



Department of Homeland Security Office of Inspector General

Customs and Border Protection Needs to Improve Its Inspection Procedures for the Western Hemisphere Travel Initiative

(Redacted)





Homeland Security

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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the effectiveness of Customs and Border Protection's implementation of the Western Hemisphere Travel Initiative at air ports of entry. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.


Richard L. Skinner
Inspector General

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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
DOS	Department of State
OIG	Office of Inspector General
TECS	Travelers Enforcement Communication System
WHTI	Western Hemisphere Travel Initiative

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

The Western Hemisphere Travel Initiative is a joint plan by the Department of Homeland Security and Department of State to implement new documentation requirements for citizens of the United States, Canada, Mexico, and Bermuda entering the United States from within the Western Hemisphere. Under the Western Hemisphere Travel Initiative's new rule for air travel, all citizens traveling by air into the United States from these Western Hemisphere countries must present a valid passport, with limited regulatory exceptions. Our objective for this audit was to determine whether Customs and Border Protection's implementation of this requirement has improved the agency's ability to identify individuals who misrepresent their identities and prevent their entry into the United States at air ports of entry.

Generally, Customs and Border Protection has successfully implemented the Western Hemisphere Travel Initiative in the air environment, reporting high compliance rates among air passengers. The new documentation requirements have improved Customs and Border Protection officers' ability to validate the identity and citizenship of compliant air passengers, allowing officers to spend more time inspecting travelers without passports. However, there is inadequate assurance that Customs and Border Protection officers "verified" the identity and citizenship of all individuals who failed to provide a passport or other Western Hemisphere Travel Initiative-compliant documentation. Customs and Border Protection officers did not always document the basis for their decisions to admit air passengers who were noncompliant with the new document requirements. Also, Customs and Border Protection officers did not always follow Customs and Border Protection's policy for referring all such noncompliant passengers to a secondary inspection area for a more thorough review. These shortfalls can be attributed to inadequate officer training, oversight, and guidance. Failure to establish the identities and citizenship of all air passengers is a vulnerability that could be exploited by individuals intent on harming this country. We are making four recommendations to improve the agency's implementation of the Western Hemisphere Travel Initiative's new documentation requirements.

Background

United States Customs and Border Protection (CBP) is the frontline border security agency within the Department of Homeland Security (DHS), charged with the priority mission of preventing terrorists and terrorist weapons from entering the United States. The mission of CBP's Office of Field Operations is to secure the flow of people and goods into and out of the country, while facilitating travel and trade. On a typical day, CBP processes more than 235,000 air passengers. CBP conducts both primary and secondary inspections of goods and international travelers to ensure appropriateness of entry into the United States. CBP conducts "primary inspections" to initially determine whether travelers are compliant with applicable entry rules and regulations. CBP then conducts "secondary inspections" when a CBP officer determines that further inspection processes are necessary to grant a traveler's entry into the United States.

Prior to January 23, 2007, when the new documentation requirements for air travel went into effect, United States citizens were not required to present passports for travel into the United States from anywhere within the Western Hemisphere except for Cuba. Also, passport requirements were generally waived for similar travel by citizens of Canada and Bermuda, and for certain Mexican nationals. On December 17, 2004, President Bush signed into law the *Intelligence Reform and Terrorism Prevention Act of 2004*. Section 7209 of this law noted that then-existing admission procedures allowed many individuals to enter the United States with little to no identification, and that additional safeguards were necessary to prevent terrorists from entering the United States. As a result of these findings, Congress required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to "require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom passport requirements were previously waived under section 212(d)(4)(B) of the Immigration and Nationality Act."

Accordingly, the Department of Homeland Security (DHS) and the Department of State (DOS) developed the Western Hemisphere Travel Initiative (WHTI), a two-phase joint plan to implement the new documentation requirements for entry at air, land, and sea ports of entry. On November 24, 2006, the departments jointly

published the final rule on new documentation requirements for air travel, effective January 23, 2007.¹ The rule amended DHS and DOS regulations to now require citizens of the United States and certain categories of nonimmigrant aliens from Canada, Bermuda, and Mexico to present passports or other WHTI-compliant documentation when entering U.S. air ports of entry from countries within the Western Hemisphere. Additionally, in the rule, the Secretary of Homeland Security designated only two other documents, in addition to the passport, that are sufficient to establish identity and citizenship at airports under section 7209 of the *Intelligence Reform and Terrorism Prevention Act* -- the Merchant Mariner Document, when used in conjunction with maritime business, and a NEXUS Air card,² when used at a NEXUS Air kiosk. These designations significantly restricted the types of documents that may be accepted in lieu of a passport to establish identity and citizenship. Prior to WHTI, U.S. citizens were permitted to present a variety of documents to establish their identity, including a state-issued driver's license. To establish citizenship, they could present birth certificates issued by a United States jurisdiction, Consular Reports of Birth Abroad, Certificates of Naturalization, or Certificates of Citizenship.

