ISSUE BRIEF:

Entry/Exit Visa Tracking

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Background

It is a common misconception that nearly all unauthorized immigrants sneak across America's southern border. However, Pew Research Center estimated that, in 2006, 40 to 50 percent of unauthorized immigrants currently residing in the United States had entered the country legally but overstayed their visas.[i] Today, the United States cannot effectively track or verify whether temporary visitors leave the country before expiration of their visas. The Government Accountability Office (GAO) noted in 2007 that, without the ability to biometrically track international travelers exiting the country, the Department of Homeland Security (DHS) "cannot ensure the integrity of the immigration system by identifying and removing those people who have overstayed their original period of admission."

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) mandated that the U.S. government collect a departure record "for every alien departing the United States" and match those to records of arrival (§ 110). Subsequently, the Immigration and Naturalization Service Data Management Improvement Act of 2000 replaced IIRIRA's requirements with a mandate that the U.S. government match entries and exits at all ports of entry by December 31, 2005.

After September 11, 2001, Congress added mandates for the use of biometric data. Biological features like retinas and fingerprints are unique, making biometric identification more fraud-resistant than identification that relies on basic biographic information. By December 2006, DHS operated a biometric entry system at about 300 air, land, and sea ports of entry (POE) under the US-VISIT program. In March 2013, US-VISIT became the Office of Biometric Identity Management.

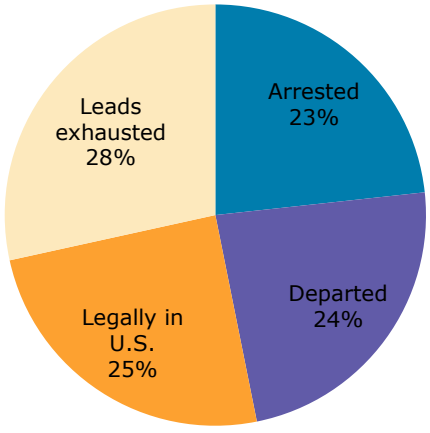
Progress

For entries, DHS implemented biometric US-VISIT largely in accordance with statutory deadlines. In December 2006, GAO found that, of the 156 land POEs where DHS saw an operational need to implement biometric entry through US-VISIT, 154 met the deadline.[2] Installation "usually" proceeded "with minimal new construction or changes to existing facilities." US-VISIT spent $182 million at land ports between FY2003 and 2005 on computer-network infrastructure, equipment installation, design development, network engineering, finger-scan devices, and public outreach.

To date, biometric exit has not been systematically implemented at land, air, or sea POEs. Different logistical and infrastructural needs make exit systems more difficult to implement than entry systems. Land ports are particularly challenging. GAO reported in December 2011 that Customs and Border Protection (CBP) "does not inspect travelers exiting the United States through land ports of entry, including collecting their biometric information. … Nonimmigrants departing the United States through land ports of entry turn in their forms on their own initiative."

Air and sea POEs are further along but face challenges as well. As of April 2013, DHS exit-system planning focused on airports, with the idea that seaports could adopt a similar system. DHS's May 2012 internal assessment noted that the "building blocks to implement an effective biometric air system were available" but "significant questions remained" regarding the current biographic air exit process, as well as cost-effective integration of biometric data. Earlier GAO reports questioned DHS's ability to address or verify the accuracy of carrier-provided manifest information.

Figure 1. Visa overstay investigation outcomes, 2004-2010.



Source: *GAO, April 2011.*

Without tracking everyone who leaves the country, it is difficult to know who overstays their visas. Statute requires DHS to report overstay data, but DHS and its predecessors have not done so since 1994 due to data-reliability issues. Between 2004 and 2010, ICE field offices closed about 34,700 overstay investigations, 16,800 (48 percent) of which found that the individual had already left the United States or adjusted their status. Another 8,100 led to arrests (23 percent), and the rest were unresolved.

Challenges to collecting biometric exit data

For years, DHS has been unable to fully comply with congressional mandates on biometric exit systems and reporting on visa overstays, but it has not ignored the law. DHS has conducted several pilot programs and engaged in significant planning. However, some key challenges have prevented DHS from implementing biometric exit systems that "mirror" the entry structure.

Figure 2. Aerial view of San Ysidro, California.

Source: *GAO, December 2006.*

Space constraints. Most land ports already face severe space constraints—a 2002 task force found that 70 percent of land POEs already had less than three-quarters of the space they needed. DHS officials reported that "it is unclear how new traffic lanes and new facilities could be built at land POEs where space constraints already exist." GAO highlighted San Ysidro, California, where mirroring the entry system would require constructing 18 additional exit lanes (Figure 2). In addition to more obvious urban constraints, many facilities are limited by geological structures, transportation infrastructure, or private land (GAO-07-248, December 2006).

Collaborating with carriers. According to a May 2013 GAO report, two of the three main impediments to biometric air exit relate to coordinating with carriers. First, "air carriers and airport authorities had not allowed DHS to examine mechanisms [to] incorporate biometric data collection into passenger processing at the departure gate." For example, GAO reported in August 2010 that airlines' unwillingness to participate in 2009 pilots severely limited the usefulness of those pilots. Second, challenges existed in "determining what personnel should be responsible for the capture of biometric information." A 2008 DHS report suggests that at air and sea ports, carriers or the U.S. government could capture that information.

Cost. A full exit system would impose significant costs, including investments in new personnel, infrastructure, and equipment. DHS estimated in 2008 that implementing biometric exit at air and sea ports would produce a ten-year cost of $3.5 billion in expenditures and delays.[3] A 2003 DHS estimate pegged the cost of implementing full land entry/exit, including new infrastructure, at $3 billion. Senator Charles Schumer and other S.744 sponsors argue that costs for an entire system could be as high as $25 billion.

