa MOU, subject to certain exceptions, DHS can establish visa policy and has final authority over DOS-initiated visa guidance including: alien admissibility, classification, and documentation; place of visa application; personal appearance/interviews; visa validity periods and the Visa Waiver Program.

DHS recognizes that the ability of prospective students, scientists, tourists, or business partners to visit the United States is crucial to our society. If that travel is disrupted, either because people are unfairly rejected for a visa, or because they believe that travel to the United States is too inconvenient, we will experience a negative effect on our economy in the short-run. Equally as important, the ability of foreign visitors to come to our country is critical to spreading our democratic ideals, furthering scientific development, and promoting the image of America overseas.

Over the past several months, DHS, and particularly BTS and the Bureau of Citizenship and Immigration Services, have conducted a comprehensive review of the existing immigration laws, regulations, and policies to ensure that our immigration goals, policies, and laws are properly aligned in relation to visa issuance and policy. We have called on staff from US-VISIT, Customs and Border Protection and ICE to bring their best people and thoughts to the table to aggressively review these issues and, when appropriate, to effectuate change in this arena.

We have then worked closely with DOS on specific visa policy issues since the MOU was signed. We have met with many business organizations, education institutes, and the scientific community over the past several months and heard their message loud and clear that the visa process needs streamlining. These organizations have stated that visa application interview wait times are too lengthy, the SAO process is too slow, that applicants cannot determine if their application has been lost or is still pending, and that such delays have hurt the business, educational, and scientific sectors of the economy.

Over the past months, DHS and DOS have made a tremendous effort to combat the perception that security measures implemented since September 11 have made it too difficult for legitimate travelers to come to the U.S. We have examined how we can change policies to facilitate travel while ensuring safety to our nation and we seem to have been successful. The director of Yale University's Office of International Students and Scholars recently stated, "I think the administration, State Department and Department of Homeland Security are listening very carefully to the concerns of higher education."

DHS and DOS have worked together to identify solutions to these issues, advocated for changes through the interagency process, and implemented them once the concerns of other agencies have been addressed. We have examined the issues of visa reciprocity and visa interview validity periods, two issues that are inextricably intertwined.

DHS and DOS have also spent substantial time and effort to ensure that through appropriate changes in visa policy we can streamline the SAO process. With the ICE VSU, BTS is considering how to improve electronic transfers of information and whether imposing reasonable deadlines on other agencies to review the underlying visa application is appropriate. By reducing the number of pending applications through changes to streamline the SAO process, we have already seen a sizeable decrease in the backlog of security advisory opinions. We are looking a ways to make the visa application process smoother for many applicants, which will help our business, education, and scientific communities. Yale administrators said the speed and quality of the nation's visa-granting process has improved, smoothing this fall's entry of international students into the country. Yale President Richard Levin said "There have been improvements, and efforts to get responsiveness in Washington have been successful."

Visa Waiver Program

The Visa Waiver Program (VWP) enables citizens of certain countries to travel to the United States for tourism or business for ninety days or less without obtaining a visa. While visa-less travel encourages travel and trade with our allies, it also makes the program attractive to those

wishing to avoid visa security checks conducted at U.S. consulates abroad. To help address this security vulnerability, the Enhanced Border Security and Visa Reform Act (EBSA) requires that beginning on October 26, 2005, VWP countries have a program in place to issue their nationals machine-readable passports that are tamper-resistant and incorporate biometric and document authentication identifiers that comply with International Civil Aviation Organization (ICAO) standards as a condition of continued participation in the VWP program. The law also requires that visitors coming to the United States under the VWP present machine-readable, tamper-resistant passports that incorporate biometric and document authentication identifiers, if the passport is issued on or after October 26, 2005—a date recently changed by Congress. Furthermore, DHS is required to install equipment and software at all ports of entry to allow biometric comparison and authentication of these passports. The Congress enacted a one-year extension of the deadline for both VWP travelers to use biometric passports and for the U.S. Government to install the equipment to read the passports. The new deadline is now October 26, 2005.

In FY03, over 13.5 million visitors (about 46 percent of all controlled arrivals) entered under the VWP.

