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THE ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Brownback, Hon. Sam, a U.S. Senator from the State of Kansas	3
Feinstein, Hon. Dianne, a U.S. Senator from the State of California	8
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	44
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts	1
Kyl, Hon. Jon, a U.S. Senator from the State of Arizona	3
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	45

WITNESSES

Byrd, Hon. Robert C., a U.S. Senator from the State of West Virginia	27
Salamone, MaryEllen, Director, Families of September 11, Inc., North Caldwell, New Jersey	4
Walker, Kathleen Campbell, American Immigration Lawyers Association, El Paso, Texas	9

SUBMISSIONS FOR THE RECORD

Air Crash Victims Families Group, Ridgewood, New Jersey, statement	47
Alliance for International Educational and Cultural Exchange, Michael McCarry, Executive Director, Washington, D.C., letter	49
American Civil Liberties Union, Timothy H. Edgar, Legislative Counsel, Washington, D.C., statement	50
American Federation of Government Employees, AFL-CIO, Beth Moten, Legislative Director, Washington, D.C., statement	55
American Immigration Lawyers Association, Church World Service, Episcopal Migration Ministries, Hebrew Immigrant Aid Society, Immigration and Refugee Services of America, Institute of International Law and Economic Development, Leadership Conference for Civil Rights, Lutheran Immigration and Refugee Services, National Association of Latino Elected and Appointed Officials, National Council of La Raza, National Immigration Forum, joint statement	58
Americans for Better Borders, Washington, D.C., letter	56
Biometric Foundation, M. Paul Collier, Washington, D.C., statement and attachment	59
Department of Commerce, National Institute of Standards and Technology, Arden L. Bement, Jr., Director, statement	63
Families of EgyptAir 990, Inc., James A. Brokaw II, President, Portage, Indiana, letter	69
Families of September 11, MaryEllen Salamone, Director, Great Falls, Virginia, letter	70
Fraternal Order of Police, Steve Young, National President, Washington, D.C., statement	71
International Biometric Industry Association, John E. Siedlarz, Chairman, Washington, D.C., letter	75
NAFSA: Association of International Educators, Marlene M. Johnson, Executive Director and CEO, Washington, D.C., letter	76
National Immigration and Naturalization Service Council, Charles J. Murphy, President, Washington, D.C., letter	77
Travel Industry Association of America, Washington, D.C., statement	78
U.S. Chamber of Commerce, R. Bruce Josten, Executive Vice President, Government Affairs, Washington, D.C., letter	79

THE ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT

FRIDAY, APRIL 12, 2002

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:00 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Present: Senators Kennedy, Feinstein, Cantwell, Brownback, and Kyl.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Chairman KENNEDY. We will come to order. I am pleased to hold this hearing with my friend and colleague, Senator Kyl, and others who will be joining with us on the Enhanced Border Security and Visa Entry Reform Act. Senator Brownback, Senator Feinstein, Senator Kyl, and I worked together over many months to create a bipartisan response to the national security challenges that we face.

This is the second border security hearing we have held in this subcommittee. Senator Feinstein and Senator Kyl have held hearings in the Technology Subcommittee to address many of these issues. This important legislation passed the House twice and is supported by 60 Senators. The bill strengthens the security of our borders, improves our ability to screen foreign nationals, and enhances our ability to deter potential terrorists. It is long past time that the Senate pass this important legislation.

The terrorist attacks and INS's recent action notifying flight schools that visas were approved for two of the hijackers clearly demonstrate that there is an urgent need to close the loopholes in our immigration system. We must enhance intelligence and technology capabilities, strengthen training programs for border officials, Foreign Service officers, and improve the monitoring of foreign nationals already in the United States.

The USA PATRIOT Act and the airport security bill are important steps in the efforts to improve national security, but further action is needed and this legislation is a critical part of our effort to strengthen the security of our borders, enhance our ability to prevent future terrorist attacks, while also reaffirming our tradition as a nation of immigrants.

We cannot delay any longer in passing this critical legislation. Some have suggested that we wait to act on this bill until after we pass legislation to restructure the Immigration and Naturalization Service, but the many important reforms that this bill requires need to be enacted regardless of how our agencies are organized. These changes cannot wait for bureaucratic arrangements to be resolved. As we have seen, the risks are too great.

I look forward to the testimony of our witnesses and to the Senate passage of this legislation in the very near future.

[The prepared statement of Senator Kennedy follows:]

STATEMENT OF SENATOR EDWARD M. KENNEDY

I'm pleased to hold this hearing on the Enhanced Border Security and Visa Entry Reform Act. Senator Brownback, Senator Feinstein, Senator Kyl and I worked together over many months to create a bipartisan response to the national security challenges we face.

This is the second hearing we've held in this Subcommittee on the issue of border security, and Senator Feinstein and Senator Kyl have held hearings in the Technology Subcommittee to address many of these issues as well. This important legislation passed the House twice and is supported by 60 Senators. The bill strengthens the security of our borders, improves our ability to screen foreign nationals, and enhances our ability to deter potential terrorists. It's long past time that the Senate pass this important legislation.

The terrorist attacks—and INS's recent action notifying flight schools that visas were approved for two of the hijackers—clearly demonstrate that there is an urgent need to close the loopholes in our immigration system. We must enhance intelligence and technology capabilities, strengthen training programs for border officials and foreign service officers, and improve the monitoring of foreign nations already in the United States.

In strengthening security at our borders, we must also safeguard the unobstructed entry of the more than 31 million persons who enter the U.S. legally each year as visitors, students, and temporary workers. Many others cross our borders from Canada and Mexico to conduct daily business or visit close family members.

We also must live up to our history and heritage as a nation of immigrants. Continued immigration is part of our national well-being, our identity as a nation, and our strength in today's global economy. In defending America, we are also defending the fundamental constitutional principles that have made America strong in the past and will make us even stronger in the future.

Legislation must strike a careful balance between protecting civil liberties and providing the means for law enforcement to identify, apprehend and detain potential terrorists. It makes no sense to enact reforms that severely limit immigration into the United States. "Fortress America," even if it could be achieved, is an inadequate and ineffective response to the terrorist threat. The Enhanced Border Security and Visa Entry Reform Act strikes that balance.

We can't delay any longer in passing this critical legislation. Some have suggested that we wait to act on this bill until after we've passed legislation to restructure the Immigration and Naturalization Service. But the many important goals of this bill, including developing an interoperable data system to give immigration and consular officers access to relevant law enforcement and intelligence information, requiring that biometric identifiers be included in travel documents, and strengthening the training of consular officers and immigration inspectors, are important reforms that need to be enacted, regardless of how our agencies are organized. The reforms that this bill requires cannot wait for bureaucratic arrangements to be resolved. As we've seen, the risks are too great.

The USA Patriot Act and the airport security bill are important steps in the effort to improve national security, but further action is needed. This legislation is a critical part of our effort to strengthen the security of our borders and enhance our ability to prevent future terrorist attacks, while also reaffirming our tradition as a nation of immigrants. It has broad bi-partisan support, and is supported by a variety of organizations, including the U.S. Chamber of Commerce, the International Biometric Industry Association, Americans for Better Borders, the National Immigration and Naturalization Service Council/AFGE, the American Federation of Government Employees, the Association of International Educators (NAFSA), the American Immigration Lawyers Association, the Leadership Council for Civil Rights, National Council of La Raza, and the National Immigration Forum.

I look forward to the testimony of our witnesses, and I hope the Senate acts favorably on this legislation in the near future.

Chairman KENNEDY. Senator Brownback.

STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. Mr. Chairman, thank you very much for holding this important hearing. I, too, agree that it is time that we pass this very important, needed legislation. We were close to passing it late last year at the waning hours of the session. We did not get it through at that time. It is imperative that we get it through now.

Let me say first, Mr. Chairman, how grateful I am to you and to Senator Kyl and Senator Feinstein for the opportunity to work with you on this bill. Together, I think we have crafted an excellent bill, one that clearly and thoroughly serves the best interest of the public. For all the technical language in this bill, it distills down to one simple precept: Protect our country, our communities, our children from future terrorist attacks. I am proud to work with all three of you on this project of great importance and great integrity. I am delighted we are having this hearing today to discuss some of the ins and outs and the needs within this bill.

I know that it needs not be said between the four of us, but I want the record to reflect that this legislation is not the creature of hurried or rash deliberation. Far from it. This bill was carefully vetted with our colleagues in the Senate before its introduction last November and it was carefully tweaked in bicameral negotiations before its passage by the House last December. This legislation has ringing endorsements from a wide array of interests and the public, including family groups, business groups, law enforcement, schools and universities.

As you know, we have extensively, extensively consulted experts, both within the executive branch and outside it, to make sure that we are getting it right. In short, we have worked with the affected agencies and the affected public. Even though the legislation may contain some tough provisions, the people and entities who are impacted by it see its wisdom. I am proud to say that we have done a good job in balancing our nation's security needs with the need to protect our values and our freedom.

I am delighted that we are having this hearing to vet further on this particular piece of legislation some concerns on it, but I think at the end of the day, within the next several days, at least by this time next week, we need to get this piece of legislation passed and on to the President. It is past time for us to do it. We need to move it on forward.

Thank you, Mr. Chairman. I look forward to the witnesses testifying at this hearing.

Chairman KENNEDY. Senator Kyl.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman. Again, thank you for holding this hearing. You and Senator Feinstein and Senator Brownback have been great to work with in getting this bill to-

gether. I would also like to thank our staffs who have, frankly, done a lot of the work: Esther Olivaria, Lavita Strickland, David Neal, and Elizabeth Mayer. We do not often enough thank those who do a lot of the hard work for us on our staff.

The unanimous consent agreement which is pending before the Senate allows us to bring this bill up today and we are looking forward to moving it quickly in order to close the loopholes in our immigration laws that have allowed terrorists to come into this country.

We are looking forward to hearing from the witnesses, and again, thank you, Mr. Chairman.

Chairman KENNEDY. Thank you very much.

We will hear first from MaryEllen Salamone. MaryEllen Salamone is a pediatric physical therapist, a special education consultant in North Caldwell, New Jersey. She worked for the State of New Jersey for many years writing and implementing policy. Her husband, John, worked for Cantor Fitzgerald on the 104th floor of Tower I of the World Trade Center. After the terrorist attacks, she has joined with other families who have lost loved ones to establish Families of September 11, a nonprofit organization that works to promote the interests of victims' families and support public policies that strengthen our security and guard against future attacks.

We are very, very grateful. We know that this is difficult for you to be talking about these issues, but it is very important that we hear you. Thank you for coming.

STATEMENT OF MARYELLEN SALAMONE, DIRECTOR, FAMILIES OF SEPTEMBER 11, INC., NORTH CALDWELL, NJ

Ms. SALAMONE. Thank you, Mr. Chairman, Senator Brownback, and all members of the committee for granting me this opportunity to testify on this most critical issue. I would also like to take a moment to thank Senator Kennedy, Senator Byrd, the Senators from our area, Senators Clinton and Schumer and Corzine and Torricelli, for supporting the families of September 11 in negotiating the aftermath of the devastating tragedy on September 11.

Between July and September 2001, 19 terrorists gained access to our country, unrecognized. On September 11, 2001, they passed undetected through airline security, hijacked four commercial jets, and crashed into the towers of the World Trade Center, the Pentagon, and rural Pennsylvania. They murdered in cold blood thousands of innocent people. They maimed the security innocence of more than 10,000 children left without one or both parents. They destroyed the trust Americans had in the safety of their country. On September 11, 2001, the terrorists won.

My name is MaryEllen Salamone. I am the wife of John Salamone, a broker in preferred stock for Cantor Fitzgerald who was killed in the apocalyptic attacks on September 11. I am a widow, a newly single mother of three small, beautiful children, and a director of the organization Families of September 11. We are comprised of nearly 1,000 family members of victims of the attacks and we are committed to affect change to prevent further acts of terrorism so that the lives taken from our loved ones will not have been lost in vain.

Families of September 11 supports without reservation and without revision the Enhanced Border Security and Visa Entry Reform Act.

Defects in American procedures led to the heinous events of September 11. Osama bin Laden is not a brilliant man. He is an average man who took advantage of the weaknesses in our airline security and immigration laws. The Enhanced Border Security Act is an important and necessary bill that addresses the failures of our current policies. The members of the House of Representatives have already passed the bill and the Senate must do the same. Our borders remain as porous as they were before September 11 without immediate action on this bill.

Families of September 11 supports the provisions of this bill as written. We support the development of an interoperable law enforcement and intelligence data system. In today's age of advanced technology, it is unacceptable that there is not yet a system with the capacity to share information amongst government agencies. No better example for the immediate need of improved communication can be offered than that of the fact that six months after the heinous attack on America, the INS approved two of the hijackers for flight school posthumously.

We also support all provisions of the legislation which would decrease the probability of a dangerous individual gaining access or securing residence in our country. The requirement for the use of only machine-readable tamper resistant visas and travel and entry documents that use standard biometric identifiers, the mandate that all vessels be obligated to submit pre-arrival manifests, and the restriction on aliens from countries that are state sponsors of international terrorism are all important and necessary corrective measures this government can no longer delay enacting.

Finally, Families of September 11 advocates for the establishment of a foreign student tracking system. Two of the hijackers entered this country under student visas and never reported for classes. To date, there continues to be no enforced regulations that track foreign students or require the reporting of any foreign person with a student visa that does not report for classes as admitted. This bill remedies this lax oversight and requires adherence to direct reporting.

In 1941, Franklin Delano Roosevelt spoke of a world founded upon four essential freedoms, the fourth being freedom from fear. We in these United States of America no longer enjoy that freedom. Our border policies and immigration laws are fatally flawed and these weaknesses contributed to the failure to prevent the attacks of September 11. Thousands of our loved ones were taken from us senselessly that day. Most of their bodies have not been recovered. They have not been brought home. Ten thousand children cry each night, missing a parent. Seven months have passed since the murder of more than 3,000 people on American soil and our current border security and immigration policies have not changed and leave our doors open for another attack.

The Enhanced Border Security and Visa Entry Reform Act would strengthen our borders and establish more effective procedures for immigration screening and control. It is not fiscally burdensome or inappropriate. As written, it does not duly impede anyone's civil

liberties, nor is it violative of due process. The delay in passing this legislation is unconscionable.

As members of the Senate, you have a responsibility to secure the safety of those you have been elected to represent. You must pass the Enhanced Border Security and Visa Entry Reform Act and you must pass it now. Otherwise, we all stand to lose another important freedom, and that is the freedom my husband was denied, the freedom to live. Thank you.

Chairman KENNEDY. Thank you very much for an excellent statement summarizing the bill eloquently and the important reasons for those provisions. It is very helpful to have the support of your organization. We have pointed that out to our colleagues and all of our colleagues have been very mindful of that and it has made a big difference. We want you to know that.

Ms. SALAMONE. Thank you.

Chairman KENNEDY. How are your three children?

Ms. SALAMONE. They are okay. They had a rough time after the holidays and through the end of the winter, but they seem like they are getting back on their feet again.

Chairman KENNEDY. Good for you.

[The prepared statement of Ms. Salamone follows:]

STATEMENT OF MARYELLEN SALAMONE, DIRECTOR, FAMILIES OF SEPTEMBER 11, INC., NORTH CALDWELL, NJ

Thank you Mr. Chairman and members of the Committee for granting me this opportunity to testify on this most critical issue.

Between July and September 2001, nineteen terrorists gained access to our country, unrecognized, and continued their planning and preparations to carry out an attack of epic proportions against the people of the United States. On September 11, 2001, they passed through the airline security at three major airports, hijacked four commercial jets in flight and crashed the planes into the towers of the World Trade Center, the Pentagon and rural Pennsylvania. They murdered, in cold blood, thousands of innocent people. They maimed the security and innocence of more than ten thousand children left without one or both parents. They destroyed the trust Americans had in the safety of their country. On September 11, 2001, the terrorists won.

My name is MaryEllen Salamone. I am the wife of John Salamone, a broker in Preferred Stock for Cantor Fitzgerald, who was killed in the apocalyptic attacks on September 11. I am a widow, a newly single mother of three small beautiful children, and a director of the organization Families of September 11. We are an organization comprised of nearly 1,000 family members of people killed or injured in the attacks. Our mission is to promote the interest of families of victims of September 11 and to support public policies that improve the prevention of and the response to terrorism. Our goal is to assist in any and all efforts to prevent any other family from suffering the devastating loss we have incurred. We are committed to effect change so that the lives taken from our loved ones will not have been lost in vain. Families of September 11 supports without reservation the Enhanced Border Security and Visa Entry Reform Act.

Defects in American procedures allowed the heinous events of September 11 to occur. Osama Bin Laden is not a brilliant man who succeeded in toppling the homeland defense of the United States of America. He is a average man who took advantage of the weaknesses in our policies governing airline security and our immigration laws. The Enhanced Border Security and Visa Entry Reform Act is an important and necessary bill that must be passed now. It addresses the failures of our immigration laws and visa procedures, and without it, we remain fearfully vulnerable.

As an example, on March 11, the six month anniversary of the attacks, Mohammed Atta, the purported ringleader of the team of hijackers, and his cousin, the two men who piloted the planes into the Twin Towers of the World Trade Center, the two men responsible for the murders of more than 2500 people, were posthumously granted permission to attend flight school by the United States Immigration and Naturalization Service. Even more horrifying than this is the realization that this

is just one glaring and high profile example of dangerous individuals being able to enter our country legally. The honorable Members of the House of Representatives have already passed this bill, and the Senate must do the same. Our borders remain as porous as they were before September 11 without immediate action.

Families of September 11 supports all provisions of this bill as written. We particularly appreciate the opportunity to recognize key provisions of this legislation which we feel most effectively will address the flaws in our present system.

• Interagency Information Sharing—This bill requires the use of advanced and available technology to correct flawed practices and appropriates funding for their development. Despite the advantages the computer age offers, independent agencies of the government are not equipped with the capacity to share information on foreign individuals residing in our country, or seeking to gain entry through our borders. Individuals could be on a CIA Terrorist Watch List while gaining lawful access to the United States. The Enhanced Border Security and Visa Entry Reform Act prevents the perpetuation of this inexcusable deficiency by requiring the development of interoperable law enforcement and intelligence data systems with name matching capacities and training. With all the technology available today, it is incomprehensible that a system such as this does not already exist.

• Biometric Identifiers—This legislation further relies on the advancements of science by mandating the use of biometrics. Pertinent sections of the bill expressly provide for the use of only machine readable, tamper resistant visas and travel and entry documents that use standard biometric identifiers. This decreases the likelihood that passports or other documents could be shared or counterfeited. The bill also demands that as a condition to continue in the visa waiver program, foreign countries must issue its nationals machine readable passports with biometric identifiers that comply with standards acceptable within our system.