CBP implemented WHTI's new documentation requirements for air travel in two phases. During Phase 1, which began on January 23, 2007, CBP's goal was to educate the public about the new requirements. During this phase, WHTI-noncompliant passengers were admitted at primary inspection after CBP officers issued verbal and written advisories of the document requirements introduced under WHTI. Phase 2, which began on February 19, 2008, required full enforcement of WHTI requirements. During this phase, CBP procedures required that all WHTI-noncompliant passengers, including those claiming to be U.S. citizens, be referred to secondary inspection, where their identities and citizenship can be verified prior to their admission to the country.

WHTI did not change the travel document requirements for lawful permanent residents, who may generally be admitted to the United States upon presentation of Permanent Resident cards issued by the U.S. Citizenship and Immigration Services.

¹ Final Rule on Documents Required for Travelers Departing from or Arriving in the United States at Air Ports-of-Entry from Within the Western Hemisphere, 71 *Fed. Reg.* 68412 (November 24, 2006).

² NEXUS is a trusted traveler program that allows prescreened travelers expedited processing by U.S. and Canadian officials at designated northern border ports of entry using NEXUS kiosks located at the Canadian Preclearance airports and at marine reporting locations.

Results of Audit

WHTI has improved CBP officers' ability to validate the identity and citizenship of U.S. citizens, Canadians, Mexicans, and Bermudans arriving at U.S. airports by limiting the number of acceptable documents. However, CBP officers did not always comply with CBP's policy to refer passengers to secondary inspection areas for additional screening when those travelers failed to present WHTI-compliant documentation during primary inspection. There is inadequate assurance that CBP officers verified the identity and citizenship of all individuals who failed to meet WHTI's documentation requirements. CBP officers did not always document decisions on how they verified the identities and citizenship of passengers who failed to present a passport or other WHTI-compliant document.

CBP officers' failure to consistently comply with CBP's policy can be attributed to a number of factors, including inadequate training, oversight, and guidance. Not properly establishing the identity and citizenship of travelers at either the primary or secondary inspection areas in accordance with WHTI-amended regulations increases the potential that CBP officers may erroneously grant admission to persons falsely claiming to be citizens of the United States, Canada, Mexico, or Bermuda. This creates a vulnerability that may be exploited by terrorists who have the intent to cause harm in the United States.

Inspection of Air Travelers From the United States, Canada, Bermuda, and Mexico Facilitated by WHTI

WHTI's new documentation requirements have simplified CBP's process to inspect documents from citizens of the United States, Canada, Mexico, or Bermuda arriving by air from within the Western Hemisphere. Prior to WHTI, in lieu of a passport, passengers could present a variety of documents to establish identity and citizenship when attempting to enter the country from countries within the Western Hemisphere. For example, U.S. citizens could present a driver's license to establish identity and a birth certificate (issued by any one of 8,000 entities in the United States) to establish citizenship. However, under WHTI's new documentation requirements, U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico who enter the United States at air ports of entry are required to present a valid passport, a Merchant Mariner Document in conjunction with maritime business, or a NEXUS Air Card at a NEXUS Air kiosk. Also,

there are pre-existing exceptions to the passport requirement for U.S. citizens traveling on official orders as active-duty members of the U.S. Armed Forces and U.S. citizens who have obtained a DOS waiver for humanitarian, emergency, or national interest reasons.³

CBP officers at the three airports we visited indicated that the inspection process for these categories of travelers proceeds more smoothly since there are fewer documents to review, which allows officers to spend more time on passengers who may require further scrutiny. An official from the Office of Field Operations stated that since WHTI standardizes the documents accepted, persons are processed more efficiently and security is increased.

CBP reports that more than 99% of WHTI passengers arriving in the United States from Western Hemisphere countries are complying with WHTI's document requirements. Although the reported compliance rate is very high, CBP needs to improve its procedures for verifying the identity and citizenship of WHTI-noncompliant passengers.

