

TESTIMONY OF

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ON

“The Abu Dhabi Pre-Clearance Facility:
Implications for U.S. Businesses and National Security”

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Chairman Poe, Ranking Member Sherman, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the role preclearance operations in U.S. Customs and Border Protection's (CBP) multi-layered strategy in securing America's borders and facilitating legitimate trade and travel.

CBP's preclearance operations are an important step in the U.S. government's effort to prevent terrorism from coming to our borders. As President Obama said at the National Defense University on May 23, "the threat has shifted and evolved from the one that came to our shores on 9/11." After 9/11, as this Subcommittee is well aware, a host of measures were put in place by the Congress and the Executive Branch to increase security at U.S. airports and ports of entry. Today, the Department of Homeland Security (DHS) and CBP have access to improved screening tools, new legal authorities, and thousands of trained security professionals that make it harder than ever, for a terrorist to enter the United States by air. However, the threat continues to evolve. The attempted terrorist attack on American Airlines Flight 63 from Paris to Miami on December 22, 2001, and on Northwest Airlines Flight 253 from Amsterdam to Detroit on December 25, 2009, demonstrate that terrorists seek to avoid U.S. screening and targeting efforts by carrying out attacks on U.S.-bound aircraft before arrival in the United States.

It is the responsibility of DHS, and CBP, to do what we can to anticipate terrorists' tactics and develop measures to prevent them from succeeding. Preclearance, and similar programs like the Immigration Advisory Program (IAP), are among the most effective means we have developed to disrupt such attacks. Screening passengers abroad, an activity that is normally conducted upon landing in the United States, reduces the risk of attack by helping to keep dangerous people and goods off aircraft bound for the United States. CBP works with our international partners around the world to set up either preclearance or an Immigration Advisory Program (IAP) presence where the security and facilitation benefits are the greatest and where our relations with our international partners are the strongest.

Extending the Zone of Security

On a typical day, CBP welcomes to the United States nearly a million travelers at our air, land, and sea ports of entry (POEs). The volume of international air travelers increased by 12 percent from 2009 to 2012 and is projected to increase 4 to 5 percent each year for the next five years.¹

A critical objective of CBP's multi-layered strategy is to extend our zone of security to interdict threats as far from the homeland as possible, working closely with our international partners. As the threat has evolved to include not only aircraft present in the United States, but also aircraft bound for the United States, we can no longer view our border as the first line of defense, but rather one of the last lines of defense. We accomplish this security objective through targeting, using passenger information provided in advance of travel, to focus on those of greatest security concern. We also leverage international relationships, such as by operating preclearance and IAP in foreign airports, to interdict threats before they pose a risk to an aircraft or other US bound conveyance.

Targeting

In order to make risk-based operational decisions before a passenger boards an aircraft, and continuing until the traveler enters the United States, CBP leverages all available advance information on in-bound passengers. Throughout the travel process – from reservation, to check-in, to boarding at a foreign point of origin – CBP devotes its resources to identifying the highest threats, including those who may not have been exposed by the Intelligence community. As a result of advance travel information, CBP assesses passenger risk ahead of time, often days before a traveler boards a plane. The visa process, run by the Department of State, provides one source of information, and for travelers under the Visa Waiver Program, CBP has the opportunity to assess their risk via the Electronic System for Travel Authorization (ESTA). CBP assesses travelers' risk when they purchase their ticket and/or make a reservation, and when they

¹ U.S. Commerce Department Forecast of Growth in International Travel to the United States Through 2016. <http://www.commerce.gov/news/press-releases/2012/04/23/us-commerce-department-forecasts-growth-international-travel-united-s>.

check-in for their flight. Currently, in all cases before an international flight departs for the United States from a foreign point of origin, the airline transmits passenger and crew manifest information to CBP. CBP's National Targeting Center (NTC) then reviews traveler information to identify travelers who could be determined inadmissible upon arrival. Preclearance augments this capability, by allowing CBP to take action against high-risk travelers, including those who may be determined to be inadmissible based on additional interviews. Furthermore, certain malicious actors, such as perpetrator of the attempted bombing aboard Northwest Airlines Flight 253 Umar Farouk Abdulmutallab, may be unknown to law enforcement or the intelligence community, but pose an immediate threat to aviation. Preclearance affords the United States the ability to interdict such threats and work with our international partners to ensure that they never board the aircraft in the first place.