• Foreign Student Monitoring Program—Two of the hijackers entered this country under student visas and never reported for classes. To date, there continues to be no enforced regulations that track foreign students or require the reporting of any foreign person with a student visa that does not report for classes as admitted. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provided for the development of a tracking system and required it to be fully operational within 18 months of the enactment of that legislation. Yet on September 11, 2001, this government had no means to identify or locate foreign individuals on student visas remaining in this country illegally. The provisions required in the Illegal Immigrant Act of 1996 were never enforced; a tracking database was never implemented. the Enhanced Border Security Act remedies the lax oversight of the foreign student tracking system and requires adherence to direct reporting requirements within 120 days of the bill's enactment into law.

• Passenger Manifests—Most of the hijackers on September 11 hailed from Saudi Arabia, which, by our own laws, is not required to submit passenger manifests of vessels entering our country. A system most equipped to prevent the passage of dangerous entrants into our country is one which would require an individual to pass through a series of security checkpoints. The Enhanced Border Security Act requires the submission of passenger manifests of all vessels entering our ports, providing an additional opportunity to identify potentially dangerous terrorists.

• Restriction of Visas to Nonimmigrants From Countries Sponsoring Terrorism—As a necessary measure to strengthen homeland security during this dangerous time in history, the enhanced Border Security Bill also prohibits the issuance of entry documents to any alien from a country that is a state sponsor of international terrorism, unless the Secretary of State determines that the person is not a threat.

In 1941, Franklin Delano Roosevelt spoke of a world founded upon four essential freedoms, the fourth being freedom from fear. We, in the United States of America, no longer enjoy that freedom; we can no longer claim it as our own. Our border policies and immigration laws are fatally flawed. These weaknesses contributed to our failure to prevent the attacks of September 11. As a result, thousands of our loved ones were taken from us senselessly. Over ten thousand children cry for the loss of a parent as they close their eyes to sleep. Seven months have passed since the murder of three thousand people on American soil, and our border security and immigration policies leave us waiting for another attack.

The Enhanced Border Security and Visa Entry Reform Act would strengthen our borders, and establish more effective procedures for immigration screening and control. It requires the use of currently available technology and coordinates interagency cooperation. It is not fiscally burdensome or inappropriate. It does not unduly impede anyone's civil liberties, nor is it violative of due process. The events of September 11 and the current state of international affairs clearly illustrate that this is a time to secure safety, not a time to allow loopholes for terrorist activity. This legislation must be passed without amendment. As written, it secures our safe-

ty; if amended, it compromises it. The delay in passing this legislation is unconscionable. As Members of Congress, you have a responsibility to secure the safety of those you have been elected to represent. You must pass the enhanced Border Security and Visa Entry Reform Act and you must pass it now. Otherwise we stand to lose another important freedom, the freedom to live.

Chairman KENNEDY. We have been joined by one of our prime leaders on this, Senator Feinstein, who has been so involved in shaping and helping to drive this legislation. If she would want to say a word at this time before we hear from our other witness, we would welcome it.

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you, Mr. Chairman. Just a couple of words.

First of all, thank you so much for having the courage to come and be here and spur us on. I think all of us agree with everything you said. I only wish we were able to move earlier to do what we should have done after the 1993 attack. That really, I think, was our warning. We have to move to change what has been a paper-driven agency into an action-driven agency.

Senator Kyl and I have worked on this bill, as you probably know, Senators Kennedy and Brownback on another half of the bill, and then we put the two halves together to a whole. Some feel that, I think, action should not be taken until after the agency is reorganized. I do not think any one of us share that view. I happen to believe it is probably the most significant piece of legislation we can pass to secure our borders.

Ms. SALAMONE. I agree.

Senator FEINSTEIN. I think in the hearings that Senator Kyl and I held, when we questioned the State Department, and particularly, I think Senator Kyl will remember, the head of the visa section, I think it was, and she said, well, they had no intelligence to prevent the granting of these visas to the hijackers. So a part of this bill remedies that by providing an interoperable database between these agencies.

Then there was the instance that a couple of these hijackers actually came in on visas that had expired and nobody caught it. And then there was the instance that six months after 9/11, visa renewals were sent out, which means to me that nobody bothered, even after 9/11, to check the database to see if there was anything suspicious in the database before they sent it out to the contractor to be mailed out.

Coming from California, where there has been massive fraud in the student visa program, particularly in San Diego, where people are actually doing time because they falsified a student's presence in school, they falsified grades, so we have taken, I think, the best that we can take to really change this agency with a mandate. Now, it is going to cost money, but it is probably the best expenditure of money we can do at this point in time.

So I just want to say thank you for being here this morning.

Ms. SALAMONE. Thank you for having me.

Senator FEINSTEIN. I know all of us wish you well and it will be a good life for you, I think.

Ms. SALAMONE. Not right now, but one day, in time. Thank you.

Senator FEINSTEIN. Thanks, Mr. Chairman, very much. I appreciate it.

Chairman KENNEDY. Thank you very much.

We will hear from Kathleen Walker, an attorney in El Paso, Texas, with the law firm Kemp Smith. She is an expert on border affairs. Her practice primarily involves the areas of immigration, customs, and international transaction. She is Past President of the American Immigration Lawyers Association, has served on the AILA's National Board of Governors since 1998. She served as a board member of the Board of Trade Alliance on the Texas Border Infrastructure Coalition. She was appointed to the State of Texas Comptroller of Public Accounts Border Advisory Group by the Comptroller. She is currently involved with the Immigration Subcommittee of the U.S. Chamber of Commerce.

Is there anything you have not done on immigration kinds of matters? You have a very impressive background and experience and we thank you so much for being here. We are looking forward to your testimony.

STATEMENT OF KATHLEEN CAMPBELL WALKER, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, EL PASO, TX

Ms. WALKER. Thank you, Mr. Chairman and very distinguished members of this subcommittee. It is indeed an honor and a privilege to have the opportunity to say a few words on this important bill.

I am here representing the American Immigration Lawyers Association, a national bar association comprised of almost 8,000 attorneys engaged in the practice of immigration law, representing immigrants' rights and trying to deal with figuring out how we apply our complex immigration laws. As we all know, it is more than a Rubik's cube to be able to figure out how they interrelate.

This bill recognizes that fact. This bill notices that we do not have just a clear ability to just address one point. They are interlocking issues dealing with border security. That is what is so pivotal about this bill. It is a package that needs to be passed now. If we do not pass it, then we do so at our peril, as we have already painfully been reminded by events on September 11.

We believe that swift passage is necessary because we have already lost seven months in the ability to go recruit and hire additional inspectors and investigators. That, on its own, is inexcusable.

We have got only 2,000 investigators to go track people down right now within the INS. We strongly support that they be recognized for their efforts and be supported and fortified. But the same thing goes to the valuable duties that are performed by our inspectors. Inspectors are different than Border Patrol. We can keep on adding Border Patrol on our borders, but it does not engage in the issue of being able to ascertain whether or not someone is a bad guy or a good guy when they come to our ports of entry, and it is not that simple, either.

The face of terrorism is not one that one can check a box on. There is a new form out that we have been asked to complete when we apply for visas across the world at our U.S. consulates where we check off background information. Is that really going to enable us to do anything? I hazard a guess that the answer is no. We have

to have effective interlocking systems engaged and we cannot wait to proceed with them.

In addition to that, as to the reorganization bill, it seems like I am beating the same drum over and over again, but we have got a Customs Service down there at our ports of entry. After 9/11, the Customs Service and the Immigration Service were not on the same board on reacting to the events of 9/11. In addition to that, we had problems in just what was happening in California, what was happening in Texas, Arizona, and on our northern border in reaction to 9/11. It is absolutely critical that we require coordination.

It is critical in addition to that that we push some of the burden away from our ports of entry by creating something like the North American Perimeter Security Zone that is addressed by this bill. In addition to that, pre-inspection, pre-clearance, passenger manifests are all part of this bill that allow us to be more effective in interdiction.

Do we wait? What portion of the bill do we drop? Would anyone hazard a guess as to any portion of this bill that they would remove and not try to address at this point in time? I believe the answer is no on the part of the American public, as well, I will be so bold to say. And certainly, sitting here next to someone representing the group that she does, I am very humbled and humiliated by the response of our Congressional bodies by not going ahead and having this bill passed by now.

One thing that we have to keep reminding ourselves about as we proceed is that enforcement carries with it the responsibility to do so with due process, with professionalism. Since 9/11, the easiest thing to do at our ports of entry is to adopt an enforcement mentality that does not want to listen to anybody, that assumes everybody is going to come and do harm to this nation. That is not the case. Our economic prosperity depends on being able to facilitate trade and commerce.

We have dealt on the border for years with this conundrum about how do we facilitate as well as interdict. It is not something that really takes a rocket scientist. I really believe that strongly. If we have the ability to have people enroll voluntarily in programs to say, I am more than happy to submit my fingerprints to an FBI check so that you can facilitate my entry and focus your scarce resources on the people that you need to be concerned about, that is what makes sense now. That is wise use of our resources, and we have not in the past done that.

Case in point, post-9/11, we have something called a dedicated commuter lane in my neck of the woods in El Paso, where I have gone through myself a ten-print FBI check. I have had a seven-point inspection of my vehicle. Post-9/11, the response, knee-jerk, was even in those lanes, they were going ahead and using the exact same procedures utilized for everyone else. It makes no sense. This bill directs the resources to be focused, utilized wisely.

I could not support the provisions of it more. From the consular corps perspective, they are the first line of defense. The second line of defense is INS. But look what you have done within this bill. You are creating yet a third line that can be utilized by garnering the use of our trading partners in the Canadian and Mexican bor-

der areas to help us in this process. What could be more logical and rational? Is this a desperate measure born from desperate times?

As Senator Brownback so aptly stated earlier, it obviously is not. It is a studied review of what it is going to take to address the war on terrorism that we are engaged in. That is what this is. It is a war. Let us go ahead and give people the tools that will enable them to address it effectively and make this the pivotal first downpayment on this action. Thank you.

Chairman KENNEDY. Thank you very much, Ms. Walker. Someone of your background and knowledge and study and practical experience, to have your strong support of the provisions is, I think, very encouraging, and hopefully our colleagues will feel very reassured because you bring a wealth of experience.

[The prepared statement of Ms. Walker follows:]

TESTIMONY OF KATHLEEN CAMPBELL WALKER, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. Chairman and Distinguished Members of the Subcommittee:

My name is Kathleen Campbell Walker. I am honored to be testifying today before you on behalf of the American Immigration Lawyers Association (AILA). AILA is the national bar association of nearly 8,000 attorneys and law professors, who represent the entire spectrum of individuals subject to our immigration laws. I have been privileged to chair AILA's State Department Liaison Committee for the past three years and am a member of that organization's Border Issues Committee. I also practice immigration law in El Paso, Texas, where I have focused for over 16 years on border issues. In addition, I serve on the Texas State Comptroller's Border Advisory Council, and have served as a board member of the Border Trade Alliance as well as a member of the Executive Committee of the Texas Border Infrastructure Coalition. I worked for four years as President of the El Paso Foreign Trade Association to establish the first Dedicated Commuter Lane using Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) technology in the State of Texas.

I thus bring to the table practical and on the ground experience regarding the challenges of border security, and cross-border and cross-agency issues that I hope will be of use to the Committee as it works to develop laws to address effectively the complex issues raised by achieving effective border security without harming either our internationally based economy or our dedication to respecting individual rights preserved by the Constitution.

INTRODUCTION: THE IMPORTANCE OF THE BORDER SECURITY AND VISA REFORM BILL AND THE NEED FOR ITS SPEEDY PASSAGE

I appreciate this opportunity to present AILA's views on the Enhanced Border Security and Visa Entry Reform Act. AILA applauds this Committee's responsive and thorough work in formulating this bill and strongly supports its swift passage. This bipartisan bill takes significant steps to improve the capability of federal agencies engaged in applying our immigration laws to determine who should or should not be admitted to the U.S., and to ensure that our nation's immigration policies are in line with our common goal of effectively deterring terrorism. On behalf of AILA, I commend Senators Kennedy, Brownback, Kyl, and Feinstein for their leadership in developing this important measure. The Enhanced Border and Visa Reform Act is central to this nations's effort to implement the necessary steps that will enhance and increase the layers of security both at and away from our borders.

This nation does not have the luxury of waiting to enhance the protection of the precious jewel, which is this nation. Without the tools provided in this bill, those who protect our borders and attempt to fairly implement our laws would confront the war on terrorism with an antiquated and poorly coordinated armory. At this critical time, we must give our federal agencies the tools they need to succeed in their task, rather than handing them their marching orders without the means to achieve their objectives. And we must do so without losing sight of our country's long and proud history of due process and respect for civil liberties.

The Enhanced Border Security Bill includes real solutions to real problems. It also recognizes that we cannot achieve security without accountability. Database integration that is not combined with well-trained inspectors, investigators, and consular officers is an insufficient response to our security needs. Equally important, we can-

not expect our federal agencies to be able to look into the minds of individuals with no criminal records to find a potential terrorist. Terrorists do not check off the boxes on a form to indicate that they are, or may be, terrorists. We thus need to make sure not to pose false solutions to real problems and thereby lull ourselves into a degree of security we have not achieved.

The border security bill is premised on two facts. First, enhancing our intelligence capacity is key to our increased security. The face of terrorism is not tied to one nationality, religion, or ethnic group. The horrific terrorist action in Oklahoma is an ever-present reminder to us of that painful fact. Any changes in immigration policies or procedures must allow our federal agencies timely fact. Any changes in immigration policies or procedures must allow our federal agencies timely access to valuable and reliable intelligence. Second, our most effective security strategy is to keep out those who mean to do us harm, while admitting those who come to build America and make our country stronger. Immigration is not a synonym for terrorism. The problem here is terrorists, not immigrants. We need to isolate terrorism, not America.

The Enhanced Border Security bill's provisions reflect two important understandings about our country and our needs—namely, that we are a nation of immigrants, and that we must undertake any reforms in ways that do not destroy our economy and commerce. The U.S. is an integral part of the world economy, with global business, tourism, and migration serving a pivotal role in our economic prosperity. As we take important and needed steps to enhance our security, we must seek to ensure the efficient flow of people and goods across our borders. If we do not, we risk both chaos at our borders and the destruction of our economy, and along with it, the ability to pay for our national security. "Fortress America" is an undesirable and impractical solution that repudiates our history and our economic and social needs as well as the current reality of our global economy.

Nearly 500 million entries occur annually by people who come to the U.S. as tourists, business people, students, or to visit with their families. Less than one million annually settle here as immigrants. Living in a border community underscores on a daily basis the imperatives this flow creates and the importance of this bill, and the necessity of balancing our security needs with the fact that we are a nation of immigrants and that we must continue to facilitate the free flow of people and goods.

After September 11, border communities experienced first hand the need for federal agencies to work together. These communities dealt with repeated inspections of same-day crossers without any modification of procedures to reflect the waste of resources that occurred whenever the same individuals were repeatedly put through the same enhanced inspection processes. Pedestrians and passenger vehicles waited more than 5 to 6 hours to enter the United States, a delay that overtaxed our border agencies and reduced the effectiveness of our inspectors. While patriotism and a concern for our country's security led these communities to tolerate these disruptions, many asked if these procedures really were making us safer. I fear that the answer is "no." In the meantime, at a time of economic downturn, border communities faced further suffering as a result of our economic interdependence on our neighboring countries. From the perspective of this nation's border communities, the Border Security bill presents a reasoned and timely approach to this challenge of balancing our security with our economic realities.

In summary, AILA urges the bill's swift passage because it reflects the following:

- We must enhance our security as a nation of immigrants. Our immigrant heritage remains central to our national identity and helps explain our nation's vitality and success.
- We must enhance our security in ways that will not destroy our commerce or economy or inhibit the efficient and secure flow of people and commerce at our borders and ports of entry. Our economic security is essential to our national well-being and contributes to our ability to enhance our national security while improving our nation's global competitiveness.
- The key to enhancing our national security is increased intelligence provided on a timely basis to the appropriate federal agencies.
- Our best protection is to focus our security resources where they are most needed. We must be able to identify and separate low risk travelers and facilitate their entry. Such measures are more effective and more easily implemented than measures that focus on persons after they enter the U.S. In all cases, we need to make sure that we use our resources in the most effective way possible to keep out those who seek to do us harm, not those seeking to come to our country for the reasons that people have always come here, including escaping persecution, desiring to be reunited with their families, working legally in the U.S., investing or conducting business in the U.S., or visiting this country as tourists.

As Congress addresses the need to enhance our national security and the many important as well as complex issues raised in this discussion, it is important to recognize that:

• The Senate Needs To Pass the Enhanced Border Security and Visa Reform Bill as a Package: All the various parts of the border security measure are needed to enhance our security. The different provisions in the bill fit together to create an effective border security and visa security-related reform initiative. Selectively passing only some of this bill's many important provisions will leave dangerous gaps that threaten our security and decrease the effectiveness of our federal agencies. The bill's provisions reflect the reality of the federal synergies inherent in our current immigration system, and recognize that enhancing our security will require the combined efforts of many federal agencies and the support of Congress and the Administration. The bill also recognizes that our security is further enhanced by defined cooperative efforts with our Canadian and Mexican neighbors. We cannot achieve security-related goals in an international vacuum.

• The Bill Needs To Be Quickly Passed: It is vitally important that this measure be passed and signed into law with all due haste. Delay threatens our safety and well-being and flies in the face of the gravity of the situation created by the incomprehensible events of September 11. The bill's provisions include changes in the policies, practices, and procedures of several federal agencies including, but not limited to, the Immigration and Naturalization Service (INS). While reorganization of that agency is a top congressional priority, we cannot afford to wait until that task is undertaken to implement the necessary changes advanced by the border security bill. We need to move forward now to implement the important reforms included in the bill. How can we say "wait" to those lost on September 11 or to their surviving families and friends?

Our urgent need to move forward on this bill is underlined by the fact that our border security concerns go beyond the INS and its reorganization. Intra-agency coordination, which is a primary goal of the bill, needs to be addressed immediately, as vividly illustrated in Inspector General Fine's February 28, 2002 testimony on the Visa Waiver Program. In his testimony before the Subcommittee on Immigration and Claims of the House Judiciary Committee, Inspector Fine notes that in July 2000, the INS submitted 22 projects to the U.S. Customs Service requesting modifications to the Interagency Border Inspection System (IBIS) which the Customs Service manages. One of these changes mandated via IBIS was the entry of an alien's passport number upon primary inspection in order to enhance the interdiction of fraudulent passport users. The Customs Service would not pay for the revisions from its own budget, and INS did not receive funding for this effort until FY 2002. Perhaps timely funding would have been appropriated if there had been more intra-agency coordination.

• The Administration and Congress Must Support Adequate Funding for the Bill's Initiatives: Given the bill's very ambitious deadlines, the Administration and Congress need to step up to the plate and provide the federal agencies with the staffing and funding levels necessary to implement this measure's provisions. The Bush Administrations' proposed FY 2003 budget is a good first step, but we must be prepared to fund this effort generously, with Congress and the Administration reviewing how the agencies use these funds. The functions targeted in this bill have been neglected for decades, and it will take much patience, time, congressional attention, and sufficient appropriations to achieve the goals of this legislation.