CBP Officers' Decisions to Admit WHTI-Noncompliant Passengers at Secondary Inspection Areas Not Documented

CBP officers do not always adequately document their decisions regarding the identity and citizenship of WHTI-noncompliant passengers who are admitted at secondary inspection areas. CBP officers use the February 19, 2008, WHTI enforcement memorandum and CBP's *Inspector's Field Manual* as their primary guidance for processing WHTI passengers. According to the memorandum, CBP officers must establish the identity and citizenship of WHTI-noncompliant passengers at secondary inspection areas by inspecting "other" documents in the travelers' possession. Both U.S. citizens and passengers from other countries covered by WHTI are subject to this requirement. According to CBP's field manual and memorandum, once CBP officers are "satisfied" that a passenger's claim of U.S. citizenship is valid, that person must be granted admission.

Similarly, the February 19, 2008, memorandum requires that CBP officers verify the existence of the passport in the DOS Passport Information Electronic Records System when a traveler claims that

³ U.S. citizens bearing an official identification card issued by the International Boundary and Water Commission, pursuant to employment for approved Commission work, are also exempt from the passport requirement.

his or her U.S. passport is lost or stolen. The memorandum advises that once the traveler's identity and U.S. citizenship are verified, the traveler will be admitted, but the officers must record the referral to secondary inspection and the results of that inspection in the Travelers Enforcement Communication System (TECS) database comment fields. TECS is CBP's principal database for law enforcement and antiterrorism information, and was formerly known as the "Treasury Enforcement Communication System." It is now simply referred to as TECS.

CBP officers did not always document the decision processes they used to "verify" the identities and citizenship of WHTI-noncompliant passengers they processed at secondary inspection areas. CBP provided us with data showing that from February 19 to December 31, 2008, its officers processed 3,935 WHTI-noncompliant passengers at secondary inspection areas. Our review of a sample of 350 passenger records (282 U.S. citizens, 56 Canadians, 10 Mexicans, and 2 Bermudans) of the 3,935 total showed that CBP officers did not adequately document their decisions to admit 51 of the travelers (43 U.S. citizens, 5 Canadians, and 3 Mexicans).

For the sample of WHTI-noncompliant travelers, we reviewed the TECS comments sections to determine the decision processes CBP officers used to admit those travelers into the country at secondary inspection. We sought to determine the methods used to satisfy the inspecting officers of the travelers' identity and citizenship, such as what documents were used to establish identity and citizenship. We also determined whether officers accessed law enforcement databases (such as the National Crime Information Center) or performed a [REDACTED] search in TECS to assist in validating identity and citizenship.

For the 282 U.S. citizens receiving secondary inspections, the TECS comments sections indicated the following:

- For 73 passengers, CBP officers completed TECS system checks and reviewed other documents.
- For 53 passengers, CBP officers completed TECS system checks, but there was no indication that the passengers presented other documentation.
- For 113 passengers, CBP officers reviewed other documents the passengers provided, such as [REDACTED] but did not document whether they completed systems checks.

-
- For 43 passengers, the TECS comments sections did not indicate whether the officers performed systems checks or reviewed other documentation. This group included

Under WHTI's final rule for air travel,

For the 68 Canadians, Mexicans, and Bermudans in our sample, we determined that CBP officers did not document the methods used to verify the identity and citizenship of 8 passengers (5 Canadians and 3 Mexicans).

WHTI-Noncompliant Passengers Not Referred for Secondary Inspections

CBP officers do not always comply with CBP's policy for referring WHTI-noncompliant passengers to secondary inspection areas for verification of identity and citizenship. CBP provided data showing that from February 19 to December 31, 2008, CBP officers admitted 2,476 WHTI-noncompliant passengers into the United States at the primary inspection areas. We reviewed CBP's records for these passengers to determine the reason for their admission, such as for humanitarian situations. Our analysis indicated that CBP officers admitted 1,542 passengers as U.S. citizens, 669 under various visa classes, and 265 as lawful permanent residents. The majority of these individuals admitted at primary screening should have been referred to secondary screening.

WHTI-Noncompliant U.S. Citizens Admitted at Primary Inspection

Table 1 summarizes the reasons CBP officers recorded in TECS for all 1,542 passengers admitted at primary inspection as U.S. citizens.