Immigration Advisory Program

CBP established the IAP to enhance efforts to prevent terrorists and high-risk travelers from boarding commercial aircraft destined to the United States. IAP officers are stationed at major gateway airports in Western Europe and have a presence in Asia and the Middle East including Amsterdam, Frankfurt, London Heathrow, London Gatwick, Manchester, Madrid, Paris, Tokyo, and Doha. Building on the IAP concept, CBP launched the Joint Security Program (JSP), partnering with host country law enforcement to identify air passengers linked to terrorism, narcotics, weapons, and currency smuggling. JSP officers are posted in Mexico City and Panama City. Using advance information from the NTC, IAP officers work in partnership with host government authorities to identify possible terrorists and other high-risk passengers. When a threat is identified, IAP officers issue no-board recommendations to commercial air carriers, helping to prevent terrorists, high-risk and improperly-documented travelers from boarding commercial flights destined for the United States. In Mexico and Panama, JSP officers collaborate with host government law enforcement to jointly engage travelers arriving into and departing the host country (U.S. and foreign-to-foreign commercial flights). Using mobile technology, IAP and JSP officers conduct database queries and coordinate with the NTC to confirm whether a traveler is a watchlisted individual. IAP and JSP officers also evaluate the potential risks presented by non-watchlisted travelers. Since the inception of the program, CBP

has been successful in preventing the boarding of 18,366 high-risk and improperly documented passengers from IAP and JSP locations. This effort significantly increases security and reduces the cost to the U.S. Government and the airlines required to return inadmissible travelers to their points of origin. Cumulative IAP and JSP no-board recommendations have resulted in an estimated savings to CBP of \$32.4 million in adverse action processing costs for travelers who would have been denied entry at U.S. ports of entry and an estimated savings to commercial carriers of \$29.5 million in averted fines associated with the transportation of improperly-documented travelers.

The IAP and JSP programs are based on the cooperation of the airlines and the host government. IAP and JSP officers do not have the legal authority to compel air carrier or traveler compliance that CBP officers have at a port of entry in the United States or at a preclearance facility overseas. Nevertheless, an IAP or JSP officer's no-board recommendation to an air carrier regarding inadmissible travelers, while not legally binding, are generally accepted and followed by airlines.

Preclearance Operations

Preclearance operations support CBP's extended border strategy by providing for the inspection and clearance of commercial passengers on foreign soil.

Preclearance operations allow CBP to staff officers at host airports and complete the same inspectional processes of passengers as at a domestic port of entry. CBP officers are in uniform, and have the legal authorities to question travelers and inspect luggage. All mission requirements are completed at the preclearance port prior to travel, including immigration, customs, and agriculture inspections. This process allows the aircraft to arrive at a domestic airport gate in the United States and travelers to proceed to their final destination without further CBP processing, a major efficiency for travelers. Passengers at a preclearance facility found to be inadmissible to the United States are denied boarding to the airplane. Currently, CBP operates 14 air preclearance locations in five countries: Canada (Calgary, Edmonton, Halifax, Montreal, Ottawa, Toronto, Vancouver and Winnipeg), Ireland (Dublin and Shannon), The

Bahamas (Freeport and Nassau), Aruba and Bermuda. CBP also conducts immigration preinspection on ferries in Victoria, Canada and on cruise vessels and trains in Vancouver, Canada.