• The Administration and Congress Need To Be Prepared To Respond to Potential Problems With Mandated Deadlines: Some of the bill's provisions, particularly several of the mandated implementation deadlines, may impact negatively on cross border commerce and travel. Certainly, the goal of exit and entry control at our land ports needs to be carefully reviewed. The investment in infrastructure alone could prove to be significant (for example, certain land ports will have to add lanes for exit control inspection). And these costs do not take into account the necessary staffing increases. The Administration and Congress need to be open to effective alternatives, alert to the consequences of short time frames, and willing to modify these deadlines as merited, and, in some cases provide alternatives and/or appropriate expedited funding.

• Federal Agencies Need To Step Up to the Plate: The federal agencies, especially the INS, the Department of State (DOS), and the U.S. Customs Service, play critical integrated roles in enhancing our nation's security. With sufficient funding, the provisions in the Border Security Bill will give federal agencies the wherewithal to achieve their goals. For their part, the agencies need to be up to the task of implementing major reforms that address our security needs and, at the same time, recognize the continued importance of immigration to our nation: people will continue to seek entrance to the U.S. to visit, reunite with their families, contribute to the

American economy, and seek safe haven. The efficient flow of cross-border and international commerce must continue to fuel our economic recovery and growth. We also cannot tolerate inter-agency or intra-agency disagreements that threaten to derail the goals of the bill, for we do so at our collective peril.

The Enhanced Border Security and Visa Reform Bill highlights the urgent need for the following:

• A U.S./Mexico Immigration Agreement To Help the U.S. Address National Security Concerns: These discussions offer the United States the opportunity to align our immigration policies with our national security needs, market forces, and family reunification goals. Bilateral cooperation in enforcement efforts regarding illegal immigration, an alternative for hardworking immigrants already here filing legitimate labor needs to earn legal status, a new temporary program for essential workers to fill identified labor needs, and more visas for workers and family members are initiatives that will contribute to our security. Because the Border Security bill creates the additional impetus for Mexico and the U.S. to coordinate and cooperate, it follows that by encouraging and facilitating legal immigration, both countries will be able to focus their resources on terrorists and people engaged in smuggling, trafficking, and other criminal activities.

• An Effective Reorganization of the INS and Border Functions: A reorganization of the INS tops the congressional agenda and must take place. However, as noted earlier, such restructuring must not delay the passage of the Border Security Act. Reforming the INS has dramatic implications for the border and, hence, border security. Any reforms of the INS must recognize that the inspections function, by its very essence, represents the competing missions of the INS. Inspectors both process thousands of applicants for entry documents while simultaneously trying to identify and interdict criminals or potential criminals. The enforcement and adjudication aspects of inspections need to be closely coordinated, as do INS and U.S. Customs, the two primary agencies staffing our ports of entry.

Such inter- and intra-agency coordination will be harmed by any proposal that would split off INS inspections and other aspects of INS enforcement from the rest of the agency, as has been contemplated by reports about a proposed border security agency. That type of splitting merely adds another cook in an already over-crowded kitchen. Rather, some form of unified port management may provide the needed solution, and merits further investigation. Unified port management does not require the reinvention of the proverbial wheel by forming a new single federal agency. Instead, port efficiencies are achieved through community and agency involvement to create a port authority reporting to a governing body comprised of agency and Administration members. Such a body would clearly and decisively react to port of entry security, staffing, infrastructure, and policy needs. All of these needs must be coordinated to achieve the goal of enhanced border, and hence, national, security.

THE ENHANCED BORDER SECURITY AND VISA REFORM BILL INCLUDES NEW AND NECESSARY DETERRENCE MEASURES

Among other provisions, the Enhanced Border Security bill includes increased funding for the DOS and INS, increased access to lookout lists, reforms at our consulates, the use of new technologies, direct government funding of these technologies, more pre-inspections abroad, a study of the creation of a North American Perimeter Safety Zone, reforms to the foreign student program, and a workable entry-exit control system. These and other provisions in this measure will help enhance and create layers of protection that stand between us and any potential terrorist adversaries from abroad. The bill's provisions interrelate with each other to create a more effective security net and the foundation necessary to enhance our security, and include the following.

1. Increased Staffing and Funding for DOS and INS and Interagency Data Sharing

The Border Security bill authorizes increased personnel, technology funding and data access for the DOS and INS, and also provides additional training for INS and DOS staff. These provisions provide an important first step. Clearly, both agencies need increased staffing levels and funding to appropriately handle their heightened security-related responsibilities post September 11. Staffing shortages already were prevalent in INS inspections and investigations prior to September 11. In addition, the consular corps for years has been overtaxed and under-resourced.

Inadequate funding has left these agencies with technologically obsolete and incompatible computer systems. Some offices, especially those overseas, do not have adequate computer capacity, much less sufficient access to Internet resources. In order to effectively fight terrorism by enhancing our intelligence capabilities and improving our border security, both the DOS and the INS need this increased funding

to upgrade their technological infrastructures. However, Congress' active oversight will be necessary to ensure that funding is used wisely and our goals are achieved.

The Bush Administration's FY 2003 budget includes $11 billion for border security. This funding is a critically important down payment and a significant first step in providing the money needed for long-overdue changes. However, the reforms this measure contemplates will demand large, multi-year commitments from Congress and the Administration. It is necessary and appropriate that such funding come from direct federal appropriations. Technological capacities at our federal agencies cannot be fully supported through user fees.

2. The Use of New Technologies

The Border Security Bill recognizes that in order to gather and make accessible a great range of information about individuals and their identities, it is critical to make use of existing and emerging technologies to achieve the most reliable means of verifying identity. The bill seeks to upgrade the technological capacities of the government so that federal agency personnel are better trained and equipped to use new technologies to effectively screen out potential terrorists. The bill also includes provisions for the issuance of machine-readable, tamper-resistant, travel documents with biometric identifiers that would promote the use of secure passports and visas resistant to counterfeiting. The federal government needs to fund the development and use of these new technologies and ensure that the various federal agencies coordinate compatible efforts in this area. Given the importance and complexity of these efforts relative to the short time frames provided in the bill, Congress needs to be willing to modify these deadlines as needed.

It also is important to recognize that as we attempt to strategically balance our security concerns with our economic needs, we need to test these new technologies and staff them appropriately. And the need is acute. After September 11, people in the border pedestrian lines waited 4 to 6 hours to enter the U.S., due to the mandate that all applicants for entry be subjected to an Interagency Border Inspection System (IBIS) security check. Because of a lack of scanners, other equipment, and staffing, the ports were backlogged and incapable of initiating any inspection efficiencies.

3. Interoperable Data System, Lookout Lists, and Protections

The Enhanced Security Bill includes a provision requiring the development and implementation of an interoperable data system to provide current and immediate access to information contained in the databases of federal law enforcement agencies and the intelligence community that is relevant to visa issuance determinations and determinations of an alien's admissibility or removability. U.S. federal agencies, as well as international law enforcement officials, need real time, direct access to certain information from the different agencies' databases. The "lookout lists" created by these databases include the names of people who should not be admitted to the U.S. or who should be pulled aside for questioning should the authorities come into contact with them. Increased funding would allow the agencies to build up their technological capacities so that DOS and INS could directly access the FBI's and other agencies' databases. Direct and timely access to this data would enable law enforcement agencies to act immediately to identify those high-risk individuals who seek to enter the U.S. or receive other immigration benefits. Names and relevant identifying information could assist agencies in interdicting individuals.

The bill also includes important safeguards against potential abuse of this data by: limiting the redissemination of information; ensuring that such information is used solely to determine whether to issue a visa or to determine admissibility or removability; ensuring the accuracy, security, and confidentiality of information; protecting any privacy rights of individuals who are the subject of such information; providing for the timely removal and destruction of obsolete or inaccurate information; and doing so in a manner that protects the sources and methods used to acquire intelligence information. The bill also addresses the need for algorithms to account for various name and language transliterations.

Such safeguards will become even more necessary as the lists increase in size and unfamiliar names from various regions of the world may be incorrectly keyed in to a database. We must make every effort to ensure the accuracy and timeliness of the names on these lists so that the right, not wrong, individual is targeted.

4. Needed Reforms at U.S. Consulates

The Enhanced Security Bill recognizes that our intelligence gathering can be further improved by increasing funding for the DOS, improving training for consular officers, reforming the Visa Waiver Program, tracking stolen passports, establishing a Terrorist Lookout Committee, restricting visa issuance procedures for those from designated states sponsoring terrorism, and enhancing the access of the DOS to in-

formation relevant to screening visa applicants who pose a potential threat to the safety and security of the U.S. Consular staff cannot be expected to interdict potential terrorists without timely access to relevant intelligence and agency database information, access to the Internet, and relevant training. In addition, to properly address security concerns, DOS needs additional consular staff as well as the attendant support staff and facilities.

Given the importance of this work, AILA would support upgrading the status of the consular officer who interviews visa applicants to determine visa eligibility and assess potential fraud allegations. Currently, more junior personnel with less hands-on visa application interviewing experience perform this function. AILA supports the placement and rotation, if necessary, at consular posts of a core of highly trained and specialized civil service visa processing specialists, fully trained in the complicated area of U.S. immigration law, who would be required to take a certain number of continuing consular education courses to be considered for promotion or pay increases.

Furthermore, decisions on visa issuance need to be reviewable. In these times of heightened scrutiny when it is much easier than ever to just say, "no," such review is vital to ensure the integrity of the visa application process. Certainly, when comparing the level of accountability to which INS is held versus the DOS, the DOS is insulated from core precepts of administrative and judicial review to which INS is subject. AILA members know that many INS headquarters policies or regulations have been enhanced and improved through our judicial process, and in many cases have been strengthened through judicial scrutiny. We believe that such a review process is necessary so that DOS consular decisions mirror the checks and balances that are central to our democracy and our judicial system. Along with an avenue for review of the denial, we recommend providing any visa applicant or applicant for entry who is denied a visa or entry with the reasons for the denial. In those cases where the adverse decision is affirmed, a visa applicant should at least be provided with a means of appeal to the U.S. District Court for the District of Columbia.

In addition, consular authority to deny the presence of legal counsel at consular interviews should be rescinded since such authority enhances the ability of certain consular officers (certainly not all) not well-versed in the law or unwilling to provide a modicum of due process to deny applications not based on fact and/or law.

5. North American Perimeter Safety Zone

The Enhanced Border Security Bill calls for greater cooperation between the U.S., Mexico, and Canada through the study of the feasibility of creating a North American National Security Program. This program would facilitate the creation and implementation of a North American perimeter security zone to increase the collective security of all three nations. Such a North American perimeter would bolster security through law enforcement coordination, intelligence sharing, and better joint use of enforcement resources. Such efforts would reduce the chance that someone wishing to do harm to the U.S. would travel to one of our neighboring countries and then cross by land into the U.S.

Any cooperation among the three governments in immigration enforcement should include a plan to ensure that asylum seekers have meaningful access to protection. While Mexico has recently acceded to the refugee convention, access to asylum remains problematic, particularly for migrants intercepted at Mexico's southern border. On the other hand, Canada should not be pressured into diminishing protections for refugees. All countries in the region can and should strengthen security measures. None should be required, however, to lower their protections for refugees to the "lowest common denominator."

As North American security cooperation also addresses the issues of smuggling and trafficking, the European experience is particularly relevant regarding protection for asylum seekers. The United Nations High Commissioner for Refugees (UNHCR) commissioned a report that concluded that the majority of asylum seekers arriving in the European Union have been smuggled or trafficked. The report also states that in the European Union, "the effects of blanket enforcement measures, such as common visa policies, readmission treaties, carrier sanctions, and airline liaison officers (preinspection personnel) act to deny refugees the possibility of illegal exit from the regions of their persecution." The report recommends that European nations review their migration and asylum policies to open other channels to people fleeing persecution in their native countries. This recommendation includes incorporating the right to seek asylum and the responsibility of non-refoulement into anti-trafficking and anti-smuggling policy, recognizing that trafficking and smuggling are both "inherently abusive" and that both trafficked and smuggled persons can be refugees, thus improving reception conditions, and increasing family reunification.

6. Preinspection and Preclearance

As part of the study of the feasibility of a North American Perimeter National Security Program, the bill provides for a study of preinspection and preclearance programs. U.S. preinspection programs currently are in effect in only five countries: Canada, Ireland, Bermuda, the Bahamas, and Aruba. In these locations, passengers are in effect "preinspected" for admission to the U.S. before ever boarding a plane—passports are checked and names are run against the applicable lookout lists. This preinspection process allows more time for inspection and increases the likelihood of a more thorough check. It also would move our system from one that focuses on determining a person's eligibility for admission into the U.S. as a port of entry to one that focuses on determining that person's eligibility at the point of origination. This process also would decrease the volume of applications for entry at our air ports of entry. (The land ports of entry would receive less of a realized benefit from this procedure, but the preclearance program described below available in a frequent traveler program would enhance efficiency and security at our land ports of entry.)

INS and DOS will need to jointly recommend where such additional preinspection facilities should be located, as it would be impractical to undertake this procedure at every airport in the world. It also will be critical to clarify in advance with host countries any sovereignty issues that might arise when someone is to be arrested by U.S. officials working cooperatively with local authorities at the preinspection site who have the power to arrest and detain. Such cooperation should include assurances that suspected terrorists are not released because the host country authorities do not view the threat posed by the individual as seriously as do U.S. authorities. These programs also will raise numerous international law concerns in which the laws of the host country do not recognize certain laws and procedures followed under U.S. law. When a country cooperates in such preinspeciton programs, those inspected should benefit from expedited admission upon arrival to the U.S.

The Border Security bill also contemplates creating programs that would enable foreign national travelers to the U.S. to submit voluntarily to preclearance procedures that the DOS and INS would establish to determine whether a traveler is admissible to the U.S. Such preclearance programs also would allow more time to review travelers' information and compare such information with information contained in the databases of federal law enforcement agencies and the intelligence community. The INS already has established precursors to these programs. For example, the SENTRI program, which is utilized in the Dedicated Commuter Lanes on the southern border, require applicants to undergo a ten print FBI fingerprint check and various customs and INS clearances as well as a seven point inspection of the car enrolled in the program. These programs allow the federal agencies involved inspections to winnow the wheat from the chaff and focus their security reviews on higher risk applicants for entry. In addition, the NEXUS program (which is similar to, but less costly than SENTRI), is moving forward rapidly toward implementation on the northern border. The U.S. Customs Service also is testing a PASS program for commercial drivers that requires preinspections and provides for expedited clearance of cargo to enrollees.

What is critical for these programs to succeed is that they be integrated. Enrolled frequent travelers should be able to use their issued preclearance documents at any port of entry. Otherwise, we duplicate efforts, costs, and staffing with no improved security benefits. In addition, the benefits to this enrollment should extend to entry into Mexico and Canada to improve effective border crossings and entries at air and seaports.

Congress needs to be prepared to fund such preinspection and preclearance programs. As with other programs to increase security and deterrence, the federal government's role is key because of the significant costs in setting up and maintaining these programs. As to preclearance programs, the benefits of a high volume of enrollees must be weighed when contemplating against pass through costs to the user. In this instance, it is in our national interest and will reduce overall costs through preventative planning to waive the fees to enroll in these preclearance programs.

Finally, any preinspection/preclearance system must provide for mechanisms, including specially trained personnel, to assure that legitimate asylum seekers are afforded a meaningful opportunity to seek protection.

7. Passenger Manifest Lists

The Border Security bill requires that all commercial vessels or aircraft coming to the U.S. from any place outside the country provide manifest information about each passenger, crew member, and other occupant of the vessel or aircraft to an immigration officer prior to arrival in the U.S. In addition, each vessel or aircraft departing from the U.S. for any destination outside the U.S. must provide manifest

information before departure. The information that must be provided for each individual listed on the manifest is extensive and includes: complete name of the applicant, date of birth, citizenship, sex, passport number and country of issuance, country of residence, U.S. visa number, date, and place of issuance, when applicable, alien registration number, when applicable, U.S. address while in the U.S., and "such other information the Attorney General . . . determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security." The manifests must be transmitted electronically by January 1, 2003. The bill also requires the President to conduct a study, within two years of enactment, on the feasibility of extending the new manifest requirements to land carriers transporting persons to the U.S.

Mandating at the time of take-off that all airlines transmit passengers' names to the designation airport to be checked against the look out list is an important security tool. Through their reservation systems, airlines know in advance who will be flying to the U.S. Transmitting the list in advance would give U.S. authorities the opportunity to compare the passenger list to the lookout lists, thereby preventing the entry of and/or apprehending those who should not be permitted to enter the U.S. Currently, about 75 percent of airlines transmit these lists. In addition, such lists would assist in the review of applicants for entry under the Visa Waiver Program prior to their departure from the point of origin, which would enhance the level of security related to program participants.

AILA has concerns about the impact of the manifest requirement, if not efficiently implemented. The effectiveness of such a system depends on the INS having adequate technology and personnel to make swift and efficient use of the information. Preinspection and preclearance programs should facilitate the process for incoming travelers and reduce some of this burden, but appropriate staffing and procedures will be critical to success. In addition, if preinspections are conducted with meaningful safeguards to guarantee protection for asylum seekers, then the transmission of passenger lists should not compromise the safety of asylum seekers who may be en route to the U.S.

AILA also believes that the requirement to submit manifest information prior to departure from the U.S. will be more problematic and will cause delays in departures and possible chaos at our nation's airports. It will be critical to exempt our frequent travelers enrolled in preclearance programs from this process. In addition, we must be prepared to develop workable alternatives that meet both security and transportation concerns. If we are ever to effectuate exit control, it will be easier to test the principle at air and seaports.

8. Entry-Exit Controls

Congress needs to ensure adequate personnel and technological improvements at and between our ports of entry. The August 2001 GAO Report, "INS Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years," clearly identifies that security risks exist at both our northern and southern borders. The Border Security bill implements an integrated entry and exit data system included in the INS Data Management and Improvement Act of 2000 (Pub. L. No. 106–215) which provided for the system first contemplated by Section 110 of the 1996 immigration law, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) (Pub. L. No. 104–208).

In developing this entry-exit system at points of entry into the U.S., it is important to recognize the implementation challenges and possible disruptions to our commerce likely to be caused by such a system. For instance, implementing Section 110 at land ports is extremely problematic from infrastructure, staffing, and cost perspectives. In fact, many of our land ports have no place to expand to encompass outbound inspections. Furthermore, significant numbers of people would be involved. More than 400 million (about 80% of all inspections) are done annually at our land borders. About 800,000 border crossings are made daily between the U.S. and Mexico, and about 260,000 cross each day between the U.S. and Canada. A June 1998 report from the Senate Judiciary Committee, then chaired by Senator Orrin Hatch (R–UT), noted the catastrophic delays that would accompany the implementation of a Section 110 entry-exit system at land borders. For example, the report cited testimony from an earlier hearing by a witness who estimated that "assuming the most efficient and remarkable entry and exit procedures in the world that will take only 30 seconds per vehicle, and making the equally optimistic assumption that only half the vehicles have to go through the procedures, that would amount to an extra 3,750 minutes of additional processing time each day" at the Ambassador Bridge in Detroit. The witness then pointed out that there are only 1,440 minutes to a day, which means that implementing a Section 110 entry-exit

system at that land border port of entry would lead to a delay of more than 2½ days.