Table 1. Summary of TECS Comments for WHTI-Noncompliant Passengers Admitted at Primary Inspection as Citizens

Reason Recorded for Admission as U.S. Citizens	Number Processed
<i>Passenger admitted for</i> [REDACTED]	35
<i>Passenger presented</i> [REDACTED]	96
<i>Passenger presented</i> [REDACTED]	171
<i>Passenger</i> [REDACTED]	113
<i>Passenger was "WHTI-advised"</i>	93
<i>Passenger was</i> [REDACTED]	251
<i>Passenger presented</i> [REDACTED]	50
<i>Other reasons</i>	<u>160</u>
Records with Comments:	969
Record with Comments sections left blank:	<u>573</u>
TOTAL:	1,542

Based on our review of the TECS comments sections, according to CBP’s policy, the majority of the 1,542 passengers who were admitted as “WHTI-noncompliant” U.S. citizens at primary inspection should have been referred to secondary inspection areas to undergo further verification procedures. The CBP officers’ comments do not indicate whether or even how the officers attempted to verify the passengers’ identity and U.S. citizenship. For example,

- For 110 of the 113 passengers [REDACTED] CBP officers did not document [REDACTED]
- For 93 passengers, CBP officers simply noted that they were “WHTI-advised,” meaning that the passengers were provided written or verbal warnings to obtain passports for future travel.
- For 573 passengers, CBP officers failed to provide comments to explain why those passengers were not referred to secondary inspection.
- For 227 of the 251 passengers who were admitted [REDACTED]

[REDACTED] The passenger records contained the word [REDACTED] or similar terms such as [REDACTED]

WHTI-Noncompliant Aliens Admitted at Primary Inspection Under Various Visa Classes

The February 19, 2008, WHTI enforcement memorandum requires that all WHTI-noncompliant passengers from Canada, Mexico, and Bermuda be referred to secondary inspection areas to verify their identities and citizenship prior to admitting them to the United States. We identified 648 instances of those travelers being admitted into the United States without being referred to secondary inspection. CBP officers [REDACTED]

[REDACTED] for inappropriately admitting these WHTI-noncompliant aliens into the United States at primary inspection.

An additional 21 passengers were identified in TECS records as U.S. citizens under the "Citizenship" column. However, the TECS records also showed that 16 of the 21 passengers may have presented visas to CBP officers, and 11 of the 16 were admitted under temporary visitor status. A U.S. citizen would not need to present a visa or be admitted under a temporary visitor status.

WHTI-Noncompliant Lawful Permanent Residents Admitted at Primary Inspection

CBP data indicate that 265 passengers were admitted at primary inspection because CBP officers determined that they were lawful permanent residents. Lawful permanent residents are not affected by WHTI's new documentary requirements and may present a valid Permanent Resident card when applying for readmission to the United States.

We determined that for 129 (28 Canadians and 101 Mexicans) of these 265 passengers, they presented no valid Permanent Resident cards. Further, there was no record in TECS as to whether CBP officers checked their identities in the Image Storage and Retrieval

System,⁴ or checked the validity of their applicant status in the Central Index System.⁵ We identified one Mexican passenger who had a valid Permanent Resident card but was nonetheless admitted at primary inspection as WHTI-noncompliant. We did not analyze the TECS records for the remaining 135 passengers.

Factors Hindering CBP Officers' Effective Implementation of WHTI Requirements

CBP officers' failure to document their decision processes for admitting WHTI-noncompliant passengers or to refer them to secondary inspection as required by CBP policy can be attributed to a number of factors, including inadequate training, oversight, and guidance.

Inadequate Training

CBP officers received minimal training for processing passengers under the new WHTI requirements. According to an official from the Office of Field Operations, the February 19, 2008, WHTI enforcement guidance was communicated to CBP officers during "muster" meetings. Muster meetings are similar to the roll calls that police officers attend daily. CBP did not provide any other specific training to its officers on how to enforce WHTI requirements. As a result of the minimal training, CBP officers may not have a clear understanding of what alternative WHTI-compliant documentation is sufficient for admission in lieu of a passport. This may also contribute to the officers' erroneous classification of some passengers entering from countries from within the Western Hemisphere as WHTI-noncompliant.

Insufficient Oversight

CBP's Office of Field Operations has not performed any oversight or analytical reviews to determine whether CBP officers are complying with the WHTI guidance disseminated. An official from the Office of Field Operations said that the WHTI Program Management Office does not have a budget for air operations, and is primarily funded to support implementation of WHTI at land and sea ports of entry. Another official said [REDACTED]

⁴ The Image Storage and Retrieval System provides digitized photographs, fingerprints, and signature images of Permanent Resident cards.

⁵ The Central Index System is a legacy Immigration and Naturalization Services system that contains information on the application status of more than 55 million aliens, including permanent residents.