Technology. Biometric identification technology has improved significantly in recent years. The FBI's custom-developed fingerprint system achieved 92 percent accuracy in 1999, but a new system based on commercially available technology achieved 99.6 percent accuracy

using the same database in 2013. However, GAO reported in May 2013 that some "airports and airlines rely on older, proprietary systems that may be difficult to update." Further, as described below and in the next section, some DHS pilot programs employing biometric technologies experienced setbacks.

Commerce and movement. POEs already struggle to handle volume. GAO and DHS have each warned of potential negative repercussions for the movement of people and goods across the U.S. border. An analysis by Bloomberg Government valued the U.S.-Mexico truck trade at $322 billion in 2012 and posited that existing border-crossing delays already cost the U.S. economy $7.8 billion in 2011.

At land POEs, the above-described space restrictions would compound severely if a "mirror" of the entry system required already squeezed ports to handle exit traffic. Additionally, any U.S. expansion of land POE infrastructure would likely require the Mexican government to make similar investments, particularly for exit traffic lanes, on the southern side of the POE. This has historically proved to be difficult for the United States to control and could delay the use of new lanes or systems on the U.S. side. For air POEs, GAO argued in December 2010 that "limitations with scope, approach, and reporting" limited the extent to which pilot programs could inform long-term planning. For example, screenings were suspended to avoid flight delays.

Land exit alternatives

Mirroring the entry system at land ports appears to be impractical, but potential alternatives exist. In 2007, GAO reported a DHS belief that "technological advances over the next 5 to 10 years will make it possible to biometrically verify persons exiting the country without major changes to facility infrastructure and without requiring those exiting to stop and/or exit their vehicles." Since that time, improvements in biometric, sensor, and information technology have indeed occurred, but challenges remain. DHS efforts to find a solution have focused on three main categories:

1. Automated kiosks in Canada and Mexico. Congress could require travelers to confirm their exit at automated kiosks located in Canada and Mexico, subject to some penalty (such as denial of reentry) for noncompliance. However, challenges exist. In 2005, DHS deemed remote kiosks to be "infeasible" due to challenges related to political coordination, foreign construction and infrastructure, connectivity to DHS, and the lack of assurance that travelers would use the kiosk. Subsequently, in September 2011, DHS canceled a pilot program requiring temporary workers to use automated kiosks at two U.S. POEs. A Federal Register notice described the challenges: "considerable time and resources" spent helping people who had trouble using the kiosks, inconsistent kiosk operability due to the desert climate, and the "physical layout of the departure area."

2. Data sharing with Canada and Mexico. Canadian and Mexican entry data have potential to serve as a proxy for U.S. exit data. In October 2012, DHS and the Canada Border Services

Agency (CBSA) launched a "Beyond the Border" pilot at four shared POEs and expanded the program to all shared POEs on July 3, 2013. After June 2014, GAO reports that "DHS plans to exchange data on all travelers at all automated ports of entry along northern border." According to CBSA, DHS was able to use existing entry/exit systems to match 97.4 percent of the records it received from Canada during the program's first phase, from September 2012 to January 2013.

According to a May 2013 *New York Times* article, DHS officials say that Mexican authorities "do not reliably collect and store personal data" on all crossers from the United States, preventing a similar exchange. Chappell Lawson, a former CBP director of policy and planning, told the *Times* that negotiations with Mexico over the issue largely came down to money: the countries "could do it in a year if you had all the money you needed." If Mexico were to build up its data-collection infrastructure in partnership with the United States, it would be important for planners to consider the potential impact on commerce and movement.

3. Radio frequencies. DHS has considered issuing unique radio frequencies to individuals at entry that could later be read at-speed upon exit. In June 2007, GAO reported numerous challenges with DHS testing of such a solution, including the inability to reliably detect frequencies. Widespread commercial deployment of at-speed radio-frequency detection (such as EZ-Pass) suggests that, in theory, a technologically workable solution could be identified.

Conclusions

The legal mandate for biometric entry/exit visa tracking is more than a decade old, and DHS implemented the entry portion largely in accordance with statutory deadlines. However, an array of logistical challenges has prevented DHS from implementing similar exit capability to track departing visitors. This makes it impossible for the government to systematically track whether individuals overstay their visas. Public debates often overlook visa overstays, but these individuals constitute 40 to 50 percent of all unauthorized immigrants in the country.

Biometric exit capabilities would be most difficult to deploy at land ports of entry, where space constraints effectively prohibit the deployment of an exit system that mirrors the entry system. At land, air, and sea ports, challenges also exist related to cost, technology, and the movement of people and goods. Recent technological advancements appear poised to help overcome some of these challenges. In particular, the U.S. data-sharing program with Canada appears to be a promising solution for collecting exit data at land ports. Unfortunately, Mexico does not yet have the capability to collect equivalent data.

As the past decade has shown, legal mandates alone are unlikely to overcome the challenges that stand in the way of full exit tracking. Stakeholders on all sides of the immigration debate should support and vigorously pursue solutions, including but not limited to further exploration of the land exit alternatives described above.

Endnotes

[i] Of these individuals, Pew estimated that "4 to 5.5 million entered with nonimmigrant visas, mostly as tourists or business visitors, and another 250,000 to 500,000 entered with Border Crossing Cards." The common claim that 30 to 40 percent overstay appears to originate from a Federation for American Immigration Reform fact sheet, but the source traces back to this same Pew estimate, which says 40 to 50 percent.

[2] There were 170 total land ports at the time of GAO's December 2006 report. Of the 16 excluded, statute prohibited individuals from using US-VISIT at 14 of them. The other two lacked appropriate communication infrastructure.

[3] The proposed rule applied to air carriers with more than 1,500 employees and to sea carriers with international departures.