We also must recognize the limitations of such a system if we do not also enhance our intelligence capacity. The Senate report also noted that it is highly questionable if implementing Section 110 would ultimately provide limited, if any, assistance in prosecuting individual visa overstayers, and would have nothing to do with stopping terrorists or traffickers. An automated entry-exit control system's database will in no way provide information as to which individuals might be engaging in terrorism or other unlawful activities. It would however have the potential of identifying suspicious travel patterns, if the individual utilized the same identity. We believe that the use of this system to track or locate terrorists or potential terrorists is not a realistic goal, and that our precious resources would be better spent on other aspects of this bill.

9. Reforms to the Foreign Student Program

The Border Security bill strengthens the monitoring aspects of the foreign student program provisions contained in the 1996 immigration laws, mandates the collection of additional information related to students, and requires the INS to periodically review schools authorized to admit foreign students to ensure that the schools are complying with record keeping and reporting requirements. If an institution or program fails to comply, its authorization to accept foreign students may be revoked.

Specifically, the bill requires the Attorney General, in consultation with the Secretary of State, to establish an electronic means to monitor and verify the various steps involved in admitting foreign students to the U.S. such as: the issuance of documentation of acceptance of a foreign student by an educational institution or exchange visitor program; the transmittal of such documentation to the Department of State's Bureau of Consular Affairs; visa issuance; the student's admission to the U.S.; the registration and enrollment of the student in his or her institution or program; and any other relevant act such as changing schools or termination of studies or program participation. The bill also requires schools to notify the INS if a student has not reported for school more than 30 days after the deadline for registering for classes.

Additional data that must be collected under the bill includes: the student's date of entry, port of entry, date of school enrollment, date the student leaves school (e.g., graduates, quits), and the degree program or field of study. Student visa applicants also must provide additional information to the consular officer including their address, names and addresses of relatives, names of contacts in the country of residence who can verify information about the student visa applicant and previous work history, if any, including the names and addresses of employers.

The Border Security bill also establishes an interim system to be used until the program included in the 1996 law is fully implemented. Under this temporary system, the State Department is prohibited from issuing student visas unless the agency has received electronic evidence of acceptance documentation from an approved academic or other institution and the consular officer has adequately reviewed the applicant's visa record. Once a visa is issued, the Secretary of State must transmit to the INS notice that the visa has been issued, the INS must notify the academic institution that the alien has been admitted to the U.S., and the institution must notify the INS not later than 30 days after the class registration deadline should the alien fail to enroll. In addition, within 30 days of enactment, the INS must provide the State Department with a list of approved institutions authorized to receive nonimmigrants.

Although AILA believes that foreign students are not the equivalent of terrorists, we support the efforts of the INS to ascertain a student's compliance with their terms of entry to the U.S. We do not support the use of a student visa to enter the U.S. to achieve a non-education-related objective. We are concerned, however, that students not be subject to unmerited scrutiny in the application for visas. Our institutions of education are enhanced by the participation of foreign students and such institutions allow the U.S. to spread its message to other countries of the benefits of democracy and tolerance of ethnic and religious diversity. That message must continue to be delivered not only through such valuable efforts as the Peace Corps, but also through our educational institutions and foreign student programs.

10. Other Important Provisions in S. 1749

The Enhanced Border Security Bill includes many other important provisions that merit bipartisan support. Of particular relevance to the southern border is this measure's extension by one year of the deadline for border-crossers to acquire machine-readable laser visas from DOS. Although, the DOS started issuing laser visas in 1998 as a replacement for border crossing cards issued by the INS, prior to Sep-

tember 11, DOS was requesting an extension of the October 1, 2001 deadline for such replacements due to volume and processing delays. On October 1, the economic downturn caused by enhanced border inspections was further exacerbated by the inability of border crossing cardholders to enter border communities to shop. In addition, the INS gave no quarter to these border crossing cardholders by providing waivers for the laser visa requirement for such visitors.

This treatment was applied to one of our most favored trading partners and to applicants who had gone through at least one prior document application with the U.S. government. In comparison, nonimmigrant applicants from Canada are visa exempt except in the E visa category. Some DOS officials now are stating that it should not be a problem if laser visa applicants, who have waited three to five months to get a laser visa appointment at a consulate, would have to wait a few more months. Border communities have responded loudly and clearly to this position: It will be a huge problem. Such a position ignores the realities of border society and economy in which each day's events impact on the viability of the border. Border communities are symbiotic. Coming from a southern border community, I can state unequivocally that any relief that would give Mexicans who are low security risks and hold old border crossing cards the ability, based on their prior cards, to cross into a border community and be inspected at land ports of entry before their laser appointments would provide an economic life boat to border businesses. In the interim, old border crossing cardholders could be mandated to undergo a security check prior to entry to address any security-related concerns.

WHAT HAS BEEN ACHIEVED SINCE SEPTEMBER 11

Since September 11, the status quo has undergone much change, with federal agencies (INS, Customs, Coast Guard and the other border agencies) coordinating and cooperating at unprecedented levels to make more effective the processes at the border both to protect our homeland and efficiently process legitimate trade and travel. In addition, our nation's agreements with Canada and Mexico already are helping us to increase the security of all three countries.

These initial efforts underscore the importance of coordination and cooperation among our federal agencies in the U.S. as well as in other countries and reinforce the need for the Border Security bill to reinforce, invigorate, and expand on these preliminary efforts. Some of these efforts are:

• Additional Personnel at Our Ports of Entry: The INS detailed hundreds of inspectors and Border Patrol agents to the northern border and other ports of entry to enhance the inspection process and guard against unauthorized entries. Customs inspectors were sent to northern border ports of entry to make sure that they were staffed at all times by at least two agents. The Coast Guard sent additional patrols to the ports. Unfortunately, the INS and the U.S. Customs Service had difficulties implementing coordinated policies at ports of entry as to inspections issues, creating certain inefficiencies and agency disconnects.

• Enhanced Data Sharing by the Federal Agencies: On January 15, 2002, the INS was able to utilize the Consular Consolidated Database maintained by the DOS Bureau of Consular Affairs to help assess admissibility of applicants for entry to the U.S. In addition, the Customs Service enhanced the access of the INS and DOS to the Advance Passenger Information System, a database that includes information on arriving commercial air passengers.

• Creation of the Foreign Terrorist Tracking Task Force: President Bush, in October 2001, created the Foreign Terrorist Tracking Task Force. Comprised of representatives from the FBI, INS, DOS, Customs Service, Secret Service, and the intelligence community, this task force shares information previously unavailable to the federal agencies and is charged with enhancing security by denying entry to terrorists and pursuing those already in the country.

• "Smart Border" Agreement With Canada: In December 2001, the U.S. and Canada signed the "Smart Border Declaration," which outlines a 30-point action plan through which both countries will collaborate to identify and address security risks "while efficiently and effectively addressing the legitimate flow of people and goods back and forth across the Canada-U.S. border." The declaration focuses on the secure flow of people, goods, and infrastructure, and on coordination and information sharing.

• "Smart Border" Agreement With Mexico: During his recent trip to Mexico, President Bush and Mexican President Fox finalized a 22-point "U.S.-Mexico Border Partnership Action Plan." This plan is a comprehensive attempt to reconcile post-September 11 security concerns with the need to keep commerce moving freely between the U.S. and its second largest trading partner. The "smart border" deal aims to facilitate the legitimate flow of people and commerce across our borders while

screening out those who would threaten us. Among other things, the plan calls for the U.S. to pre-certify certain Mexican companies that would electronically seal their containers in Mexico and receive express processing treatment at the border. The plan also calls for a study of the possibility of creating express immigration lines at airports for people from the three NAFTA nations, and for Mexico and the U.S. to share information on those applying for visas to travel to either country.

The two countries also are discussing: improved sharing of intelligence in order to thwart terrorists using Mexico to facilitate illegal entry into the U.S.; border crossing practices that facilitate and streamline the passage of legitimate people and cargo while identifying those that require more extensive screening; and intensified joint efforts to crack down on human trafficking.

CONCLUSION

AILA strongly supports the speedy passage of the Enhanced Border Security and Visa Reform bill to allow the government agencies charged with addressing the critical needs of border and visa reform to be successful in efforts to enhance this nation's security. We must proceed swiftly with the entire bill, or else drastically hamper our response to one of the most insidious challenges this country has faced.

Chairman KENNEDY. I will just ask a couple of questions. Those that think that we ought to wait on this until we have the final reorganization and restructuring of INS, what is your reaction to that?

Ms. WALKER. Thank you, sir. My reaction to that is that it is ridiculous, bluntly. But respectfully, we have plenty of bills pending for people trying to figure out how to reorganize the INS. It has been going on for years. Nine-eleven is something that happened just recently that we have to address. Obviously, INS reorganization is something we have to deal with, but we also have to deal with hiring people down at our ports of entry, getting them up and running. It is going to take us over six months just to hire people.

We have got to give our consular corps the appropriate types of technology to be able to interdict these people. We have got to be able to have them give an appropriate review, based on the intelligence that they will need, as Senator Feinstein so aptly noted earlier. And without doing so and waiting, we only harm ourselves. Where is the logic in that?

Chairman KENNEDY. Just finally, you refer to this perimeter defense, which is something that may be out there down the road, in the future. We heard from our former governor and current Ambassador to Canada who thinks that having cooperation in terms of the total entry into North America, and hopefully extending that down into the South, to Mexico, could be important as sort of a first line of defense prior to people coming into Canada and then being able to come into the United States.

Do you want to make just a brief comment? We are doing a study on that, but it is a matter, I think, of importance, looking down the road further. I would be interested, since you referenced it—not many people do—your reaction.

Ms. WALKER. Yes, sir. Already, just think, we have established at least a baseline with Governor Ridge's activities with Canada and Mexico, but what really makes a lot of sense is you can utilize that also to achieve effective commerce crossings, as well. If you are able to go ahead and have more security and more agreement between Canada, Mexico, and the United States on the individuals crossing back and forth amongst our borders, we are going to be able to effectuate entries to those countries, as well, as well as improve our interdictive efforts.

Why would I not want to try to create a perimeter zone to further push back the person from possible entry to the United States by utilizing our trading partners? Again, it is a logical step.

Chairman KENNEDY. It is a logical step, and the way you present it is compelling, but this is something that will take additional thinking on through. With this, we just begin that process, but I think there is a lot to that.

Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman, and thank you both as witnesses for being here and for pressing this forward. We are hopeful to be able to see quick action in the next week in the Senate and move this on to the President, because I think we really need to get it on through.

I was in your area, El Paso, with the Attorney General, it has been a year ago, and we were at the INS detention facility and it was amazing to me. I asked the director how many different countries were represented at the detention facility in El Paso, Texas, and he said 59 different countries were represented. That is a little higher than I thought it would be, at 59. You could hold a pretty good global meeting with representatives from that many different countries. He said a number of people come in through Central America or other places and then take ground transportation on up to the border, which is building on the point of why we think we need a North American perimeter to try to back some of the problems down.

Another point that I felt has been important in this is that we are such a large global economy as a country, $9 to $10 trillion GNP annually in this country. We get millions of people crossing our borders regularly as a key part of what our commerce is and our openness as a country. So the number of people that we are looking for that are coming to the United States to do us harm is a small number amongst millions. It is not a needle in a haystack, it is a needle in a hayfield. So we have got to really concentrate and hone in on where do we think the problem areas are, and that was the attempt with this bill.

It is not financially possible, if it were even physically possible, for us to close the borders down, and we should not do that. But we need to be able to try to get at where those problems are, and that is why we have drafted this legislation the way we have to try to get at the problems as much and as effectively as we can.

Do you see anything in here as a practicing lawyer and the head of the immigration bar that you look at and say, this is going to be particularly useful to us? In your years of practice and your work, you are saying, this is an area that we should have plugged years ago and I see that this is here and this is really going to help us now?

Ms. WALKER. You know, the basic fundamental addition of inspectors and investigators provided by this bill is pivotal. We tend to think of immigration and security at our borders as being related to the Border Patrol, and aptly, it is, but we have not provided the focus on inspectors and investigators and the technology that they need.

For example, why have all of our Mexican nationals get a new laser visa, which is supposed to be machine readable, and yet we

do not have the scanners to read them and utilize the benefits of those cards at our ports of entry, which would also enable us to be able to start tracking entries. We could have already started that.

So it is pivotal, those provisions, as well as since we have NAFTA already, it would have made sense to have as a part of NAFTA these security level concerns addressed at that point, and integration of those policies.

Senator BROWNBACK. I think you covered it well, and that was an excellent point.

MaryEllen, let me just say again, as the chairman did, thank you for being here. I have young children, we have five children, and just the idea of being there without one of the spouses would be a very difficult thing. Your courage in being here and representing the families that were hit so directly and so hard on September 11, I really appreciate that and God bless you for doing it.

Ms. SALAMONE. Thank you. It is my honor.

Chairman KENNEDY. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Thanks, Mr. Chairman.

I wanted to ask Ms. Walker a question. One of the things that has occurred to me in the nine-and-a-half years I have been on this is that we may well have, no matter how much we can modernize and improve the management of the agency, an agency that is dramatically overburdened. Let me just read you some figures. This is CRS.

During 1998, this is the most recent year for which these data are available, a record 30.1 million non-immigrants entered the United States, and the overwhelming majority, 23 million, were tourists. Now, those are the visa waivers. Nobody knows where they are, whether they have left or not or what they are doing.

In 1999, the Department of State issued 537,000 visas to foreign students, making up nine percent of the six million. In 1999, the Department of State identified 291 potential non-immigrants as inadmissible for security or terrorist concerns. Of that number, 101 aliens seeking non-immigrant visas were specifically identified for terrorist activities, but 35 of them were able to overcome the ineligibility.

Have you looked at this at all? I mean, you get overcome. And then you have, what is it, 350 million border crossings that are legally here. I mean, it is just hundreds of millions of people coming in and out of this nation all of the time. Now, that is great up to this point where we now have reason to believe that asymmetric warfare, the terrorist act, is really going to be the warfare of the future, perhaps for the next decade or more, and there is good evidence that that is going to be an ongoing concern.

You are technically extraordinarily proficient. You know this area. What is your best advice to us? How do we manage that system?

Ms. WALKER. The system, first of all, has to involve individuals who are accountable, and what I have seen in the past is that we have a good idea. We may not know how much it costs. We may not know how many people it takes. And we are not able to react effectively enough as developments occur to address those concerns.

There has to be the flexibility to respond quickly and effectively, but also there has to be accountability.

What I find the most frustrating, this is a "one bite of the elephant at a time" sort of thing to be able to even start, because I agree with you that it is overwhelming, the responsibility and the difficulty in dealing with it. But you have a lot of responsible people out there who want to do the right thing. You give them the tools, the direction, and then do follow-up from a Congressional audit or review and make sure that things are going accordingly.

I must say that what I have seen in my 16-and-a-half years on the border is ideas come down, but not with clear directives, and also, there is no follow-up. Let us talk about, for example, just this small example of the laser visas for Mexican nationals. They are the most documented foreign nationals that we have to deal with on entry, and we decided that we needed a biometric card. That card already involves a digitized print. It already involves a digitized photograph. We were supposed to have scanners to be able to scan them on entry to more effectively enter. It was a two-for-one deal, improve commerce in entry, at the same time, improve security, and yet we have not moved forward with it.

I find that inexcusable, and I lay the blame at a lot of different feet, but it does not do any good to lay blame right now. We have got to figure out what the problem is and answer it and hold people accountable.

Senator FEINSTEIN. Can I ask you a question?

Ms. WALKER. Yes, ma'am.

Senator FEINSTEIN. One of the things that I have found is that the private sector management in terms of technology is much more sophisticated than the public sector management in terms of technology. Governments are usually civil service bureaucracies and heads of these bureaucracies are unable to bring in the freshest, best talent to put in managerial systems.

One of the things I have been thinking of, whether it makes any sense to permit the Commissioner of Immigration to bring in a whole top-level coterie of the most efficient technologically adopt managers from the private sector.

Ms. WALKER. I think any partnership of the private and public sector makes sense. Let us talk about the issue of unified port management, just in trying to get the Customs Service and the Immigration Service to work and play well together. Unified port management, which Senator Kyl is very familiar with with the Arizona Department of Transportation study that was conducted many years ago in his State, identified that you have more than one cook in the kitchen, basically, here with these agencies at these ports of entry, and in addition to that, if you manage to have community accountability and then one entity that is responsible and reactive to be able to implement these technologies, that we are more effective.

So absolutely, any type of partnership that gives you the most talent would be effective. At least, that is my opinion.

Senator FEINSTEIN. Thank you very much. Thanks, Mr. Chairman.

Chairman KENNEDY. Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

September 11 in many ways brought out the best in America. It certainly brought out the best in a lot of Americans and especially so for many of the families of victims of the September 11 tragedy. For people like Ms. Salamone to be here today testifying so strongly in support of this legislation is just one more example of that strength and the way that people have found the best in themselves to help the entire nation prepare for the future and recover, bringing their unique and special experiences to this fight, and I very much appreciate your being here this morning, Ms. Salamone.

Ms. SALAMONE. Thank you. Again, it is my honor.

Senator KYL. Well, we appreciate it very much. It will help us in finally getting this legislation pushed through, I am sure.

And to have someone as experienced as Ms. Walker here, with the wealth of the background you have in immigration matters supporting this legislation, and in a statement which you did not read but you have submitted for the record, which is very thorough, covers everything in the legislation with some critique of different provisions, but showing how they all work together in an integrated way to make this work, is also very important.

Ms. Walker, you made the point, to talk about the funding of some things that are in this legislation that will have to be funded, and the lack of funding for some other projects that are already in the law, like the laser visa system, it made absolutely no sense to require the laser visas of our Mexican friends. A lot of my friends go down to Hermosillo, which is where they have to get the laser visa. They go through a lot of trouble, it costs them money, and then there is no machine to read it.

We go to the INS and they say, well, we do not have the money. Well, did you ask for it? Not exactly. We talk to some of our friends here in the Congress, what about appropriating the money? Well, INS is a poor institution. It is just pouring more money down a black hole. Well, that is a real constructive solution to the problem.

You point out something that is critical. We are going to have to fund this legislation. My view is that, yes, it is going to cost some money in the short run and I will lead the effort to get it funded. Those who say, Congress will never fund this and that is a reason to oppose it are wrong. We have no choice and I will lead the effort. I will join my colleagues in seeking the funding.

But I think the irony is that, over time, the use of technology will actually result in a less-expensive system than the old-fashioned way that we have been doing it. I will make two points and then I would just ask you to comment.

The thesis of your comments is that we have a dual task here, to enhance commerce, the millions of people that cross our border every day for legitimate purposes, and two, to stop those few who we would want to stop. That requires the application of technology. In fact, it cannot be done any other way. But we have held hearings in our subcommittee that demonstrates the technology that is available. It is relatively inexpensive, and over time, obviously, the cost of that technology would go down, in addition to which, someday, I am going to try to figure out how much the cost is for the delays just at the border between Arizona and Mexico.