[REDACTED]

Limited Guidance

Both the February 19, 2008, WHTI enforcement memorandum and the *Inspector's Field Manual* that CBP officers use as their primary guidance for enforcing WHTI's requirements contain [REDACTED] instructions. The guidance does not adequately explain the secondary inspection procedures that officers should use to process WHTI-noncompliant passengers. For example, according to the enforcement memorandum, WHTI-noncompliant passengers should be referred to secondary inspection, where CBP officers are to "verify" the passengers' identities and citizenship. However, the only additional guidance on what should be done to process travelers claiming to be U.S. citizens [REDACTED]

[REDACTED] Likewise, for WHTI-noncompliant citizens from Canada, Bermuda, and Mexico, CBP's guidance [REDACTED] inspecting nonimmigrant aliens for admission.

The enforcement memorandum requires that CBP officers record the dispositions (secondary inspection results) in the [REDACTED]

The *Inspector's Field Manual*, [REDACTED] is the agency's "how-to" manual, detailing CBP's policies and procedures for accomplishing its immigration mission. The manual [REDACTED]

Improvements Needed to Ensure WHTI Requirements Are Followed

Although WHTI has simplified CBP's process to inspect passengers' documents, its implementation procedures need to be improved to comply with applicable law and regulations. Specifically, CBP needs to improve its guidance and training for how to handle WHTI-noncompliant travelers attempting to enter the United States without a passport or other WHTI-compliant documentation. CBP should monitor whether officers are complying with applicable law and CBP's established procedures for processing WHTI-noncompliant passengers.

Failure to properly determine whether travelers without WHTI-compliant documents should be admitted into the United States increases the potential that CBP officers may erroneously grant admission to persons who falsely claim to be citizens of the United States, Canada, Bermuda, or Mexico. This vulnerability may be exploited by terrorists intent on causing harm in the United States.

Other Concerns

During the course of our review, an issue arose concerning whether CBP's procedures for admitting travelers claiming U.S. citizenship, but who do not present a valid passport or other authorized documentation, are consistent with legal requirements.

Section 215(b) of the Immigration and Nationality Act makes it unlawful for U.S. citizens to enter the country without a valid passport, except as authorized by the President. The President's waiver authority is delegated solely to the Secretary of State under Executive Order 13323. Prior to 2004, the Department of State (DOS) categorically waived the passport requirement for citizens traveling within the Western Hemisphere (except for Cuba).

In 2004, in response to concerns raised in the 9/11 Commission Report, Congress passed the Intelligence Reform and Terrorism Protection Act (IRTPA). Section 7209 of IRTPA narrowed the President's authority to waive passport requirements for U.S. citizens and effectively rescinded DOS's categorical waiver for travel within the Western Hemisphere. IRTPA required the Department of Homeland Security (DHS), in consultation with the DOS, to develop and implement a plan to require a passport or other documentation for all travel into the United States by U.S.

citizens (and certain categories of nonimmigrant aliens). Under the resulting joint DHS/DOS plan, now known as the Western Hemisphere Initiative, the Secretary of Homeland Security designated only two other documents as sufficient to establish identity and citizenship at airports—the Merchant Mariner Document (MMD) and the NEXUS Air card.⁶

Nevertheless, CBP officers continue to rely on "pre-WHTI" documents to establish identity and U.S. citizenship of WHTI-noncompliant travelers. In our opinion, this practice conflicts with the Secretary's determination that only the passport, MMD, and NEXUS Air Card are sufficient to denote identity and citizenship. By accepting documentation other than that designated under WHTI, CBP, in essence, is waiving document requirements. However, only the President has the authority to grant waivers under IRTPA, and he has delegated that authority solely to the Secretary of State.

In our opinion, our concerns could be addressed if the Secretary of Homeland Security designated additional documents as acceptable under WHTI, or if DHS and DOS amended their regulations addressing WHTI-noncompliant travelers claiming to be U.S. citizens, or if the President amended Executive Order 13323 to allow DHS to waive document requirements under IRTPA's permissible scenarios.

Recommendations

We recommend that the Commissioner, United States Customs and Border Protection:

Recommendation #1: Revise and reissue guidelines that specify procedures for CBP officers to follow when addressing WHTI-noncompliant travelers attempting to enter the United States. The guidelines should clarify the requirement to refer noncompliant travelers to secondary inspection and the minimum steps necessary at secondary inspection.

Recommendation #2: Update the *Inspector's Field Manual* to incorporate the revised WHTI enforcement procedures.

⁶ As mentioned previously, other exceptions to the passport requirement include when traveling as an active duty member of the U.S. military or when bearing an official identification card issued by the International Boundary and Water Commission. 22 C.F.R. § 53.2(b)(1), (8).

