

April 22, 2004

Nuala O'Connor Kelly
Chief Privacy Officer
Department of Homeland Security
245 Murray Lane, S.W.
Building 410
Washington, D.C. 20528

Dear Ms. O'Connor Kelly:

On behalf of a coalition of privacy, immigration and civil rights organizations, we write to express our concern with the redress policy for US-VISIT recently released by the Department of Homeland Security. While conceived with the worthwhile goal of securing our borders and protecting U.S. citizens, permanent residents, and visitors, the US-VISIT program poses enormous potential for error, invasion of privacy, and violation of international privacy laws and human rights standards. For this reason, a straightforward redress policy that allows for fair review and rapid appeals of erroneous determinations is essential.

According to the US-VISIT redress policy dated March 15, 2004, DHS has implemented a three-stage process for individuals to inquire about and amend incorrect and incomplete data. The first stage occurs at the primary inspection lane and is intended to provide immediate data correction for errors that deal with name, date of birth, flight information, and country-specific document number and document type. It is our understanding that the Customs and Border Protection Office in charge of the line has "the ability" to correct such errors. If the errors detected deal with biometric information, the Customs and Border Protection Officer sends a "data correction" request to US-VISIT.

The second stage allows those processed through US-VISIT to seek review of their records for accuracy and completeness. If the individuals are not satisfied with the result of this review, the third stage of this redress process would allow them to appeal to the DHS Privacy Officer, who conducts an investigation and is expected to provide final adjudication on the matter within 20 business days.

The information provided on the redress policy raises a number of questions:

1. How long does it take to receive a response to the "data correction" request sent to US-VISIT regarding biometric information?
2. Where does the individual have to wait during the "data correction" period?
3. How long does data review in the second stage of the redress process take? Where is the traveler during that process?
4. How would an individual know what particular record is not accurate, relevant, timely or complete? To what records would he/she have access? What reasons will be considered reasonable justifications for review?

5. If a person is denied entry into the U.S., which federal agencies will be notified about the questions surrounding that person's access to the U.S.? Is his/her government notified that one of its citizens has been denied access into the U.S.? What type of information will be shared with that government?
6. What happens to persons denied admission because of a US-VISIT "hit"? Are they sent back to their point of origin under an expedited removal order? Will such individuals be barred from returning for a certain period of time? Will passports of affected persons be stamped "refused admission"? How will the redress process take place if an individual is in detention or returned to the home country?
7. Are any individuals admitted to the U.S. if they have failed to pass the US-VISIT requirements? If so, will individuals who must appeal in the third stage of the redress process and who will be in the U.S. for more than 20 business days have their final decision from DHS sent to their temporary address or to their country of residence?
8. If the records are sent to an individual's country of origin and he or she does not know that his or her appeal has been denied, will he/she have any problems when exiting this country?
9. If an individual's record is to be amended based on an appeal, how long will it take to update those records in US-VISIT?
10. How will those persons affected be notified of the redress process?

In general, it remains unclear what happens to individuals who come up as "hits" on any of the various databases used by US-VISIT. While we agree that detention or barred entry, in accordance with due process, is appropriate for persons who pose genuine threats to the U.S., we are also concerned about false positives. If these individuals are detained or sent to their home countries, their access to redress procedures may be severely limited, and the consequences of the false "hit" may be significant and long-lasting. We fear that the current redress policy does not adequately deal with these serious problems.

In addition to our concerns about the vagueness of the redress policy, we remain very concerned about the uneven and incomplete implementation of the program. We understand, for example, that the exit portion of US-VISIT has not been fully implemented. Moreover, we also understand that when lines are long at ports of entry, visitors are allowed entry without going through US-VISIT procedures. Our concern is that the failure to implement the entry and exit systems uniformly will lead to greater hardships on travelers to the United States and increased inaccuracies that may have negative consequences for these travelers in the future. In order for this system to be consistent with our nation's tradition of individual rights and liberties, it must not be implemented in a way that needlessly undermines privacy, results in profiling based on national origin, or relies on inaccurate data or unreliable technology. In light of all of these concerns, we strongly recommend an independent evaluation of the US-VISIT program.

We appreciated the opportunity that many of us had to discuss US-VISIT with you and other DHS officials on January 14, shortly after the program was launched. In the interest of continuing that dialogue, and to explore the issues raised in our letter, we respectfully request another such meeting with you to discuss the redress policy and other outstanding questions and concerns regarding the implementation of the US-VISIT program. Please contact Iliia Rodriguez of People For the American Way at 467-2305 if you have questions about this letter or to schedule a meeting with the undersigned groups.

Sincerely,

American-Arab Anti-Discrimination Committee
American Immigration Lawyers Association
Asian Pacific American Legal Center of Southern California
Association of Asian Pacific Community Health Organizations
Center for Democracy and Technology
Electronic Privacy Information Center
Empowering the Korean American Community, New York
Friends Committee on National Legislation
Fairfax County Privacy Council
Human Rights First
Irish Immigration Center, Boston
Korean American Coalition
Korean American Resource and Cultural Center, Chicago
Korean Resource Center, Los Angeles
National Asian Pacific American Legal Consortium
National Black Police Association
National Council of La Raza
National Employment Law Project
National Federation of Filipino American Associations
National Immigration Law Center
National Korean American Service and Education Consortium
People For the American Way
Presbyterian Church (USA) Washington Office
Privacy Activism
Privacy International
Privacy Rights Clearinghouse
Robert Ellis Smith, Publisher, Privacy Journal
Sikh Mediawatch and Resource Task Force
The Multiracial Activist
World Privacy Forum

Cc: Steve Yonkers