The Secretary of Energy from Michigan used to complain about two-minute delays between Canada and the United States. Two

minutes? I said, if we could get it down to two hours, we would be pleased. Think of the lost time and productivity just by the delays.

So your point about the delay of legitimate crossing for commerce and other reasons and stopping the terrorists and using the technology to enhance both is, I think, right on the mark. We will not only get the cost down, but we will save money as a result of speeding up the commerce, and we will eventually save money as a result of the diminished costs of the terrorists, such as that that occurred on September 11.

Now, you make the point we have already lost seven months in recruiting and in addressing existing problems and talked about the importance of the investigators and the inspectors. I just wondered if you could explore that just a little bit more for those who are not familiar with the job that the inspectors and the investigators do. We tried hard to get more border agents on the border and we have a ways to go yet there. But we also are woefully inadequate in our inspectors and investigators. To some extent, more of them, well-trained, are going to be required to make part of our bill work.

Ms. WALKER. Thank you, Senator Kyl. The inspectors represent the true dilemma of the Immigration Service. When we talk about that dichotomy between enforcement and benefits, where those two missions truly merge is with the inspectors' function. They are out there dealing with hours being on the line inspecting passenger vehicles and whether or not someone is admissible and trying to also interdict drugs and then work with their compatriots with the Customs Service to go down and inspect the vehicle further for the drugs to seize them. And then you have got to deal with those pedestrians and applicants who are trying, for example, on our Southern border to enter the United States for a period of more than 72 hours or go beyond a 25-mile perimeter of the border, except in your State, 75 miles and one point, and that takes a lot of time.

Another portion of that is they have to figure out whether or not people coming to seek asylum protection can go ahead and receive it, as they should when they are qualified. They have got to deal with, in addition to that, processing the final entry for people coming in after being approved for immigrant visas. They have got to deal with that, also.

They have got a panoply of tasks that they have to deal with and are not compensated as well as other members of the INS workforce. They have got more burden on their back than just about any other portion of our INS group of workforce, so why are we not recognizing that? It makes absolutely no sense.

From an investigator's perspective, those are the people that are trying to investigate and interdict smuggling rings. They are trying to follow up on people who have over-stayed, people who have violated status, to track down people who have not gone ahead and presented themselves for removal from the United States. We are doing that with 2,000 people? There had better be super-human efforts to be able to perform their tasks. I expect a lot out of them, but I do not think it is realistic to expect that much.

So I would go beyond 200 that is provided in this bill if I could, but it is a start and it is a valid one, it is a reasoned one, and it is a long-needed one.

Senator KYL. Thank you very much. We will need a lot more and I hope you will be able to help us in our request for the funding to back up the bill once we get it passed.

Ms. WALKER. It would be my privilege.

Senator KYL. Thank you very much, both of you.

Chairman KENNEDY. Thank you very much. As I understand, your sense of the balance between sort of the law enforcement and the openness which you get, do you think we have done this about as well as we could? What is your reaction?

Ms. WALKER. Senator Kennedy, you have indicated in this bill that all of these elements are important, but what also will be critical is your ability to monitor how this is implemented.

Chairman KENNEDY. All right, good. Fair enough.

Ms. WALKER. Hold their feet to the fire.

Chairman KENNEDY. That is very helpful. We are going to look forward to hearing from you, because we are going to monitor it and we are going to call upon you as this moves along to give us your best judgment as to how it is being implemented, as well, and we thank you very, very much.

We thank you, Ms. Salamone, as well. We are very grateful to you for taking the time and being here. It is a wonderful thing that you are doing. There are 149 families in Massachusetts, as well, and I know how proud they would be of your presence here. Thank you very much.

We will excuse both of you at this time.

Ms. WALKER. Thank you very much.

Ms. SALAMONE. Thank you.

Chairman KENNEDY. Our final witness is Senator Robert Byrd, who is the Chairman of the Appropriations Committee and has taken a deep interest in the issues of border security and homeland security. Many of us have worked with him on these issues and we are very, very grateful for his presence. I have had the good opportunity to work with him on the whole issue on bioterrorism with Senator Frist. He had the chance to come before the committee and also visit and talk with him about how we were going to deal with those particular kinds of challenges affecting American security.

He has been one in the Senate on bringing together the range of homeland security issues that has given a very, very high priority to this, as well as a number of issues, and he has followed the development of this legislation and is always interested and has been involved generally in the matters of the committee. We are very grateful for his presence here.

We have been joined by Senator Cantwell, as well, and we will look forward to hearing from him.

Senator Byrd, we are very appreciative of your joining with us here this morning.

STATEMENT OF HON. ROBERT C. BYRD, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator BYRD. Thank you, Senator Kennedy. I was on this committee many years ago with you and I remember those days. I had

a great deal of pleasure. We had some tense hearings in those days. As I recall, we did not have any five-minute rules. We pursued a line of questioning until we were finished.

Chairman KENNEDY. I am not sure whether you were here when I was here. At the time Sam Ervin was here, the consideration of the 1964 Civil Rights Act, and Attorney General Robert Kennedy was in that seat there and Sam Ervin questioned him for two-and-a-half days—two-and-a-half days before it became my turn to question after that. There were advantages at that time in terms of developing a thorough record, but I am not as interested in following the clock. You take whatever time that you desire.

Senator BYRD. Thank you. Mr. Chairman, members of the committee, I thank you for inviting me to testify before your subcommittee today to share my thoughts on border security and the Enhanced Border Security and Visa Entry Reform Act.

I applaud the subcommittee for initiating a long overdue debate on the security of our nation's borders. The need for such a debate is unquestionable. We ought to have a debate. That was one reason why I did not give my unanimous consent to Senators who urged me to give unanimous consent to the passage of this bill at the close of the last session. There needs to be debate.

The September 11 attacks showcased the gaps in our border defenses. Each of the 19 hijackers involved in the September 11 attacks was granted a visa to enter our country by a U.S. consulate abroad. Three of the hijackers lived undetected in the United States for months after their visas had expired. Six months after the September 11 attacks, the INS was still processing paperwork for two of the terrorists who piloted planes into the World Trade Center towers. I firmly believe that the Senate needs to pass legislation to tighten our immigration and border security laws.

I devoted a large amount of my time and resources last fall to that very goal. I crafted a $15 billion homeland defense package as part of the economic stimulus bill the Senate considered last November. That homeland defense package provided $1.1 billion for border security initiatives, many of which are included in the border security bill that we are discussing today. Under a Presidential veto threat—let me underline that, under a veto threat by President Bush, those funds were removed from the economic stimulus package by a partisan vote on a budgetary point of order, and every Republican on this committee supported that point of order to knock out that money. Not a single Republican stood with us in my effort to fund border security then and there, not one.

After the $15 billion homeland defense package was removed from the stimulus bill, I came back. I offered a $7.5 billion homeland defense package. Of that amount, $591 million was devoted to border security initiatives, many of which are included in this subcommittee's border security bill. Once again, under the threat of a veto by President Bush, those funds were removed, this time from the fiscal year 2002 defense appropriations bill by a partisan vote on a budgetary point of order, a 60-vote point of order, and every Republican on this committee voted to knock that money out at that time. Because that point of order—we were not able to get the 60 votes to override it because the Republicans to the man and

woman voted against it. We could have done things then. But every Republican on this committee voted against us.

Make no mistake about it, I understand that additional resources are required and I tried to provide them to secure our borders, but when a unanimous consent request was circulated in the waning hours of the first session of this Congress to take up and to pass this subcommittee's bill, I was forced to object. Now, I was criticized across the country for holding up border security, holding up border security. When I tried to get money before we went out of session, not a single Republican on this committee supported me, not one.

At the time, I was told that a window of opportunity had opened to pass this legislation and that in the aftermath of the September 11 attacks, a united coalition, Democrats and Republicans, would support this authorization bill. Yes, they were willing to support the authorization bill, good to pass that, pass it by unanimous consent, go back home and say we have taken care of the problem. We passed an authorization bill. But not one, not one Republican—I am sorry to have to be so strong in my statement here in this regard. I very seldom criticize members of the other party, but I think I have a right to in this instance.

I fought the fight then. I tried to get money then, but every Republican on this committee voted against that money. They supported that 60-vote point of order. They could have had the money then. No, they were strong on getting Senator Byrd to go along with the unanimous consent to pass this authorization bill, but they would not back us up when it came to voting for the money, and their President, our President, my President threatened to veto anything over $40 billion.

We passed a $40 billion appropriation bill within three days of that horrendous, horrific, savage attack on the Twin Towers. Within three days, we passed $40 billion. The administration wanted $20 billion. We worked it up to $40 billion, and then we were hung on our own petard. When it came to trying to get one thin dime over that $40 billion, the administration threatened to veto it and the Republicans raised the 60-vote point of order and the Republicans voted against that money then.

That is one reason, Mr. Chairman and members of the committee, I try to speak respectfully to all members. I hold all members in respect, I always have. I have been here 50 years. I was taught a long time ago to respect other members and respect their feelings. I have got to tell you, I have to speak with some feeling. I was drawn and quartered when I tried to get more money for this very purpose last fall, and then some of the members of this committee implored me, pleaded with me to agree to unanimous consent to pass this authorization bill. They could go home then. They could say, oh, yes, we passed that.

But when it comes to the money, I wanted to face these Republicans and say, are you going to vote for the money? As an appropriator, I have a right to know and I have a right to be concerned. And I tried, I tried, I tried and this President threatened to veto one dime, one dollar over the $40 billion.

Chickens have a way of coming home to roost. But the so-called coalition split twice last year, in November and December, when it

came time to appropriate the money. When it came time to put the money on the barrelhead, they were not there.

What is more, in circulating that unanimous consent request, Senators who do not sit on this subcommittee and had no voice in crafting this border security bill were being asked to pass it without debate, without amendment, and without any action by the Judiciary Committee. That is an egregious way for the Senate to conduct its business and I am not for it.

I have been around here 50 years. The Republicans were in control when I came here. Joe Martin was in control of the House. John Tabor was in control of the Appropriations Committee in the House, John Tabor of New York. They would turn over in their grave today if they knew what is going on now.

Passing bills without debate, important bills, far-reaching bills, bills that are going to cost money? Nobody on this committee, not one person on this committee today can tell me how much money this bill is going to cost, not one. When the Senate passes legislation without debate and without amendment, we forego our responsibility to be a salutary check on the government. While debate and amendments can be limited or even prohibited in the House, the Senate is the only body that has the procedural means to question, examine, and discuss at length every measure that comes before it.

In the Federalist Paper No. 62, James Madison wrote that "a defect to be supplied by a Senate lies in a want of due acquaintance with the objects and principles of legislation. What indeed are all the repealing, explaining, and amending laws which fill and disgrace our voluminous code but so may monuments of deficient wisdom."

Only by offering and debating amendments and by voting on the underlying legislation can the Senate work to ensure that the Congress does not act with deficient wisdom. To do less is to fail in our duty to educate and inform the public about matters which affect their lives, the people's lives.

If we forego a national debate about our border defenses in order to pass legislation through a fleeting window of opportunity, as I was told, as I was beseeched, as I was implored, as I was importuned to do last December, a fleeting window of opportunity, we risk failing to explain and examine important details that could improve the legislation.

I heard on some of the radio talk shows around the country that I was holding up border security, that I was holding up border security. I thought we ought to have a debate on this bill. Let the American people in on this window. Let them hear the details of it.

This bill, if it is to be successful, will require the support of the Congress and the American people over the long haul. It will also require, according to the INS, if we can believe them, billions of dollars, although no one knows its true cost because the Congressional Budget Office never had to provide a cost estimate as a part of the committee process.

If the Senate passes this legislation by unanimous consent, which it will not, without the benefit of public debate, how can the American people, who ultimately will have to foot the cost of the bill, be expected to support the long-term financial commitments

that this legislation would require? And where will the administration stand? Where will the President stand then?

Mr. Chairman, the lapses in our border security extend well beyond the problems identified by the pending bills. Part of the problem is that our border security policies are driven by factors other than homeland defense. Too often, the safety of the American people within their own borders has taken a back seat to politics.

We need only look to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act to see how border security initiatives, such as the integrated exit/entry system, a tighter visa waiver program, and the implementation of the foreign student visa monitoring program have been scaled back or delayed to accommodate trade, commerce, diplomatic concerns. The administration's proposal to revise the Section 245(i) amnesty is only the latest example of how quickly we fail to integrate new border security concerns into older policies.

Similarly, this Congress is quick to pass legislation that will place new requirements, new deadlines on the INS without giving adequate consideration to whether that agency is equipped to meet those mandates. The inevitable result is that the Congress will later have to weaken the mandate or roll back the deadline when the INS fails to comply with the law. Considering the INS's most recent debacles and its apparent inability to handle its current workload, I suggest that before we task that agency with additional responsibilities and with meeting additional deadlines, we should first try to reach some sort of consensus about that agency's organizational structure.

So far, the administration has proposed two seemingly contradictory INS restructuring plans. The first plan would split the INS into an enforcement agency and a separate service agency, and the second would consolidate the INS and the Customs Service within the Justice Department.

The House Judiciary Committee marked up an INS restructuring plan just a few days ago, this week, I believe. As I understand it, Chairman Kennedy and Senator Brownback are crafting an INS restructuring plan, as well, and that is to say nothing of the fact that at least two bills have been introduced in the Congress that consolidate the Border Patrol functions of the INS within a Homeland Defense Department or agency.

With all of these organizational plans circulating through the halls of Congress, it makes little sense to me that the Senate today will begin consideration of a border security bill that places new mandates on the INS without addressing how that agency should be structured. Mr. Chairman, fixing the holes in our border defenses will require more than an interoperable database system, even though that is needed. I am all for that. And biometric identifiers, I am all for them. While they undoubtedly are needed, these initiatives are no panacea for border defense.

We must adjust our mindset about border security to reflect the realities of September 11. We need to consider the funding changes which may be necessary in light of a different organizational structure of our border defenses. We need to acknowledge that a long-term commitment of resources is necessary if we are to close the holes that were exposed by the September 11 attack. We cannot

achieve these goals without a comprehensive debate, and we certainly cannot achieve them if we pass legislation by unanimous consent.

We risk the loss of confidence of the American people if we enact deadlines that we know will be breached and technology that may still be in the prototype stage. Another border incident coming on the heels of a bill that has been hailed as a panacea will not help to sustain public support for the expenditures which will be necessary. That is where the rubber will hit the road, the expenditures that will be necessary to repair our border ills.

I thank Senators Kennedy, Brownback, Feinstein, and Kyl for authoring this legislation. It is a start. It at least is going to have some debate. But I am hopeful that the bill's proponents understand that this legislation is not the final answer to what ails our border defenses. Meeting the deadlines and requirements set out in this bill will require their continued support for large amounts of funding this year and in future years, and without those funds and without the continued support of Senators on both sides of the aisle, this bill is just an empty promise.

Mr. Chairman, I thank you.

[The prepared statement of Senator Byrd follows:]

TESTIMONY BY SENATOR ROBERT C. BYRD

Chairman Kennedy, Senator Brownback, and members of the Immigration Subcommittee, I thank you for inviting me to testify before your Subcommittee today to share my thoughts on border security and the Enhanced Border Security and Visa Entry Reform Act.

I applaud the Subcommittee for initiating a long-overdue debate on the security of our nation's borders. The need for such a debate is unquestionable.

The September 11 attacks showcased the gaps in our border defenses. Each of the 19 hijackers involved in the September 11 attacks was granted a visa to enter our country by a U.S. consulate abroad. Three of the hijackers lived undetected in the United States for months after their visas had expired. Six months after the September 11 attacks, the INS was still processing paperwork for two of the terrorists who piloted planes into the World Trade Center towers.

I firmly believe that the Senate needs to pass legislation to tighten our immigration and border security laws.

I devoted a large amount of my time and resources last fall to that goal. I crafted a $15 billion homeland defense package as part of the economic stimulus bill the Senate considered last November. That homeland defense package provided $1.1 billion for border security initiatives, many of which are included in the border security bill we are discussing today.

Under a presidential veto threat, those funds were removed from the economic stimulus package by a partisan vote on a budgetary point of order.

After the $15 billion homeland defense package was removed from the stimulus bill, I offered a $7.5 billion homeland defense package. Of that amount, $591 million was devoted to border security initiatives, many of which are included in this Subcommittee's border security bill.

Once again, under the threat of a presidential veto, those funds were removed, this time from the Fiscal Year 2002 Defense Appropriations bill, by a partisan vote on a budgetary point of order.

Make no mistake, I understand that additional resources are required to secure our borders. Nevertheless, when a unanimous consent request was circulated, in the waning hours of the first session of this Congress, to take up and to pass this Subcommittee's bill, I was forced to object.

At the time, I was told that a window of opportunity had opened to pass this legislation, and that, in the aftermath of the September 11 attacks, a united coalition—Democrats and Republicans—would support this authorization bill.

But the so-called coalition split twice last year, in November and December, when it came to appropriate the necessary funds.

What's more, in circulating that unanimous consent request, Senators who do not sit on this Subcommittee and had no voice in crafting this border security bill, were

being asked to pass it—without debate, without amendments, and without any action by the Judiciary Committee.

That is an egregious way for the Senate to conduct its business. When the Senate passes legislation—without debate and without amendments—we forgo our responsibility to be a salutary check on the government. While debate and amendments can be limited or even prohibited in the House, the Senate is the only body that has the procedural means to question, examine, and discuss at length every measure that comes before it.

In The Federalist Paper #62, James Madison wrote that a "defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation . . . What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom?"

Only by offering and debating amendments, and by voting on the underlying legislation, can the Senate work to ensure that the Congress does not act with "deficient wisdom." To do less is to fail in our duty to educate and inform the public about matters which affect their lives.

If we forgo a national debate about our border defenses in order to pass legislation through a fleeting window of opportunity, we risk failing to explain and examine important details that could improve the legislation.

This bill, if it is to be successful, will require the support of the Congress and the American people over the long haul. It will also require, according to the INS, billions of dollars—although, no one knows its true cost because the Congressional Budget Office never had to provide a cost estimate as part of the Committee process. If the Senate passes this legislation by unanimous consent—without the benefit of public debate—how can the American people, who ultimately will have to foot the cost of this bill, be expected to support the long-term financial commitment that this legislation will require?

Mr. Chairman, the lapses in our border security extend well beyond the problems identified by the pending bill. Part of the problem, is that our border security policies are driven by factors other than homeland defense. Too often, the safety of the American people within their own borders has taken a back seat to such issues as trade, commerce, tourism, and diplomacy and politics.

We need only look to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act to see how border security initiatives—such as the integrated exit/entry system, a tighter Visa Waiver Program, and the implementation of a foreign student visa monitoring program—have been scaled back or delayed to accommodate trade, commerce, and diplomatic concerns. The Administration's proposal to revive the Section 245(I) amnesty is only the latest example of how quickly we fail to integrate new border security concerns into older policies.