Recommendation #3: Ensure that all CBP officers receive training on how to process air passengers according to the revised WHTI enforcement procedures.

Recommendation #4: Establish and implement procedures for monitoring CBP officers' compliance with WHTI enforcement procedures.

Management Comments and OIG Analysis

In its response to our draft report, CBP provided general comments in addition to addressing the specific recommendations. CBP management stated that WHTI has been implemented in a practical and flexible manner that fully complies with the Constitution, the statute calling for WHTI, and the joint Departments of Homeland Security and State regulations designating WHTI documents. CBP believes the OIG has not relied on the proper legal interpretation. CBP added that their inspecting officers have been specifically trained to establish identity and citizenship through oral questioning and inspection of all documents in a traveler's possession. CBP asserts the presentation of a passport or other document, genuine or fraudulent, by itself is not verification of citizenship.

We continue to conclude that CBP's reliance on "pre-WHTI" documents and practices to establish identity and U.S. citizenship conflicts with the Secretary's determination that only the passport, MMD, and NEXUS Air Card are sufficient to denote identity and citizenship. Our conclusion is based on the plain meaning of relevant laws, implementing regulations, and Executive Order. By accepting documentation other than that designated under WHTI, CBP is in essence waiving document requirements. However, only the President has the authority to grant waivers under IRTPA, and he has delegated that authority solely to the Secretary of State.

Management Response on Recommendation #1

CBP does not concur: CBP believes that it is not always necessary to refer WHTI non-compliant travelers to secondary in order to establish identity and citizenship. Also, CBP asserts the "minimum necessary" for any secondary inspection cannot be quantified and is based on the unique totality of each inspection. CBP states that it will clarify and reissue, at its discretion, WHTI guidance on procedures for processing non-compliant travelers, but not in the manner put forth in Recommendation 1. CBP stated it

will clarify and reissue guidance on what constitutes WHTI compliance, procedures for processing both non-compliant citizens and aliens, procedures for properly documenting secondary inspections, and alternative means in which U.S. citizens may establish to the satisfaction of CBP when not in compliance with WHTI.

OIG Analysis: The recommendation to refer WHTI-noncompliant travelers to secondary inspection areas is based upon the WHTI Enforcement Guidance that CBP issued to its field offices on February 19, 2008. If CBP has decided to change that requirement it will need to update its guidance accordingly. CBP should include specific guidance on when a noncompliant traveler should be referred to secondary inspection and under what circumstances the noncompliant traveler can be admitted without any secondary inspection procedures.

As is noted above, CBP's reliance on "pre-WHTI" documents and practices to establish identity and U.S. citizenship conflicts with the Secretary's determination that only the passport, MMD, and NEXUS Air Card are sufficient to denote identity and citizenship. In our opinion, it is contrary to the intent of the legislation which clearly sought to change entry procedures. Thus, CBP's proposed action is not responsive to our recommendation.

This recommendation will remain open and unresolved until we receive a corrective action plan with a target date for completing the clarified guidance and until we receive and evaluate the clarified WHTI guidance.

Management Response on Recommendation #2

CBP partially concurs: CBP said it will clarify, but not revise WHTI enforcement procedures. CBP will update the *Inspector's Field Manual* regarding its procedures for processing both non-compliant citizens and aliens, procedures for properly documenting secondary inspections in TECS, and alternative means in which U.S. citizens may establish citizenship to the satisfaction of CBP when not in compliance with WHTI.

OIG Analysis: In its clarified procedures, CBP plans to include an alternative means for U.S. citizens to establish identity and citizenship. As such, these procedures would conflict with the Secretary's determination that the only acceptable WHTI documentation to denote identity and citizenship are the passport,

MMD, and NEXUS Air Card. Accordingly, the proposed action is not responsive to the recommendation. This recommendation will remain open and unresolved until we receive a corrective action plan with a target date for completing the clarified procedures. It will also remain open until we receive and evaluate both the clarified WHTI procedures and the updated *Inspector's Field Manual*.

Management Response on Recommendation #3

CBP partially concurs: CBP said it will clarify, but not revise the WHTI enforcement procedures and stated that CBP officers will receive additional refresher training, via a training muster, memo, or related reference material, on how to process air passengers according to CBP policy.

OIG Analysis: CBP states that it will provide its officers refresher training on its clarified procedures. The recommendation will remain open and unresolved until we receive a corrective action plan with a target completion date for providing the refresher training to its officers. The recommendation will also remain open until after we evaluate the training materials CBP plans to provide to its officers for processing air passengers.