Of the two international programs, preclearance offers additional benefits for both security and the facilitation of travel and trade. Through preclearance, CBP is able to work with foreign law enforcement officials and commercial carriers to prevent the boarding of potentially high-risk travelers, leveraging its full legal authority, as opposed to a purely advisory role. Preclearance is also more efficient. Whereas passengers arriving in the United States from an airport with an IAP presence will be subject to inspection by CBP upon arrival, passengers arriving from a preclearance location may proceed to their final destination without further CBP processing, as if they had arrived on a domestic flight. Reinforcing the CBP's layered approach to security, CBP always retains the authority to conduct further inspection or engage in enforcement action of a pre-cleared flight upon its arrival in the United States. IAP is a voluntary program, whereas preclearance provides for the complete security screening and formal determination of admissibility to the United States for all travelers before they ever board U.S.-bound flights. In light of the terrorist threat we face now and in the future, there will be locations where preclearance provides important security benefits available in no other way.

In Fiscal Year (FY) 2012, CBP officers processed 15.6 million travelers for entry into the United States at international preclearance locations, which included 29 percent of all commercial aircraft and 18 percent of travelers arriving by air destined for the United States. Over 8,000 inadmissible travelers were intercepted at preclearance locations, allowing the U.S. government to avoid about \$20 million in detention, processing and repatriation costs that would have been generated had they been caught upon arrival. However, no new preclearance locations have been established since 2006 due to the cost of stationing CBP officers and their dependents overseas,² and the fact that many foreign countries where preclearance would be beneficial do not permit

² To establish and maintain a preclearance location, CBP incurs additional costs beyond that of standard salaries and benefits, including continuous international relocations, housing and education allowances, and shared costs in the Department of State's International Cooperative Administrative Support Services (ICASS) system applied to all federal entities at diplomatic and consular post.

CBP officers to exercise the full authorities, privileges, and immunities required to carry out our mission.

Benefits of Preclearance Operations in UAE

After the December 25, 2009 attempted terrorist attack on Northwest Airlines Flight 253, CBP, along with DHS and members of the counterterrorism community, renewed efforts in security programs in the Middle East and the Horn of Africa to identify and interdict threats before they board an aircraft, particularly those threats which may not be foreshadowed by intelligence.

The United States and the United Arab Emirates (UAE) share many interests as partners in security and economic growth. On April 15, 2013, DHS and the UAE signed an agreement to establish preclearance operations in Abu Dhabi. Under the contemplated UAE preclearance operations, CBP officers would be allowed a full complement of authorities to question and search individuals and baggage, would have access to the full complement of technology systems, and would be authorized to have access to firearms and other law enforcement tools. The underlying principal of this agreement is the mitigation of threats, both known and unknown, based on our analysis of current threats.

An Abu Dhabi preclearance location offers the United States significant security and facilitation benefits that are not achievable in other ways. In addition, there will be a net resource gain compared to domestic processing of the same flights. Accordingly, establishing preclearance operations in Abu Dhabi will provide clear benefits to U.S. security in a highly cost effective manner.

Security

Preclearance operations in Abu Dhabi would assist CBP in preventing terrorists, illicit cargo and other national security threats from gaining access to aircraft flying to the United States from the UAE. As examples of the importance of engagement with the UAE for preclearance activities to enhance U.S. security:

- Abu Dhabi ranks in the top 10 origination airports for travelers who are positive matches to the Terrorist Screening Database (TSDB).
- UAE receives flights from Yemen, North and East Africa (Morocco, Nigeria, Kenya, Ethiopia, and Sudan), Saudi Arabia, Pakistan, Iraq, Iran, Lebanon, Bangladesh, and India, all high risk pathways for terrorist travel.
- Fewer than 5 percent of refused travelers arriving on flights from Abu Dhabi in the last two years were Emirati citizens; most were transit passengers from India, Saudi Arabia, Pakistan, and Bangladesh.
- 70 percent of the U.S.-bound commercial passengers from Abu Dhabi International Airport are in-transit from other countries.