There have always been concerns about possible security vulnerabilities created by any “visa free” travel programs. This is particularly true now, in light of recent enhancements to the visa issuance process. However, the permanent program legislation and subsequent amendments include provisions to address the law enforcement and security interests of the United States. The program now requires that:

- each participating Visa Waiver Program country certify that it has a machine-readable Passport (MRP) program;
- a VWP traveler present an MRP on 10/26/04 – a deadline that the Secretary of State has already extended from the original deadline of October 1, 2003 -- following a one-year waiver by the Secretary of State;
- participating countries be evaluated against statutory criteria every 2 years;
- participating countries establish a program to issue MRPs that are tamper-resistant and incorporate biometric and document authentication identifiers that comply with standards established by the ICAO by October 26, 2005; and
- VWP travelers present “biometric-enabled” passports if the documents are issued after that date.

By law, DHS is required to review all participating countries periodically for continued participation and report to Congress. Several countries (Slovenia, Belgium, Italy, Portugal, Uruguay, and Argentina) were reviewed by the legacy Immigration and Naturalization Service (INS), and two (Argentina (2002) and Uruguay (2003)) were removed from the program. DHS, in coordination with the Department of State, is currently conducting reviews, including site visits by interagency teams from DHS, DOJ, and DOS, of the remainder of the countries and will

complete the reviews by October. This will be the first comprehensive review of the countries and will form the “baseline” for future reviews. I can assure you that these reviews will not be a cursory process: we will be asking tough questions as to a VWP country’s compliance with the statutory criteria. Among these are:

- a low nonimmigrant visa refusal rate;
- a machine-readable passport program, and, following the Congress’ passage of a one-year extension, after 10/26/05, biometric-enabled passport programs must be in place;
- a country designation may not compromise U.S. law enforcement and security interests, including enforcement of U.S. immigration laws and procedures for extraditions to the U.S.;
- the country must certify that it reports to the U.S. on a timely basis the theft of blank passports issued by that country; and
- low immigration violation rate (overstays, etc.).

Later this month, on September 30, we are going to enroll VWP applicants in US-VISIT, which will alleviate security gaps associated with the extension by providing biometric watchlist checks and identity verification for subsequent visits to the United States.

Pre-screening

As important as the visa process is, however, it is not the only mechanism by which the U.S. screens for potential terrorists or criminals who might attempt to travel to the U.S. **One of the keys to security and travel facilitation is knowing who is getting on the plane, especially for VWP travelers, so that our first line of defense is not when a passenger arrives at a United States airport.**

In May, working with a broad coalition of interagency partners, BTS finalized an important agreement with the European Union that permits the legal transfer to DHS of advanced passenger name record (PNR) data from airlines flying between EU countries and the United States. The purpose of our negotiations was to obtain an adequacy finding, under the European privacy directive, which allowed Customs and Border Protection (CBP) to receive PNR data from major airlines.

PNR data is an essential tool in allowing CBP to accomplish its key goals: (1) PNR data helps us make a determination of whether a passenger may pose a significant risk to the safety and security of the United States and to fellow passengers on a plane; (2) PNR data submitted prior to a flight's arrival enables CBP to facilitate and expedite the entry of the vast majority of visitors to the U.S. by providing CBP with an advance and electronic means to collect information that CBP would otherwise be forced to collect upon arrival; and (3) PNR data is essential to terrorism and criminal investigations by allowing us to link information about known terrorists and serious

criminals to co-conspirators and others involved in their plots, including potential victims. Sometimes these links may be developed before a person's travel but other times these leads only become available days or weeks or months later. In short, PNR enables CBP to fulfill its anti-terrorism and law enforcement missions more effectively and allows for more efficient and timely facilitation of travel for the vast majority of legitimate travelers to and through the United States.