Management Response on Recommendation #4

CBP concurs: CBP will implement procedures for monitoring CBP officers' compliance with CBP policy regarding WHTI enforcement procedures using its Self Inspection Program.

OIG Analysis: We consider the proposed action to be responsive to the recommendation. However, this recommendation will remain open and unresolved until we receive a corrective action plan with a target completion date and until CBP provides evidence that these self-inspections are occurring.

Appendix A

Purpose, Scope, and Methodology

The objective of our audit was to determine whether Customs and Border Protection's (CBP) implementation of the Western Hemisphere Travel Initiative (WHTI) secure document requirement in the air environment has improved the agency's ability to identify individuals who misrepresent their identities and prevent their entry into the United States. We determined whether CBP officers properly verified the identities and citizenship of WHTI-noncompliant passengers they admitted into the United States.

We reviewed applicable federal laws and regulations, including the *Intelligence Reform and Terrorism Prevention Act of 2004*, the November 24, 2006, Air Final Rule titled *Documents Required for Travelers Departing From or Arriving in the United States at Air Ports-of-Entry From Within the Western Hemisphere*, CBP's *Inspector's Field Manual*, and WHTI guidance memos that CBP's Office of Field Operations issued to the field.

We interviewed CBP personnel from the Office of Field Operations, including staff from the WHTI Program Management Office, and the Advanced Passenger Information System and Preclearance Divisions. We also interviewed staff from CBP's Office of Information Technology. We reviewed internal controls applicable to our objective.

We visited three airports: Washington-Dulles International Airport, Baltimore-Washington International Airport, and Philadelphia International Airport. At these airports, we interviewed CBP officers and supervisors to learn how they implement WHTI enforcement procedures. At two of the three airports, we observed CBP officers processing incoming passengers through the primary and secondary inspection areas.

We reviewed CBP reports documenting the WHTI air compliance rates at all applicable airports. We also obtained passenger records from TECS for the WHTI-noncompliant passengers that CBP officers processed at primary and secondary inspection areas from February 18 to December 31, 2008.

We analyzed all records regarding the WHTI-noncompliant passengers that CBP officers admitted at the primary inspection areas. We also analyzed a random sample of 350 of the WHTI-noncompliant passengers that CBP officers processed at secondary inspection areas.

Appendix A

Purpose, Scope, and Methodology

We conducted this performance audit between October 2008 and April 2009 under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B Management Comments to the Draft Report

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

November 15, 2010

MEMORANDUM FOR RICHARD L. SKINNER
INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

FROM: Assistant Commissioner, Office of Internal Affairs
U.S. Customs and Border Protection 

SUBJECT: Response to the Office of Inspector General's Revised
Draft Report Entitled, "Customs and Border Protection
Needs to Improve Its Inspection Procedures for the Western
Hemisphere Travel Initiative"

Thank you for the opportunity to review and comment on the revised draft report entitled, "Customs and Border Protection Needs to Improve Its Inspection Procedures for the Western Hemisphere Travel Initiative."

U.S. Customs and Border Protection (CBP) successfully implemented all phases of the Western Hemisphere Travel Initiative (WHTI), a key 9/11 Commission border security recommendation, at the air, land, and sea ports-of-entry to the United States. The Office of Inspector General (OIG) reviewed the initial implementation of WHTI for air travel noting some areas for improvement that will be addressed. However, the OIG does not rely on the proper legal interpretation. WHTI has been implemented in a practical and flexible manner that fully complies with the Constitution, the statute calling for WHTI, and the joint Department of Homeland Security and State regulations designating WHTI documents.

The OIG revised draft report, *Customs and Border Protection Needs to Improve its Inspection Procedures for the Western Hemisphere Travel Initiative*, fails to address its own stated objective, which is to address the effectiveness of CBP's implementation of WHTI at air ports-of-entry. The report does not, for example, discuss in detail the fact that WHTI has improved CBP's ability to identify individuals misrepresenting themselves or falsely claiming U.S. citizenship and does not, in any meaningful way, discuss or examine CBP's interception of individuals that are imposters or are making false claims to U.S. citizenship.

CBP has provided multiple explanations of its operations. CBP has explained the fact that inspecting officers have been trained specifically to establish identity and citizenship through oral questioning and inspection of all documents in a traveler's possession. Consular Officers with the Department of State (DOS), Adjudication Officers with U.S. Citizenship and Immigration Services, Criminal Investigators with Immigration and

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for the Western Hemisphere Travel Initiative**

Customs Enforcement, and CBP officers and agents, are all trained to adjudicate and determine an individual's citizenship through a combination of the examination of documents and questioning and interview techniques.