Similarly, this Congress is quick to pass legislation that will place new requirements and deadlines on the INS without giving adequate consideration to whether that agency is equipped to meet those mandates. The inevitable result is that the Congress will later have to weaken the mandate or roll back the deadline when the INS fails to comply with the law.

Considering the INS' most recent debacles, and its apparent inability to handle its current workload, I suggest that, before we task that agency with additional responsibilities and with meeting additional deadlines, we should first try to reach some sort of consensus about its organizational structure.

So far, the Administration has proposed two seemingly contradictory INS restructuring plans. The first plan would split the INS into an enforcement agency and a separate service agency, and, the second, would consolidate the INS and the Customs Service within the Justice Department.

The House Judiciary Committee marked up an INS restructuring plan this week (April 10). As I understand it, Chairman Kennedy and Senator Brownback are crafting an INS restructuring plan as well. And that's to say nothing of the fact that at least two bills have been introduced in the Congress that consolidate the border patrol functions of the INS within a Homeland Defense Department or Agency.

With all of these organizational plans circulating through the halls of Congress, it makes little sense to me that the Senate today will begin consideration of a border security bill that places new mandates on the INS without addressing how that agency should be structured.

Mr. Chairman, fixing the holes in our border defenses will require more than an interoperable database system and biometric identifiers. While they undoubtedly are needed, these initiatives are no panacea for border defense.

We must adjust our mind set about border security to reflect the realities of September 11. We need to consider the funding changes which may be necessary in light of a different organizational structure of our border defenses. We need to ac-

knowledge that a long-term commitment of resources is necessary if we are to close the holes that were exposed by the September 11 attacks. We cannot achieve these goals without a comprehensive debate, and we certainly cannot achieve them if we pass legislation by unanimous consent.

We risk the loss of confidence of the people if we enact deadlines that we know will be breached and tout technology that may still be in the prototype stage. Another border incident coming on the heels of a bill that has been hailed as a panacea will not help to sustain public support for the expenditures which will be necessary to repair our border ills.

I thank Senators Kennedy, Brownback, Feinstein, and Kyl for authoring this legislation, but I am hopeful that this bill's proponents understand that this legislation is not the final answer to what ails our border defenses. Meeting the deadlines and requirements set out in this bill will require their continued support for larger amounts of funding this year and in future years. Without those funds and without their continued support, this bill is just an empty promise.

Chairman KENNEDY. I thank you very much, Senator Byrd. I remember very clearly the efforts that were made in terms of the homeland security debate last year and I think we have, hopefully, certainly in some important areas, we have been able to move on. I know that has been true in the bioterrorism area and some of the other areas. We are hopeful we can move on in this area.

As I have mentioned with you privately, and I have not been able to convince you of the fact, we are looking at the general restructuring of the INS. I personally have introduced in the 105th and 107th Congress the restructuring that had been recommended by the Jordan Commission. The Jordan Commission had some of the most distinguished men and women who studied this, basically a nonpartisan, bipartisan group. Congresswoman Jordan in the twilight of her life, really, devoted an enormous amount of time. It is not the end-all, but it was a very important start and it is one which I personally believe is the basis for the debate and discussion on that. We have had hearings in the past. We are going to be back having hearings in the future on it.

We believe that given the kinds of problems that we are facing out there with the border security, for example, under the visa waiver now, there are 22 million people that can come in here, and as our previous witnesses said, we do not track whether they are leaving or not. That is happening today. It will not when this bill passes. It will take time to get up, get the professional people, but we are moving along on that today.

We still do not have the CIA giving to the FBI the important intelligence information in terms of granting waivers in different parts of the world. There is a general agreement, but not the specificity that we have worked out with the different agencies to make sure that even a more highly trained consular corps reviewing the latest information may be able to make sure that our borders are going to be more secure. We believe this legislation can be helpful.

We have worked very closely with the Commerce Committee, Senator Hollings and other appropriators interested in that, Judd Gregg, for example, to make sure that what is going to be done with these computers here is going to be coordinated with what is happening now currently in the FBI. We have made that effort. Lord only knows, there may be other ideas from our members who follow these closely, yourself included. I know how you have followed these issues on the computers and computer training and the rest. But we have made that an important interoperability.

The list goes on, the biometrics issues, which you are very familiar with. I know that. I have talked to you about it, to ensure the utilization of it. And then the tracking that we have. We have 26,000 educational institutions that can grant student visas today. That is happening today. We are closing that loophole. We are closing that loophole in this legislation.

I believe that we can do that and these other items without waiting for the questions about how the arrangements are going to be made between Customs, the border, and terms of the INS. We have tried to make this a very lean, tight program that is responsive to professionals, as we have just heard, who think that immediate steps can make some difference in this.

You and I have talked about this a number of times, though I am not sure that I am being any more persuasive with you. We do think we have some overall budget figures. Our estimate is $1.2 billion this year, $3.2 billion over a three-year period, and I believe about $750 million of that is actually included in the administration's kind of request—$743 million—but we would be delighted to go over these in detail with your Appropriations Committee. We are going to obviously have to, in any event. We welcome that kind of exchange.

We have some additional areas of priority beyond what the administration had at the $743 million that brings us up to the $1.2 billion, which includes developing and sharing the intelligence law enforcement with the INS, State, and the data system. It is primarily the upgrading, the sort of Border Patrol inspectors, training, and we will go over that. I will put this in the record and would welcome your response, obviously, because your committee is going to have to make the judgments as to whether these are justified.

I want to just say that I certainly am one that was supporting your increases and I will let others speak to it. We want to work with you on the funding that is going to be necessary. We will welcome that.

We thank you for raising these issues. I think because you have raised them, hopefully, our members have a better understanding and awareness of what we are trying to do and the steps that we are trying to take and the American people do, as well. I believe that there is an urgency about this legislation which is special and that is why I and my colleagues have pressed our leadership to bring it to the Senate floor this afternoon.

Senator BROWNBACK. Mr. Chairman.

Chairman KENNEDY. Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman. Thank you, Senator Byrd, for being here today and for testifying and testifying strongly and clearly. You have stated some things with great strength and clarity and I think a number of them deserve a response. With all due respect to the chairman and to Chairman Byrd, I would like to respond to those with the respect that is due the chairman of the Appropriations Committee.

Senator, you have put forward a number of questions I would like to respond to in order. Senator Kennedy has put forward the cost of the overall bill. Several of those figures, of the total cost he has articulated, the first year cost, and the amount of money that is built into the current Bush budget. You had requested $3.1 bil-

lion total cost of the bill, $1.18 billion this year cost, currently built into the Bush budget, $743 million to implement this bill. I think those are well deserved and the Appropriations Committee needs to know what those numbers are, to be able to have those to articulate that. We need to know those before we pass an authorization so that you would have that information and we would have that information, it would be available.

You made great strength in the point about bringing forward the additional funding that you had put forward for homeland security last year, which was applaudable on your part to bring that forward then. As you noted and as we did last fall, we passed already $40 billion additional after the September 11 attack quite rapidly, $40 billion, a very large sum of money that was for the implementation and the efforts to deal with the terrorist attack, to deal with the efforts in Afghanistan. That was a substantial sum of money by anybody's regard and the administration felt at that time, and I agreed with the administration at that time, that we should digest that and that issue and that amount of funding first before we would look at other tranches to be brought on forward. The administration——

Senator BYRD. How is that such a partisan issue, Senator? Why was it so partisan?

Senator BROWNBACK. Why did the Democrats not vote with the President at that time? He was saying that——

Senator BYRD. We gave him $40 billion in three days.

Senator BROWNBACK. That is the point. He was saying, we have $40 billion to be able to work with in dealing with. They wanted some more time to be able to figure out what else was actually needed.

Senator BYRD. And they are asking in the supplemental appropriation bills for the same amount of money, practically, that they opposed back then.

Senator BROWNBACK. And they may be looking at this time and saying, Senator Byrd had much of it right. Some of it, we do not agree in the areas that he wants to go in. I cannot speak for the administration on that point. At the time, what they were saying, that I agreed with, was that $40 billion was a substantial sum of money to work with——

Senator BYRD. It was.

Senator BROWNBACK [continuing]. And that they wanted to be able to work with that first and then to determine what else was needed after the implementation and the spending of that.

Senator BYRD. And the Senator——

Senator BROWNBACK. I think that is a wise course of action, just to take the effort to really see, because that is such a large quantity of additional resources. So I thought that was a persuasive, and actually quite a prudent approach to take, because this long-term is going to be a war on terrorism. This is going to take us some time and we do not want to spend all the money up front without really thinking, where is it we are going? We were not sure at that time exactly where the war on terrorism might take us.

Senator BYRD. But Senator, I hope that you will lead your side to support the appropriations in the future for this and other im-

portant matters. We had a political vote and your side of the aisle voted like a solid wall against it.

Senator BROWNBACK. As yours voted the other way.

Senator BYRD. Yes, because we were looking out for the security of the American people.

Senator BROWNBACK. Well——

Senator BYRD. I am an appropriator, and we——

Senator BROWNBACK. If I could——

Senator BYRD [continuing]. And we had good justification and we stated them as to why we needed more money then. But you voted against it——

Senator BROWNBACK. The administration is the one—yes, and the administration is the one that has to appropriately spend that money and they were saying at the time, we have $40 billion additional to work with in this area. We want some time to think through what else it is before we spend all of the resources on down.

Senator BYRD. Well, Senator, I——

Senator BROWNBACK. I am hopeful that at this point in time, we can take appropriate steps to gather and get the resources that are needed, and you may have heard Senator Kyl before you came in saying that he would help in the effort to get the border security funds and I will be very supportive of that, as well. We have now had the time to be able to think about this and look and here is what we need to do.

Senator BYRD. But Senator, you are one of the Senators who pressed me hard last year before the Congress adjourned to pass this bill by unanimous consent.

Senator BROWNBACK. Yes.

Senator BYRD. And you are one of the Senators who voted against appropriations for border security.

Senator BROWNBACK. I voted for——

Senator BYRD. You cannot deny it.

Senator BROWNBACK. I voted for——

Senator BYRD. You have got it on the record.

Senator BROWNBACK. And I voted for the $40 billion additional dollars.

Senator BYRD. Oh, yes. We all voted for that.

Senator BROWNBACK. And I do not deny that, as well. I voted $40 billion, and I think this is a prudent course to follow, a prudent course to follow.

Senator BYRD. Well, let me say this to you, Senator. You are on the committee. I am not. But if you expect to close a loophole, if you expect to close the loophole, if we pass the appropriations and if the INS can meet our mandates, we will if we pass the appropriations needed and if the INS can meet the mandate. I hope you will be there voting for the appropriations when we need you.

Senator BROWNBACK. On that issue, I will be, and the figure is, as I mentioned, $1.18 billion for this year. I do not mean to be so direct and confrontational with the chairman of the Appropriations Committee, but your comments have been very direct and I think they deserve a direct response.

Senator BYRD. Absolutely. I stood on the firing line over there and I took the criticism, and I heard the talk shows around the

country saying that Senator Byrd is holding up the border security bill. I do not know who started that junk. I was not holding it up. I just wanted the American people to hear the debates and I wanted Senators to have an opportunity to offer amendments, and I did a service to the Senate. I really did you a service when I held that up. To pass a mammoth bill, a far-reaching bill—we do not know the costs of it even today—by unanimous consent is a charade. That is a joke. I have no apologies for holding it up.

Now, I may support this bill, depending on what it looks like when we come to vote, but I want to thank the chairman and I want to thank all of you for finally having at least one hearing, and certainly for your courtesy in inviting me to come.

Senator BROWNBACK. Mr. Chairman, in continuing on this, and again, I mean to be very respectful to Senator Byrd for all he has done for this country, last fall was an extraordinary period of time for this country. I do not think any of us would deny that. We passed rapidly several pieces of legislation last fall, some without any hearings whatsoever.

I recall vividly the Friday of the week of September 11. We passed legislation giving the President the authority to move forward on attacks in Afghanistan, a strong piece of legislation, and I was——

Senator BYRD. Sometimes we can act in too great a hurry, Senator.

Senator BROWNBACK. I understand, but if I could make my point on this, as well. We passed several enormous pieces of legislation last fall and needed to, and needed to for the security of the country and for the fight on terrorism. We passed a bill authorizing the Presidential action in war, which I deem to be one of the most extraordinary pieces of legislation that we can pass and deal with and we did that on a Friday after the September 11 attack unanimously in both Houses because we felt this country was under attack and we wanted to give the President the right to respond. It was an extraordinary piece of legislation, no hearings, very little discussion on the floor. It passed.

We did the USA PATRIOT Act last year, a big piece of legislation, good piece of legislation to help strengthen our security. I do not know if it had any hearings. It had a broad set of discussion of people involved in it, came to the floor, passed.

We passed $40 billion of additional appropriations. I am not sure what all hearings took place, very little discussion on the floor, passed and it went on through. One day, it was at $20 billion. The next day, it was at $40 billion.

Senator BYRD. That was in the wake of a terrible, devastating attack.

Senator BROWNBACK. Precisely my point. Precisely my point.

Senator BYRD. But we have got time here on this bill.

Senator BROWNBACK. We are getting to the end of the year——

Senator BYRD. We have got time.

Senator BROWNBACK. If I could finish this one point, precisely my point. It was a devastating attack and it was the right thing to do, and you as chairman of the Appropriations Committee, I applaud you for getting that done at that point in time.

We are members of the Immigration Subcommittee here and we saw and see and continue to see a hole, and we were saying at that point in time, sir, please let us get this passed because it is an extraordinary period of time in our country's history. We need to be able to get this narrow gap and start to deal with it, and that is why we were pleading with you in an extraordinary manner and in an extraordinary time to do something that we continue to believe and deem to be necessary for this country.

So while we can dispute the way things moved forward at that time, I do not think we can dispute the need for things to move forward at that time in a rapid fashion. The country and the world was calling upon us to act and we needed to act, and that is why so many of us implored you so heavily at that point in time to be able to get this legislation on through.

I have great respect for you. I have great, deep respect for your position, your knowledge, your abilities, your service to this great country. I will never question that and I will never question you about any of that. But on this, we felt, as members of this subcommittee, as you as chairman of the Appropriations Committee felt like this was desperately needed at that point in time.

Mr. Chairman, I would just conclude by saying that at this point in time, I would hope that maybe we could look at that as saying, okay, we had differences at that point in time. This is where we are now and the matter continues to need to go on through and I will be supportive of the funding to implement this legislation.

Senator BYRD. Mr. Chairman, if I may respond briefly——

Chairman KENNEDY. Sure.

Senator BYRD. That was $40 billion that was needed immediately following a devastating attack on our homeland and we wanted to give to the President whatever money he needed to deal with that emergency. But this bill is years away from being implemented. It is not going to be implemented tomorrow, and you are going to find that there are questions that are going to be asked about this bill.

How do you arrive at these costs? How do you arrive at these deadlines? Why do you pick October 26, 2003? Why not October 27? Why not October 25? Why not October 21? Why October 26? There are other questions that I could raise.

I am just here to point out that this committee is wise in having a hearing and there needs to be other hearings. This bill is going to be a long time being implemented. We have got lots of questions concerning the INS, and to pass a bill by unanimous consent in the time it takes to snap your finger on the Senate floor, as far-reaching as this bill is, would be a charade. It would not work. What are the American people going to say when they think they had something good, they thought we passed legislation to deal with border security, and it is full of holes, or at least has holes in it?

That is what I was trying to save you from and the others of us in asking that we have debate, we have at least a chance to offer an amendment. And, thank God, we are going to have that chance. Your chairman and I have insisted on having at least an opportunity to debate and an opportunity to amend.

Chairman KENNEDY. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

Senator Byrd, thank you so much for being here this morning. I, for one, appreciate hearing your concerns. I am one that has supported you. I am a member of your Appropriations Committee. I do not believe I have ever voted against an appropriation in this area, nor do I intend to. So as far as I am concerned, the record is pretty clear there.

We have really worked very hard on this piece of legislation and you have heard some numbers this morning which I am sure your committee has. As I understand it, of the $3.1 billion total cost of implementation of this bill, these are INS figures. We have them before us. The $1.1 billion cost of this year's figures, of the money that is in the Bush budget, which is $753 million, that would leave $188 million that we would need to come up with.

I believe that I have been given some numbers, and you would be the ultimate authority on this, and your staff, but my understanding is of the $20 billion of the $40 billion that is discretionary, all but $327 million of it has been allocated. So there is $327 million that remains which could cover the remaining cost of this.

I am of the view, however, that proper homeland defense is going to take a lot more than what is in this bill and that members have to be aware of that and willing to appropriate it. I think of the $10 billion in the contingency fund in the DOD bill, some of that ought to go into homeland defense and I think that is just my view.

But what I want you to know is that I will work with you in any way you so order to see that these funds are present. I view nothing we do as important as homeland defense. So I just want to give you my pledge to work with you as an appropriator to come up with whatever monies are necessary to carry out what we must do.

Senator BYRD. Thank you.

Chairman KENNEDY. Thank you very much.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman, and thank you, Senator Byrd, for being here to testify. I think the best thing in your statement is the fourth paragraph, which reads, "I firmly believe that the Senate needs to pass legislation to tighten our immigration and border security laws," and I really do look forward to working with you. I have talked to you about that and I know of your commitment to do this. No one should question that. Your concerns were primarily procedural, and I appreciate that.

I would like to address three or four things you said and then ask you to respond to them, if you would.

First of all, you made the point—not first, but you did make the point that this bill is not the final answer and you are absolutely correct about that. We believe this is a very important first step. I also agree with you that it is going to take a long time to implement, at least different parts of it, but our view is we should get started now because of that and because we do not want anybody sneaking into this country in the meantime when we have not closed these loopholes.

You also made the point that we all need to support the appropriations for this and I could not agree with you more. I wish you had been here when I made my little speech before about leading that effort. I have never voted against a C–J–S appropriation bill, to my knowledge, in either the House or the Senate. In fact, every

year, I have made requests that the committee did not choose to fund for law enforcement operations, including at the border.

The amendment that Senator Feinstein and I got adopted when I first came to the Senate for adding more border security, we fought for every year because frequently the administration would not ask for the money. We had to come to the committee, and in most cases your committee funded it, if not at 100 percent, at least to the extent that you could.

So I think my record in supporting appropriations in this area is 100 percent and you have my absolute commitment to seek the funding because you are right. Without the funding, this cannot work, and I agree with you on that.

To the point about reforming the INS before closing the loopholes, obviously, INS needs reforming, and I should not say in the worst way, it needs reforming in the best way. But I think we cannot afford to wait and that we can do both at the same time with good Congressional oversight, including from the Appropriations Committee. I just think we cannot afford not to do so.

I will not go over the discussion you had with Senator Brownback except to say that from your own figures, my understanding is that about $14 billion of the $15 billion on top of the $40 billion that President Bush had agreed to was not for funding relating to the items in this bill and, therefore, I would hope that you at least agree that we could agree to disagree about the other $14 billion and the timing of that particular funding.

Senator BYRD. No, I disagree with that. I disagree with it.

Senator KYL. Well, by your own numbers, $1.1 billion of the $15 billion you sought related to items in this legislation, which would mean $13.9 billion would not, and——

Senator BYRD. Senator, I also tried to keep our promise to New York.