Given these threats, and the specific routings and transit traffic through Abu Dhabi, preclearance provides clear U.S. security benefits by allowing DHS to project a core security program closer to source countries for violent extremist activity. CBP officers will have the ability and authority to inspect and interview passengers and examine baggage and personal effects prior to departure to the United States. Preclearance operations in Abu Dhabi will enhance law enforcement partnership and information sharing with a key international partner in the region and would allow CBP to inspect and interview travelers presenting intelligence-based risk factors identified through our targeting enterprise.

Preclearance also protects the security of U.S. agricultural infrastructure and public health from the spread of foreign pests, disease, and global outbreaks. For example, in the last two years, CBP has seen a 400 percent increase in interceptions of the destructive *Trogoderma granarium* (Khapra beetle), one of the most devastating agricultural pests from that region, mostly in luggage of passengers originating from or transiting the Middle East. The Khapra Beetle is frequently found in rice and other commodities from India, Pakistan, and the Arabian Peninsula. With preclearance operations in Abu Dhabi, CBP agriculture specialists would be able to

increase interdiction efforts against these and other pest threats before they arrive on American soil. In addition, preclearance provides CBP with an important opportunity to interrupt the spread of global outbreaks to the United States, such as the H7N9 bird flu and the Middle East respiratory syndrome coronavirus. U.S. Immigration and Customs Enforcement, Homeland Security Investigations, has an Attaché office located in the U.S. Embassy in Abu Dhabi to follow up on any investigative leads generated from CBP preclearance operations.

Facilitation

CBP is seeking to establish preclearance in the UAE for both security and facilitation considerations. Abu Dhabi is increasingly a key transit location, with more than 200,000 passengers arriving in FY 2012, and an expected increase in FY 2013 up to 400,000 passengers. Currently, there are three daily flights from Abu Dhabi to U.S. airports with additional service expected by the end of the calendar year. These flights arrive during peak traffic periods at congested terminals at John F. Kennedy International Airport (JFK), Chicago O'Hare International Airport (ORD), and Dulles International Airport (IAD). Given the high percentage of non-U.S. citizens on these flights, who take longer to process, passenger traffic from Abu Dhabi contributes to significant wait times that inconvenience all international travelers, including those arriving on U.S. carriers from other locations.

If these processes can be accomplished in Abu Dhabi, it not only removes the burden from CBP officers at these key domestic airports, but those CBP officers can devote time and attention to other travelers. For example, Etihad flight 151, a Boeing 777, arrives at ORD with an average of 380 passengers daily at 3:35 p.m., directly in the middle of ORD's peak traffic period. Preclearing this flight would remove almost 20 percent of the arriving travelers from processing queues at ORD during this peak hour and provide a significant, positive impact on primary and secondary examination wait times. This would not only provide economic benefits to the carriers and travelers arriving during this period, it would also free CBP officers at ORD to focus their efforts on other travelers arriving from other origination points. Similar benefits would be achieved at JFK and IAD as well.

Legal Framework

Authority for performing immigration preinspection services in a foreign country is provided in the Immigration and Nationality Act (INA).³ Specifically, section 103(a)(7) of the INA provides for the establishment of immigration offices in foreign countries and assignment of immigration employees to those offices to accomplish the purposes of the INA⁴. Regarding the provision of customs examination services overseas, the Anti-Drug Abuse Act of 1986 amended the Tariff Act of 1930 and addresses the stationing of customs officers in foreign countries, pursuant to treaty or executive agreement, to conduct preclearance of persons and merchandise prior to their arrival in the United States.⁵ For agricultural inspection services, the Homeland Security Act of 2002 transferred certain agricultural import and entry inspection functions of the Secretary of Agriculture to the Secretary of Homeland Security.⁶

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress recognized the importance of preinspection facilities overseas, directing the establishment of “preinspection stations in at least five of the foreign airports that are among the 10 foreign airports which the Attorney General [now Secretary of Homeland Security] identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive from abroad by air at ports of entry within the United States.”⁷ The preinspection stations authorized by the Illegal Immigration Reform and Immigrant Responsibility Act were in addition to those established prior to 1996.