The OIG's report states that prior to WHTI, U.S. citizens "were permitted" to present thousands of different documents to establish citizenship. While this is true, CBP did not rely only on documentation. In fact, there were no documentary requirements for U.S. citizens entering the United States from within the Western Hemisphere prior to WHTI. CBP officers focused on questioning and interviewing travelers, an essential aspect of any inspection.

The presentation of a passport or other document, in and of itself, is not verification of citizenship. Imposters utilize genuine documents or high quality fraudulent documents to attempt to gain entry to the United States. In large part through questioning and behavioral observations, CBP can and regularly does detect false claims to United States citizenship and other incidents of fraud.

CBP formulated its current policy and drafted the WHTI regulations with full knowledge that our officers will be required to deal with various situations in which travelers will not have required documentation. In all cases, CBP satisfies itself that a traveler is a U.S. citizen based on the totality of the inspection, as has been done for as long as there have been inspections at ports-of-entry.

CBP does not share the OIG's "Other Concerns" with the air phase of WHTI. Under the OIG's view, CBP would have more discretion to admit aliens than it does to admit U.S. citizens. Our current policies are all well within the terms of the applicable legal authorities. WHTI is being implemented in a manner fully consistent with the legal interpretation of the Department's General Counsel.

CBP's policy is central to the successful implementation of WHTI, as may have become clear during review of the air program as well as the review of land and sea operations.

CBP's responses to the recommendations are below:

Recommendation #1: Revise and reissue guidelines that specify procedures for CBP officers to follow when addressing WHTI non-compliant travelers attempting to enter the United States. The guidelines should clarify the requirement to refer non-compliant travelers to secondary inspection and the minimum steps necessary at secondary inspection.

Nonconcur:

CBP cannot concur with Recommendation 1 as written. CBP has sole discretion over the formulation and enforcement of its policy for WHTI non-compliant air travelers, based on the general operational environment at air ports-of-entry. CBP believes that it is not always necessary to refer WHTI non-compliant travelers to secondary in order to establish identity and citizenship. Furthermore, CBP policy states that as soon as an officer is satisfied that an air traveler is in fact a U.S. citizen, that traveler is admitted into the United States. Additionally, the "minimum necessary" for any secondary inspection cannot be quantified, and is based on the unique totality of each inspection.

WHTI guidance on procedures for processing non-compliant travelers will be clarified and reissued at CBP's discretion, but not revised in the manner put forth in Recommendation 1. CBP will clarify and reissue guidance on what constitutes WHTI compliance, procedures for processing both non-compliant citizens and aliens, procedures for properly documenting secondary inspections, and alternative means in which U.S. citizens may establish citizenship to the satisfaction of CBP when not in compliance with WHTI.

Due Date: February 2011

Recommendation #2: Update the *Inspector's Field Manual* to incorporate the revised WHTI enforcement procedures.

Partially Concur:

CBP will clarify, but not revise, WHTI enforcement procedures. CBP will update the Inspector's Field Manual regarding its procedures for processing both non-compliant citizens and aliens, procedures for properly documenting secondary inspections in TECS, and alternative means by which U.S. citizens may establish citizenship to the satisfaction of CBP when not in compliance with WHTI.

Due Date: May 2011

Recommendation #3: Ensure that all CBP officers receive training on how to process air passengers according to the revised WHTI enforcement procedures.

Partially Concur:

CBP will clarify, but not revise, WHTI enforcement procedures. CBP officers will receive additional refresher training on how to process air passengers according to CBP policy. This will be in the form of a training muster, memo, and related reference material.

Due Date: February 2011

Recommendation #4: Establish and implement procedures for monitoring CBP officers' compliance with WHTI enforcement procedures.

Concur:

CBP will implement procedures for monitoring CBP officers' compliance with CBP policy regarding WHTI enforcement procedures using CBP's Self Inspection Program.

Due Date: November 2011

Technical and Sensitive comments to this report will be provided to the OIG electronically. CBP has determined that some of the information included in the draft report should be considered "FOR OFFICIAL USE ONLY." CBP suggests that the OIG take into considerations our concerns prior to releasing information that has been determined to be sensitive.

If you have any questions regarding this response, please contact me or have a member of your staff contact Robin White, Assistant Director, Management Inspection Division, Audit Management and Liaison, at (202) 344-1061.

Appendix C
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