Senator KYL. Well, fine. I tried to do that, too.

Senator BYRD. Because of the points of order that your side raised and you voted for, we did not have the money to keep our promises to New York or to deal with border security or with homeland defense.

Senator KYL. Senator Byrd, the only point I was making here is to point out that the additional $15 billion that you sought over the $40 billion which the President supported, of that $15 billion, I was just pointing out that about $14 billion of the $15 billion did not have anything to do with this legislation. I just wanted to make it clear——

Senator BYRD. Well, it had to do with homeland security.

Senator KYL. By your definition, that was correct. I just wanted to make it clear that we were not voting against—in voting against that $15 billion in additional expenditure, we were not voting against the appropriation for this legislation, which had not yet been passed.

Senator BYRD. We will look at the facts again. I do not believe what you are saying is accurate.

Senator KYL. Okay. We will——

Senator BYRD. You are partially accurate.

Senator KYL. We will look at your statement.

Senator BYRD. You are partially accurate.

Senator KYL. Fine. Let me just conclude with this. It is true this bill did not come out of the Judiciary Committee, although we did have hearings both in this subcommittee and in the subcommittee that Senator Feinstein chairs and on which I am ranking member. But we felt this was an emergency and I would note that there is other legislation that no Senator objected to consideration that did not come through committee, including the legislation on the floor today, the energy bill. It did not come through the Energy Committee, of which I am a member. And the stimulus package——

Senator BYRD. We are not talking about the energy bill, Senator.

Senator KYL. I understand. The stimulus package did not come out of the Finance Committee, of which I am a member. Two very important bills, they did not come out of the committee, but I did not raise the objection to consideration of the legislation that the majority leader wanted to consider because they were important pieces of legislation.

Senator BYRD. Well, that is for you to do or not do.

Senator KYL. I appreciate that. I am simply making the point, Senator Byrd, that a lot of times, bills do not come out of committee and there are reasons for that. We have a right to object to it or not object to it, but it is not something as a generic proposition that is either always right or always wrong.

Senator BYRD. I did not say it was. I am not talking about generic propositions. I am talking about a specific situation.

Senator KYL. And I appreciate the fact that there was no objection posited to the consideration of this bill starting this morning. We had, at least I had suggested to you that we could consider the bill, get a unanimous consent to consider the bill without a time limitation, and I understand that is what the unanimous consent is that we will be operating under today.

Senator BYRD. May I speak to that?

Senator KYL. Absolutely.

Senator BYRD. There was a very serious objection lodged to the bill that came over from the House. This is not that bill. Senator Kennedy and I have talked about this bill. I have no objection to taking up this bill. I said so a long time. But I think questions ought to be raised. I do not think you can answer the questions that I raised about these deadlines and about the amounts of money. What will this bill cost? These are questions I think we need to raise. As I said, I may vote for this bill in the final analysis, depending on how it looks at that point. I am not speaking about generics.

Listen, Senator, I have been here 50 years. I can talk about all the generic approaches you want to talk about. I have seen legislation passed in many ways. I have seen many approaches.

But on a matter of this importance, this far-reaching importance, on a matter that is going to cost millions, hundreds of millions, perhaps billions of dollars, we need to stop, look, and listen, ask questions, offer amendments, and then act, if we can.

Senator KYL. And Senator Byrd, we are very pleased to have that opportunity starting this morning at 11:30. Take whatever time is necessary to discuss it. We had that opportunity on this exact bill last December and it was not taken. Now, with our——

Senator BYRD. We did not have that opportunity. I objected to taking up this bill last December and I have already said why. I do not think we have to go over that again.

Senator KYL. I appreciate that fact. What I was saying is that we have the opportunity to move forward on the bill, originally with the unanimous consent request acceptable at the desk, and later we suggested let us take up the bill and have an opportunity to debate it. I appreciate the fact that you were not ready to do that at that time.

But we can do it now and I think it is important for us to have whatever debate members want to have on it because it will illustrate that there are loopholes that need to be filled, that, as has been testified to this morning, these are pretty good provisions to fill those loopholes, that we need to get started on them, and it will also make the point that you made that it is going to require cooperation of this Congress to provide the funding for it, and those of us who are supporting it are going to have to commit to support the funding for that, as well.

As I said before, I will commit to you to support that funding in order to make this work and hope that we can get started on it as soon as we can. And again, thank you for being here this morning.

Chairman KENNEDY. Thank you very much.

Senator Byrd, thanks very much for being here. I think we all understand your position——

Senator BYRD. Are you through with me?

Chairman KENNEDY. I am never through with you——

[Laughter.]

Chairman KENNEDY [continuing]. But I think you are through with us. We will stand in recess——

Senator BYRD. Senator.

Chairman KENNEDY. Senator.

Senator BYRD. I just want to put a postscript in at this hearing that if Senators had voted with me last December, the money would already be in the pipeline. The money would be in the pipeline. But funds appropriated in December, some of those funds have still not yet been released by the administration.

I have been holding hearings, too. The Appropriations Committee has been holding hearings yesterday and the day before with respect to the budget for homeland security and we find that funds appropriated last December by our committee and by the Senate are still not being released by the administration. So that is one thing we might want to recall.

I thank you, Mr. Chairman, for having this hearing and I thank all members for their attention and for their presence today.

I may say to Mr. Brownback and Mr. Kyl that having been around here 50 years, I can put my arm around your shoulder when we walk out of this room. As majority leader and having worked in the majority leadership for 22 years on that Senate floor, I spoke plainly, other Senators spoke plainly, and that is the only way to speak. That does not mean I carry any emnity toward you at all. I may join with you on the next bill. I may be your best friend on the next bill.

Senator BROWNBACK. I hope so.

[Laughter.]

Senator BYRD. I have found through my long experience that the Senator who votes against me today may be the Senator who will save me tomorrow. I have found that many times over the years.

Senator Kennedy, I especially want to thank you for your courtesies, for your coming to my office, for the discussions we have had on this bill, and as I say, I want to support this bill although there are questions we still need to answer. I think some of the deadlines are impossible to meet and we need to know more about what the costs may be. It is unfortunate that we do not have the CBO's figures and estimates and recommendations on this. But anyhow, thanks for a good morning and I hope you will have a good weekend.

Chairman KENNEDY. Thank you very much.

Senator BROWNBACK. Mr. Chairman, Senator Hatch wanted me to submit his statement for the record.

Chairman KENNEDY. It will be so admitted.

Senator BROWNBACK. Thank you.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF SENATOR ORRIN G. HATCH

Thank you, Mr. Chairman, for holding this hearing today. I also wish to thank both the Chairman and the Ranking Member of the Immigration Subcommittee, as well as Senators Kyl and Feinstein, for their hard work on the Enhanced Border Security and Visa Entry Reform Act. This legislation is very important and I hope that this hearing will take us one step closer to finally getting it passed by the Senate and sent to President Bush for a signature.

The Enhanced Border Security and Visa Entry Reform Act makes a number of very common-sense reforms that will close loopholes in our immigration law, procedure, and practice that have provided terrorists access to our country in the past. First, it strengthens our initial lines of defense—the borders and our embassies abroad—by providing additional staff and training to more effectively screen visa applicants. Moreover, it breaks down some of the barriers that have, to date, prevented a comprehensive data sharing operation between intelligence agencies, law enforcement, the State Department, and the Immigration and Naturalization Service and compels the use of biometric technology to enhance our ability to confirm the identity of those seeking admission into our country. Finally, the bill makes meaningful changes to the foreign student program. In short, a student will no longer be able to roam about the country without the INS knowing that he or she is not attending school.

So why do we so desperately need the bill? Consider that Hani Hanjour, one of the nineteen hijackers involved in the September 11 attacks, was stopped for speeding on August 1, 2001, in Arlington, Virginia. Mr. Hanjour earlier entered the United States on a student visa, but had never attended even a single class, thus violating the terms of his status and thereby making him deportable from the United States. Had the data-sharing operation compelled by the Enhanced Border Security bill been in effect at the time of his traffic violation, local law enforcement would have been notified of his unlawful presence in the United States and would have taken him into custody. He would have, then, been in similar circumstances to Zacarias Moussaoui, the believed twentieth hijacker, who was detained at an INS facility in Minnesota at the time of the attacks. Certainly the brave souls aboard Flight 93 that crashed in rural Pennsylvania or, indeed, any of the other victims aboard any of the other planes would have welcomed the absence of another of Osama Bin Laden's agents of hell.

Also, consider the events of this a few weeks ago when the INS improperly admitted 27 crew members of a vessel for shore leave. Four of the individuals, all Pakistani, never returned. It has since been discovered that because an INS inspector entered an improper birth date for one of the four men, the man was permitted to enter the United States notwithstanding an earlier immigration violation in Chicago. Again, had the provisions of the Enhanced Border Security bill been in effect, that man would have never been able to enter the United States. Specifically, the retrieval of his records would not have been contingent solely upon the entering of his actual birth date but, rather, any number of variations of his name. His prior immigration violation would have likely been discovered and the man would have

been denied entry. No one knows whether his intentions in hiding out in our country are evil, but we must now wonder and do our best to track him down.

This should not be a controversial bill. The Enhanced Border Security and Visa Entry Reform Act enjoys the broad, bipartisan support of nearly 60 senators. The House of Representatives has passed it twice and the Bush Administration is supportive as well. It does not make sense that a bill designed to make such critical improvements and with this kind of support could have languished for so long in the Senate. While I recognize the right of every Senator to contribute to, further investigate, and even oppose any legislation, I cannot help feeling frustrated when a bill of this magnitude is held up for over three months with almost no comment or justification. In cosponsors alone, this bill has almost enough support to defeat a filibuster, and yet, Senate leadership has failed—to this point—to put it to the floor for a vote. I am very pleased that the Border Security bill has finally been placed on the schedule and will be debated later today. Clearly, the time has come for the Enhanced Border Security and Visa Entry Reform Act to be passed by the Senate without further delay.

Thank you again, Mr. Chairman, for holding this hearing. I am confident that you will continue to work toward passage of this legislation and I look forward to working with you and the other sponsors in this endeavor.

Chairman KENNEDY. I would like to submit the statement of Senator Leahy for the record.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF SENATOR PATRICK LEAHY, CHAIRMAN, SENATE JUDICIARY COMMITTEE

I applaud Senator Kennedy for holding this hearing today, and for his work with Senators Feinstein, Brownback, and Kyl in developing and introducing S. 1749, the Enhanced Border Security and Visa Entry Reform Act. I am one of 58 proud cosponsors of that bill, which has commanded extraordinary bipartisan support and the sponsorship of most of the members of the Judiciary Committee. I am pleased that the House has already passed H.R. 3525, which is modeled on S. 1749, and that the Senate will be taking up border security legislation today.

As a Senator from Vermont, I know what a serious issue border security is. For too long, Congress has taken a haphazard approach to border security, meeting many of the needs of our southwest border but neglecting our border with Canada. Since the terrorist attacks of September 11, we have taken a far more comprehensive approach. Congress took its first steps to strengthen our borders in the USA Patriot Act, which authorized tripling the number of Border Patrol personnel, INS Inspectors, and Customs Service agents serving along our northern border, and $100 million in funding for improved technology for the INS and Customs Service's use in monitoring the border. As the author of those provisions, I am pleased that the Administration has requested substantial increases in funding for border security personnel. I urge the Congress not only to support those requests, but to ensure that the northern border receives at least half of any new supply of border security enforcement officers.

The legislation before us today builds on the first steps taken in the USA Patriot Act to strengthen substantially the security of our borders. It will further increase the number of INS Inspectors and INS investigative personnel, and authorize raises for Border Patrol agents and inspectors so that we can retain our experienced border security officers, who have been so overworked over the past seven months. The bill also authorizes funding for training of INS personnel for more effective border management, and for improving the State Department's review of visa applicants abroad. In addition, it authorizes $150 million for the INS to improve technology for border security, another important follow-up to the USA Patriot Act.

Beyond authorizing badly needed funding for our borders, this legislation includes a number of important security provisions, a few of which I would like to highlight today. First, it requires the Attorney General and Secretary of State to issue only machine-readable and tamper-resistant visas, and travel and entry documents using biometric identifiers, by Oct. 26, 2003. They must also have machines that can read the documents at all ports of entry by that date. Second, the bill requires the Secretary of State to establish terrorist lookout committees within each U.S. mission abroad, to ensure that consular officials receive updated information on known or potential terrorists in the nation where they are stationed. Third, the bill will foster information sharing between other government agencies and the State Department and INS, and shorten the deadline established in the USA Patriot Act to develop a technology standard to identify visa applicants. Fourth, the legislation requires all commercial vessels or aircraft entering or departing from the United States to pro-

vide complete passenger manifests. Fifth, this bill would substantially strengthen existing law for the monitoring of foreign students. The government would be required to collect additional information about student visa applicants, and educational institutions would be obligated to report visa holders who did not appear for classes. In addition, the INS Commissioner would perform periodic audits of educational institutions entitled to accept foreign students.

I hope that this hearing will clarify any concerns Senators may have about border security legislation, as passage of this bill would show that the protection of our nation and our borders remains a fundamental priority for this Congress.

Chairman KENNEDY. Statements of other Senators will be included, as well.

The committee stands in recess. Thank you.

[Whereupon, at 10:42 a.m., the subcommittee was adjourned.]

[Submissions for the record follow:]

SUBMISSIONS FOR THE RECORD

AIR CRASH VICTIMS FAMILIES GROUP
RIDGEWOOD, NEW JERSEY 07451-0006
Telephone: (201) 652-7050 Fax (530) 504-8472
E-mail: ACVFA@cs.com

APRIL 10, 2002

SUBJECT: **S 1749** *"Enhanced Border and Visa Entry Act of 2001"*
Hearing – Subcommittee on Immigration of the Senate Committee on the Judiciary

MR. CHAIRMAN:

WE ARE AN INFORMAL ALLIANCE OF THE "KAL007", TWA800, SWISSAIR 111, EGYPTAIR990, AF4590 (CONCORDE), BIRGENAIR FAMILIES ASSOCIATIONS AND
INDIVIDUAL VICTIMS FAMILIES AS WELL AS SURVIVORS OF NUMEROUS OTHER AIR TRANSPORTATION TRAGEDIES.

OVER THE LAST TWENTY YEARS YOU, MR. CHAIRMAN, PERSONALLY AND CONGRESS IN GENERAL HAVE BEEN EXTRAORDINARILY RESPONSIVE TO THE PLIGHT OF THE VICTIMS OF AIR TRANSPORTATION TRAGEDIES – AND OTHER CATASTROPHES, WHEREVER THEY OCCURRED. WE ARE GRATEFUL FOR YOUR AND YOUR STAFF'S INTEREST AND FOR YOUR CARE.

REGRETFULLY, MANY ISSUES NOW BEFORE YOU ONLY STARTED TO BE ADDRESSED REACTIVELY AFTER THE TRAGEDY HAPPENED. AT THE "PRESIDENTIAL COMMISION FOR SAFETY AND SECURITY, COMMISSIONER'S VICTORIA CUMMOCK'S CALL FOR FULL IMPLEMENTATION WAS SELECTIVELY IGNORED. HAD ALL OF THOSE RECOMMENDATIONS BEEN ACTED ON, THE APOCALYPTIC EVENT OF SEPTEMBER 11, 2001 COULD NOT HAVE HAPPENED, AND OUR LOVED ONES WOULD STILL BE WITH US.

WE SUPPORT S 1749 WITH THE HOPE THAT IT WILL BECOME LAW AS SOON AS POSSIBLE. WE ALSO HOPE THAT THE VARIOUS IMPLEMENTATION DEADLINES BE STRICTLY ADHERED TO.

S 1749 CANNOT BE PROPERLY EXECUTED WITHOUT ADEQUATE FUNDING. AS AN EXAMPLE THE STATE DEPARTMENT'S CONSULAR

offices worldwide are overworked and understaffed resulting in the anomaly that entry visas are being issued to potential terrorists, but some times denied to those with legitimate needs such as family members of air crash victims.

With our present computer technology it should have been self evident to develop a common database into which all available information can be fed and from which it can be shared. It is a sad sign that such cooperation and information sharing has not be established already as a matter of course and that thousand of innocent lives had to be lost unnecessarily as a consequence of this failure.

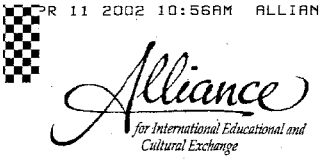
Mr. Chairman, we hope that this hearing will result in bringing S 1749, together with its companion bill in the House, to an early vote by the Senate - without any further debate - so that its provisions can be implemented forthwith.

Your making our remarks part of the records of the April 12, 2002 Hearing on S 1749 would be appreciated

Respectfully,

Hans Ephraimson-Abt
Spokesman

The Honorable Edward M. Kennedy,
Chairman, Subcommittee on Immigration
Senate Committee On the Judiciary
Washington, DC



April 11, 2002

The Honorable Edward M. Kennedy
Chair
Subcommittee on Immigration
SD-520
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

I write on behalf of the Alliance for International Educational and Cultural Exchange, an association of 65 American nongovernmental organizations that conduct exchange programs of all types. We wish to congratulate you and express our strong support for S. 1749, the Enhanced Border Security and Visa Entry Reform Act.

We have worked with your staffs as the legislation has developed, and have had opportunities for input to help ensure that the bill strikes the right balance between our strong national interests in increased security and in continued openness to exchange visitors, students, and scholars from around the world. We believe you have succeeded in accomplishing that important goal.

We look forward to the passage of this legislation, and to continuing to work with you to ensure that the United States remains fully, and safely, engaged with the world.

Sincerely,

Michael McCarry
Executive Director

1776 MASSACHUSETTS AVENUE, NW, SUITE 620, WASHINGTON, DC 20036 TELEPHONE: 202 293-6141 • FAX: 202 293-6144

American Civil Liberties Union
Testimony at a Hearing on S. 1749
The Enhanced Border Security and Visa Entry Reform Act
Before the Subcommittee on Immigration and Claims
of the Senate Judiciary Committee
Submitted by Timothy H. Edgar, Legislative Counsel
April 12, 2002

Mr. Chairman, Senator Brownback and members of the Subcommittee:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan, non-profit organization with approximately 300,000 members dedicated to preserving our freedoms as set forth in the Constitution and the Bill of Rights, we welcome this important hearing on S. 1749, the Enhanced Border Security and Visa Entry Reform Act. Since the organization's founding in 1920, the ACLU has been steadfast in defending the rights of everyone in America, both citizens and immigrants.

The bill contains a number of reasonable efforts to enhance border security and reduce the risk that known terrorists obtain entry to the United States in order to do harm to Americans. The American Civil Liberties Union (ACLU) remains convinced that creative approaches to border security and ensuring the integrity of our visa system are possible. We are also convinced that such efforts need not sacrifice the constitutional rights and human rights of American citizens and immigrants, or compromise the ability of refugees to seek asylum in the United States. We applaud the efforts of Senators Kennedy, Brownback, Feinstein and Kyl, to work on a bipartisan basis to craft legislation that enhances border security while preserving our fundamental values.