Congress expanded the preinspection program in the Intelligence Reform and Terrorism Prevention Act of 2004. In that law, Congress directed the Secretary, in consultation with the Secretary of State, to “establish preinspection stations in at least 25 additional foreign airports . . .

³ Pub. L. No. 82-414, § 103(a), 66 Stat. 163, 174 (codified as amended at 8 U.S.C. § 1103(a)(7)).

⁴ *Id.* (“[The Secretary of Homeland Security] may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detail employees of the Service for duty in foreign countries.”).

⁵ Pub. L. No. 99-570, § 3128, 100 Stat. 3107 (codified as amended at 19 U.S.C. § 1629(a)) (“When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in, or subsequent to their exit from, the United States.”).

⁶ Pub. L. No. 107-296, § 421, 116 Stat. 2135 (codified as amended at 6 U.S.C. § 231).

⁷ Pub. L. No. 104-208, § 123(a), 110 Stat. 3009 (codified as 8 U.S.C. § 1225a(a)(1)).

. [that] would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States.”⁸

Cost Reimbursement

While it is prohibited by relevant law to charge, other than the routine customs user fees, for customs preclearance activities,⁹ the Secretary may seek reimbursement for certain immigration and agriculture preinspection services. To facilitate cost-effective immigration preinspection services, Congress authorized the Secretary “to receive reimbursement from the owner, operator, or agent of a private or commercial aircraft or vessel, or from any airport or seaport authority for expenses incurred by the [Secretary] in providing immigration inspection services which are rendered at the request of such person or authority (including the salary and expenses of individuals employed by the [Secretary] to provide such immigration inspection services). The [Secretary’s] authority to receive such reimbursement shall terminate immediately upon the provision for such services by appropriation.”¹⁰

Similarly, the Secretary may accept reimbursement for agricultural preinspection services under the Homeland Security Act of 2002.¹¹ The provisions of 7 U.S.C. § 8311 authorize the Secretary to enter into reimbursable fee agreements for the preclearance of animals or articles for movement into the United States at foreign locations.¹²

The UAE airport authority has offered to reimburse CBP for the full cost of operation to the extent authorized by U.S. law. Under existing statutory authorities, CBP can accept reimbursement for approximately 85 percent of our costs associated with immigration and agriculture-related inspectional activities. CBP will seek reimbursement for all allowable costs associated with preclearance operations at Abu Dhabi, such as immigration and agriculture

⁸ Pub. L. No. 108-458, § 7210(d)(1), 118 Stat. 3836 (codified as amended at 8 U.S.C. § 1225a(a)(4) (2004)).

⁹ 19 U.S.C. § 58c(e)(6)(B).

¹⁰ 8 U.S.C. § 1356(i).

¹¹ 7 U.S.C. § 8311(a), (b); *see also* 6 U.S.C. § 231 (transferring reimbursement authority from the Secretary of Agriculture to the Secretary of Homeland Security).

¹² 7 U.S.C. § 8311(a), (b).

inspectional services, under the existing authorities in titles 7 and 8 of the U.S. Code described earlier. The current average salary and benefit cost for a CBP officer at a domestic port of entry is \$119,000, but using these existing reimbursement authorities CBP anticipates the effective cost per officer in Abu Dhabi will be approximately \$21,500 per year. CBP estimates costs of opening and maintaining a preclearance location in Abu Dhabi to be approximately \$5 million annually, which includes the relocation of CBP officers to Abu Dhabi, the salaries, benefits, and all operating costs, but with reimbursement that total cost to CBP would be less than \$500,000.