Another important tool is Advance Passenger Information System (APIS) data. This is the information coded in the machine readable zone of your passport and transmitted electronically as part of a crew or passenger manifest to CBP for advanced analysis and for targeting of passengers traveling to and departing from the U.S. The National Targeting Center (NTC) uses PNR and APIS data in combination with a host of other passenger, cargo intelligence and threat information to conduct a risk analysis that helps to identify potential terrorists and targets for additional scrutiny. During the period of heightened alert last December, the NTC played a pivotal role in analyzing information that led to the delay of several international flights that were determined to be at risk. In the coming months, DHS will develop guidance governing the transmission of APIS data. As part of the Secure Flight passenger prescreening program announcement in August, DHS also announced that it will require APIS data to be provided before airplanes left foreign airports bound for the U.S., to better allow for vetting of incoming flights.

US-Visitor and Immigrant Status Indicator Technology (US-VISIT)

US-VISIT is a continuum of security measures that begins before individuals enter the United States and continues through their arrival and departure from the country. US-VISIT represents a major milestone in enhancing our nation's security and our efforts to reform our borders. It is a significant step towards bringing integrity back to our immigration and border enforcement systems. It is also leading the way for incorporating biometrics into international travel security systems.

In the border and immigration enforcement arenas, biometric identifiers are tools that help prevent the use of fraudulent identities and travel documents, including visas. The purpose of the biometric identifier is to verify a person's identity in order to run criminal history checks and ensure that an individual cannot apply and/or be granted benefits under different names. Biometric visas issued by the DOS to travelers to the United States allow one-to-one matches, to verify that the person presenting the visa is the person who was issued the visa, and one-to-many matches, to ensure that the bearer is not the subject of a biometric lookout or enrolled in the system under another name.

The biometric identifiers, currently a digital photograph and two digital fingerscans, that are collected by DOS during the visa application process are stored. Border inspectors use travel and identity documents to access that information for identity verification and watchlist checks. At assigned U.S. border points of entry, designated visitors are required to provide biometric data, biographic data, and/or other documentation. This data is checked against multiple databases, which US-VISIT has successfully integrated and which contain visa issuance information, terrorist and criminal watchlists, and immigration status information allowing

border inspectors to verify identity and identify criminals, security threats and immigration violators.

US-VISIT procedures are clear, simple, and fast for visitors.

DHS deployed the first increment of US-VISIT on time, within budget, and has exceeded the mandate established by Congress as it includes biometrics ahead of schedule. On January 5, 2004, US-VISIT entry procedures were operational at 115 airports (covering 99% of air travelers who use visas to enter the United States) and 14 seaports. In addition, we began pilot testing biometric exit procedures at one airport and one seaport. As of September 2, more than 8 million foreign visitors have been processed under the US-VISIT entry procedures without impacting wait times. US-VISIT has matched 790 persons against criminal data and prevented 264 known or suspected criminals from entering the country. Nine hundred and six people were matched while applying for a visa at a State Department post overseas.² Before the biometric component of US-VISIT, these people might have gotten through our system and into our country. US-VISIT's experience with biometrics is demonstrating that our ability to identify who entered and left the country is significantly improved with the addition of biometric identifiers.

In August, US-VISIT began expanding the pilot exit capabilities to additional sites; on September 30 we will begin enrolling VWP nationals in US-VISIT at entry; and in December, entry capabilities will be expanded to the 50 busiest land border ports of entry. US-VISIT is critical to our national security and its implementation is already making a significant contribution to the efforts of DHS to provide a safer and more secure America. While improving security, US-VISIT is being developed and deployed in a manner that will not negatively impact our economy, particularly along the land borders.

CONCLUSION

Our border management system impacts the security of our citizens and our visitors, affects billions of dollars in trade and travel and helps define relations with our international partners. There is a need to improve this system and bring it into the 21st century with a new integrated system of technological processes that will keep our country's economic and national security strong. This 21st century technology will provide an important step toward achieving the President's goal of secure U.S. borders. While we recognize that much work remains to be done to create the 21st Century borders our citizens deserve to protect the homeland and facilitate legitimate trade and travel, we have made significant progress since 9/11. I want to thank this Committee for its support as we continue to enhance the security of our visa processes and policies.

² Not all criminal violations make an alien inadmissible to the United States, and some aliens apply for and receive waivers of inadmissibility.