As a result of the costs to be reimbursed by the UAE airport authority, CBP anticipates that the cost per passenger will be approximately 16 percent of domestic cost per passenger. Proposed reimbursement from the UAE airport authority would be deposited into existing user fee accounts, which already receive routine user fees collected by air carriers globally. Moreover, these accounts defray CBP costs for a broad set of expenses (i.e., not just employees' salaries). In general, CBP officer salaries come from a variety of sources, including the agency's annual appropriation and applicable user fees collected by airlines, and would not plausibly be viewed by CBP personnel as a source of funding dependent on Abu Dhabi in a manner that could compromise integrity. Any officers deployed abroad, as with all overseas deployments of CBP personnel, would have positions to return to at United States POEs and would not be subject to untoward influence from this arrangement.

Two additional categories of savings will also accrue to CBP: cost savings for travelers deemed inadmissible in Abu Dhabi, and an estimated savings of 15-16 officers at U.S. airports due to the partial reimbursement of UAE preclearance operations. Denying admission to the United States at a preclearance location precludes costs, such as enforcement processing, detention, monitoring, transportation, and repatriation costs, that are normally borne by DHS and CBP at the U.S. port of arrival. Meanwhile, the savings realized through partial reimbursement of CBP officers posted in Abu Dhabi would allow up to 15 domestic officers to be redirected to process traffic arriving from other international airports.

Overall, taking into account the reimbursement strategy — savings for travelers refused admission, officer savings and enhanced processing at domestic airports — the preclearance

operation at Abu Dhabi has the potential to be the most cost-effective airport operation globally for CBP.

U.S. Air Carrier Concerns

Several U.S. air carriers and labor unions have expressed concern that they would be competitively disadvantaged by this preclearance agreement. However, the terms of the agreement with the UAE permit all carriers to have an equitable opportunity in requesting preclearance services from CBP. Some carriers have also raised specific concerns that Etihad Airways, the national carrier of the UAE (though not the only or even largest airline based in the UAE; Emirates, based in Dubai, is much larger), will be the sole beneficiary of preclearance in Abu Dhabi. On this point, it is noteworthy that in April 2013, American Airlines signed a codeshare partnership with Etihad and is selling tickets on the daily flights between Abu Dhabi and the U.S. airports, among many other destinations. The Abu Dhabi International Airport, moreover, has expressed interest in offering landing rights to U.S. carriers with equitable terms to any other carrier, and gives every indication that preclearance departure gates will be available daily for U.S. carriers to operate out of Abu Dhabi if they so choose. But again, it should be noted that the underlying principal of this agreement is the mitigation of threats, both known and unknown, based on our analysis of current threats.

Conclusion

As the terrorist threat continues to evolve, CBP and DHS are determined to stay ahead of it. We cannot afford to do otherwise. Attacks on U.S.-bound international flights are a real security threat, and CBP relies on the best intelligence and analysis available to counter these threats. Intelligence alone, however, is not enough. While no single layer of a layered defense can ever be perfect, one of best means we have to disrupt and deter such threats is the eyes-on presence of a CBP officer overseas, before travelers board the flight to the United States. Preclearance gives us that advantage. DHS continues to pursue opportunities to collaborate with partner nations globally on aviation security and travel facilitation. Preclearance in Abu Dhabi will enhance U.S. security objectives and continue to build on a strategic partnership with the UAE, a key ally

in the Middle East. The UAE supports our goals on Syria, Iran, Libya, and Afghanistan and is a strong military partner for the United States. The Abu Dhabi preclearance agreement includes a reimbursable structure that has the potential to make preclearance operations in Abu Dhabi the most cost effective CBP airport operation globally, providing a net increase in passenger processing capacity while also strengthening security. Chairman Poe, Ranking Member Sherman, and Members of the Subcommittee, thank you for this opportunity to testify. I look forward to answering your questions.