S. 1749 is a compromise bill. It is intended to enhance the ability of customs officials, Immigration and Naturalization Service (INS) inspectors and Border Patrol agents to identify known terrorists, ensure the integrity of visa documents so that such individuals cannot avoid such scrutiny with false or stolen documents, and implement other common-sense measures to plug existing holes in the security of our nation's borders and visa system.

While it contains a number of reasonable measures, we are concerned that the legislation could result in unintended consequences unless certain modifications and clarifications are made by the bill's sponsors, and Congress remains vigilant in its oversight role to ensure great care in the bill's implementation. As written, the legislation could thwart law enforcement efforts if information-sharing mandates are interpreted inflexibly. Additionally, the provisions to better monitor foreign visitors could compromise the privacy rights of Americans by creating an infrastructure for a national identification and government monitoring system. A proposed perimeter border security plan must be designed so as not to discourage the ability of the world's persecuted to seek refuge in the United States. Finally, we believe that greater scrutiny of visa applicants should be based on genuine security concerns, and not according to arbitrary or discriminatory criteria.

We are also troubled by provisions that could effectively limit the ability of American citizens to receive ideas and information from individuals who may hold unpopular or unorthodox political views, but who pose no danger to the safety or security of Americans. Finally, because lookout lists may be expanded under the legislation, we are concerned about how individuals who are wrongly identified as terrorists or others on the lookout list could be harassed.

These problems could be addressed, we believe, by adopting the recommendations listed below in italics, and by continued Congressional oversight. These recommendations will help minimize unintended consequences even as the security of our border is enhanced. Security and liberty need not be at adds.

Information-Sharing Mandates Should Be Implemented With Care to Avoid Undermining Law Enforcement

Both Title II and Title III of the bill contain a number of provisions to expand information sharing concerning foreign nationals between intelligence and law enforcement, and mandate interoperable databases that would contain this information, matched by names and other identifying information. In particular, section 201 mandates that specified federal law enforcement agencies "shall, to the maximum extent practicable, share any information with the Department of State and the Immigration and Naturalization service relevant to the admissibility and deportability of aliens," consistent with a required plan for such information sharing. Importantly, this provision does not require information sharing between local and state law enforcement agencies and the INS, an ill-advised plan that is opposed by both civil rights and civil liberties advocates and by many in law enforcement.

We certainly understand the need for the government to take basic steps to ensure that the appropriate parties have access to information needed to detect and apprehend terrorists or other dangerous individuals at the border and to enforce the immigration laws. On the other hand, we are concerned that an overzealous approach to immigration law enforcement targeted at specific communities is not the right approach in combating terrorism. Such an approach can create considerable anxiety among the targeted groups, raise racial profiling issues, and subject communities to greater INS scrutiny on the basis of their nonviolent political views and associations.

An approach requiring federal law enforcement agencies *always* to refer individuals who may have immigration problems to INS also has the potential to drive a wedge between federal law enforcement and the very communities whose cooperation is vital to obtaining the information needed to combat the threat of terrorism. The Federal Bureau of Investigation (FBI) and other law enforcement agencies may well conclude that, under certain circumstances, they should not share information about immigration status with INS during a criminal investigation in order to allay fears and encourage voluntary cooperation with law enforcement efforts.

We do not believe section 201 is intended by the drafters to be an inflexible mandate that requires federal law enforcement agencies to share information with INS about immigration status under any and all circumstances. However, to ensure that law enforcement has the flexibility it needs to conduct effective criminal investigations, this intent should be made explicit. *For this reason, we recommended the sponsors of the bill make it clear that information about immigration status need not be shared if such sharing of information would interfere with the law enforcement agency's primary mission.*

Creating the Infrastructure for a National Identification and Monitoring System

The bill contains a number of provisions concerning biometric identifiers and other requirements for visa and other travel documents, and other provisions mandating greater tracking of immigrants and visitors. We understand the need for the government to take a number of these steps in order to enhance the security and integrity of the visa system.

However, the ACLU vigorously opposes any future expansion of the database system beyond its intended purpose. Creating the infrastructure the bill envisions leaves considerable room for the government to expand the system. In particular, ACLU opposes the creation of a national identification system and also opposes imposing additional requirements to carry cards or other documents that will lead to greater opportunities for harassment of people who look foreign or are members of racial minorities. *For that reason, we recommend that the sponsors of the bill make clear that nothing in the bill authorizes or permits the creation of a national identification system.*

Protecting the Ability of Refugees to Seek Asylum in the United States

Section 401 of the bill authorizes a study to determine the feasibility of a North American Perimeter National Security Program. Such a program is appealing as a security measure, because of the difficulty of applying the same security measures to persons entering the country by land as are used with persons who arrive on airplanes. Cross-border cooperation is important to ensuring that individuals who are known terrorists can be apprehended whether they arrive in Newark, Toronto, or Mexico City.

On the other hand, the establishment of a perimeter border security program without appropriate safeguards could have the unintended effect of limiting the ability of legitimate refugees and asylum-seekers to seek haven in the United States. Under current law, arriving individuals who express a credible fear of persecution or an intention to apply for asylum are entitled to be referred to an interview with an asylum officer and a hearing before an immigration judge. Immigration and Nationality Act (INA) § 235(b). Arriving refugees have often undergone harrowing experiences and are unable fully to explain their circumstances as they are questioned by INS inspectors who may suspect their documents are false or fraudulent. Many genuine refugees have been returned to the countries they were fleeing, possibly placing their lives in jeopardy.[1]

[1] These concerns were the subject of a Senate hearing that heard from human rights organizations, a number of harrowing stories from refugees, and the author of a major study on expedited removal, who

The establishment of a border perimeter system could exacerbate these problems even further by excluding refugees who are in transit to the United States from access to procedures available to them when they arrive at a United States port of entry. Section 401 addresses this problem by requiring that countries in which the United States decides to "pre-inspect" departing persons must "maintain practices and procedures with respect to asylum seekers" that comply with international law. However, such a solution could have the effect of ceding our asylum policy to other nations and lead to persons whom we would believe are genuine refugees being sent back to face persecution. *We recommend that the study mandated by the legislation should not only examine Canadian and Mexican laws concerning asylum but also determine the practical impact of establishing a perimeter border security program on the ability of refugees to seek asylum in the United States, and that the study recommend measures to ameliorate any adverse effect on asylum seekers.*

Scrutiny of Visa Applicants Based on Discriminatory and Arbitrary Criteria

One provision of the legislation calls for greater scrutiny of visa applicants in a way that could reinforce arbitrary or discriminatory treatment, rather than genuine security needs. Section 306 of the legislation states that no nonimmigrant visa can be granted to a national of a "state sponsor of terrorism" unless there is a determination that the individual is not a security risk.

This provision makes little sense from a security standpoint, because the list of state sponsors of terrorism is arbitrary as a guide to whether individual visa applicants are more likely to pose a security threat. For example, Saudi Arabia, Afghanistan and Germany are not on the list of state sponsors, even though members of Al Qaeda operate from those countries. Syria and Cuba are on the list, although these were not countries identified in a recent report as containing Al Qaeda members.[2] Nor is it good security policy to assume that only individuals from Arab or Muslim countries pose a risk, since Al Qaeda and other terrorist groups include many members from countries that are neither Arab nor Muslim. Indeed, the only suspect to be indicted thus far in connection with the government's investigation into the terrorist attacks of September 11 is a national of France. *We recommend that section 306 be deleted, and that security determinations for applicants for nonimmigrant visas be conducted on a nondiscriminatory basis.*

First Amendment Concerns

Section 304 mandates the establishment of "terrorist lookout committees" in each United States embassy, which must meet regularly and whose purpose is to "identify potential

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concluded that a very large number of genuine refugees are turned away each year. *See* An Overview of Asylum Policy: Hearing Before the Immigration Subcommittee of the Senate Judiciary Committee, 107th Cong. (May 3, 2001).

[2] Kenneth Katzman, Terrorism: Near Eastern Groups and State Sponsors, CRS Report to Congress Sept. 10, 2001.

terrorists and to develop information on those individuals . . . ." This provision is problematic because it could create bureaucratic pressure on embassy personnel to add names to a lookout list even where there is no evidence the individual poses any danger to the safety or security of Americans, and provides a ready means for punishing academics or others whose views are unpopular with the United States government but who have never been involved with any violent activity. Blacklisting on such a basis would deprive Americans of the ability to hear and learn about the views of others in the world, thus interfering with the fundamental First Amendment freedoms of American citizens.

Of course, known terrorists or others who genuinely pose a security threat should be denied entry into the United States. However, a legislative mandate that requires the regular meeting of a special committee creates an administrative burden, which may or may not be the best use of the embassy staff's time, and invites mischief because of the potential for abuse. *We recommend the sponsors of the bill make clear that the lookout committee may not recommend the placement of an individual on the list on the basis of race, religious belief or political opinion.*

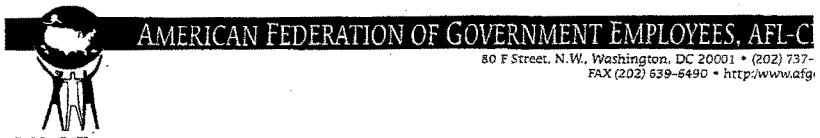
Erroneous Lookout List Correction

Finally, the bill as a whole is designed to ensure that known terrorists or others who pose a danger to Americans are listed on the government's improved data systems. Section 202 of the bill is designed to ensure that variations in name formats and spelling do not frustrate the purpose of the system. These provisions should help ameliorate a recurring problem of entirely innocent individuals being harassed because they have a name which is the same or similar to that of a terrorist suspect who is on a government lookout list.

However, there is still no formal mechanism to handle these recurring problems. Without compromising any sensitive information, it should be possible for an individual whose name is similar to that of a known fugitive to avoid recurring harassment when they seek admission to the United States. *For this reason, we recommend that the report mandated by section 201(b) recommend ways to ameliorate this problem.*

Conclusion

In the wake of the September 11 attacks, consular officials, INS inspectors and Border Patrol agents are working harder than ever to apprehend known terrorists and prevent future attacks. Yet as the government takes steps to enhance border security, as in other anti-terrorism policies, it must seek to ensure that such steps provide maximum effectiveness while minimizing any adverse effects on civil liberties and human rights. The incorporation of the clarifications and changes discussed above, careful implementation, and continued Congressional oversight will help ensure that the Enhanced Border Security and Visa Entry Reform Act will meet that test.



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Bobby L. Harnage
National President
Jim Davis
National Secretary-Treasurer
Andrea E. Brooks
Director, Women's/
Fair Practices Department

8/113738

April 11, 2002

The Honorable Edward Kennedy
Chairman, Subcommittee on Immigration
Senate Committee on Judiciary
Washington, D.C. 20510

Dear Chairman Kennedy:

On behalf of the American Federation of Government Employees, I would like to express our strong support for S. 1749, the Enhanced Border Security and Visa Entry Reform Act of 2002. In our view, the combination of improved technology, better training and higher pay will do much to improve our border response capability.

We are particularly gratified that this legislation includes a long overdue increase in the journeyman pay grade for immigration inspectors and border patrol agents. Currently, the journeyman pay grade for these two groups of employees is GS-9, among the lowest for all federal law enforcement personnel. This, coupled with the lack of law enforcement retirement benefits for immigration inspectors, has created an attrition crisis at the Immigration and Naturalization Service.

According to statistics provided by the I&NS, the current attrition rate for border patrol agents is 14 percent and is expected to rise to a staggering 20 percent by the end of the fiscal year. For immigration inspectors, the current rate is 10.1 percent and it is expected to reach 15 percent by the end of the year. We have been told that over 50 percent of our nation's border patrol agents have applied for air marshal positions. The tremendous loss of experienced personnel to other law enforcement agencies has a devastating effect on agency effectiveness and employee morale.

We applaud you for your leadership on this issue and look forward to working with you to secure full funding for this important measure.

Sincerely,

Beth Moten

Beth Moten
Legislative Director

To Do For All That Which None Can Do For Oneself

AMERICANS FOR BETTER BORDERS
A coalition of Americans concerned about trade, business, and border management
1615 H Street, NW, Washington, DC 20062-2000 202-463-5522 Fax 202-463-5901
www.abbcoalition.org

March 8, 2002

TO MEMBERS OF THE UNITED STATES SENATE:

We urge you to help bring S. 1749 to the floor, the Enhanced Border Security and Visa Entry Reform Act of 2002 sponsored by Senators Kennedy, Brownback, Feinstein, and Kyl. In December, the House passed H.R. 3525, the companion measure, by voice vote. The Senate should quickly follow suit.

Almost six months have passed since the September 11 terrorist attacks. Since that time we, like the rest of the nation, have focused on how to enhance our nation's security through constructive changes to our immigration policies. This legislation takes a significant step in ensuring that our nation's immigration policies are in line with our common goal of effectively deterring terrorism. It includes many long-overdue reforms that will deter terrorism by developing layers of protection both outside and within the U.S., and help our country increase its intelligence capacity. It provides authorization for increased funding to support additional personnel and technology at our border agencies, mandates better cooperation among border agencies, and encourages further cooperation on a North American Security Perimeter with Canada and Mexico. The bill requires new and advance information sharing between the private sector and government agencies, and enhances the use of biometrics in our visas and passports.

While we support all of these efforts, we are aware that this bill also poses significant challenges to the agencies and Congress to implement new technologies and processes in very short deadlines. Congress must allocate adequate, ongoing resources to ensure that these deadlines are met and new systems are properly maintained and updated into the future. Reliance on user fees will not be adequate for this national security priority. Furthermore, if it proves impossible to meet the deadlines in this legislation, Congress must be willing to revisit them to ensure that the legitimate cross-border flow of people, commerce and goods can continue, or our economic security may be jeopardized.

Given the importance of this measure, we urge its swift passage in the Senate and signature by the President. For our part, we in the private sector pledge to work closely with Congress and the agencies to ensure swift and effective implementation of these needed reforms.

Sincerely,

March 8, 2002
Page Two

American Council on International Personnel
American Hotel & Lodging Association
American Immigration Lawyers Association
American Trucking Associations
Bellingham (WA) City Council
Bellingham/Whatcom Chamber of Commerce & Industry
Bellingham Whatcom Economic Development Council
Border Trade Alliance
Canadian/American Border Trade Alliance
Detroit Regional Chamber
Eastman Kodak Company
Fresh Produce Association of the Americas
Greater El Paso Chamber of Commerce
Greater Houston Partnership
International Mass Retail Association
International Trade Alliance of Spokane, WA
National Alliance of Gateway Communities
National Association of RV Parks & Campgrounds
National Customs Brokers and Forwarders Association of America
National Retail Federation
National Tour Association
Pacific Corridor Enterprise Council (PACE)
Plattsburgh-North Country Chamber of Commerce
Quebec-New York Corridor Coalition
Southeast Tourism Society
The National Industrial Transportation League
Travel Industry Association of America
U.S. Chamber of Commerce
Western States Tourism Policy Council

March 8, 2002

Dear Senator:

We write to urge you to cosponsor and help enact S. 1749/H.R. 3525, the Enhanced Border Security and Visa Entry Reform Act of 2001, and to commend Senators Feinstein, Kyl, Brownback and Kennedy for their leadership in developing this important measure. We support their compromise version.

This legislation includes constructive changes to our immigration policies that can help strengthen our nation's security. These changes fill current gaps in our immigration system and will increase our nation's intelligence capacity as well as develop layers of protection both outside and within the U.S. Among other provisions, this bill:

- Provides consular and border personnel with the training, facilities and data needed to prevent the entry of people who intend to do this country harm.
- Calls for vital improvements in technology to provide more timely information.
- Authorizes increased funding for the Department of State and the Immigration and Naturalization Service so that they, along with other federal agencies, can coordinate and share information needed to identify and intercept terrorists.
- Calls for a study to determine the feasibility of a North American Perimeter Safety Zone. This study includes a review of the feasibility of expanding and developing pre-clearance and pre-inspections programs with protections for persons fleeing persecution.
- Includes provisions for a workable entry-exit control system.
- Provides for a one-year extension of the deadline for individuals crossing the border to acquire biometric border crossing cards.

S. 1749/H.R. 3525 is a bipartisan effort that merits your cosponsorship and swift passage. The House passed this measure in December. We urge the Senate to immediately take up and pass this measure as well.

Sincerely,

American Immigration Lawyers Association
Church World Service
Episcopal Migration Ministries
Hebrew Immigrant Aid Society
Immigration and Refugee Services of America
Institute of International Law and Economic Development
Leadership Conference for Civil Rights
Lutheran Immigration and Refugee Services
National Association of Latino Elected and Appointed Officials
National Council of La Raza
National Immigration Forum

The Biometric Foundation

Mission of The Biometric Foundation

The Biometric Foundation advances the use of biometric technologies to protect privacy, secure infrastructures that are critical to the nation's economic success, and prevent identity theft. Under the guidance of industry leaders and experts, the Foundation conducts and sponsors technology-neutral research, evaluation, and educational programs. These programs are intended to increase understanding of how biometrics work, examine social, economic, and legal issues that affect widespread use of biometrics, and provide authoritative data to support public and private commitment to biometric solutions. The Foundation is committed to standards and practices that ensure it remains a premier independent resource for scientists, policymakers, and citizens who are seeking accurate, reliable information about biometric technologies and their uses.

Testimony of M. Paul Collier
Before the US Senate Committee on the Judiciary
Subcommittee on Immigration
April 12, 2002

Mister Chairman, members of the subcommittee, thank you for inviting me to be a part of this distinguished panel. My testimony will focus on issues regarding the deployment and interoperability of biometrics as they apply to our border crossing and entry visa process. Biometric technology available today can offer a significant advance in controlling access at our borders and serve as an effective tool in our mission to combat terrorism.

A biometric is the quantitative measurement of a unique human attribute or behavioral characteristic such as fingerprints, face, voice, iris, hand geometry, etc. Using fingerprints as an example; a finger is placed on a sensor and then scanned. The image of the fingerprint is then processed by a series of algorithms, which convert it into a binary representation, or template. This template is then compared to a reference template stored either on a computer or card based data storage medium. Like most biometrics, you cannot reverse engineer this binary representation and recreate the scanned image.

Biometric methodologies can be categorized as two types, contact and passive. A contact biometric is one that requires an individual to interact with or touch a sensor such as fingerprint or hand geometry. A passive biometric is one that does not require any action on the part of an individual for its use, such as facial recognition.

Biometrics have been used in many civil and government programs worldwide for over ten years. They have been very effective in reducing fraud, eliminating multiple identities and securing access to sensitive areas. These wide-scale deployments have served as real world proving grounds for this technology and involved many millions of people. Knowledge gained from these programs, and applied to improvements and cost reductions, helped produce many of the commercial products available today.

Traditionally, the primary applications for biometrics in the federal government and military have been physical and logical access control, and fraud reduction programs. Though many successful pilots and proof of concept studies have been done, wide scale deployment has been slow.

It should be noted that the federal government, in partnership with industry has made a significant contribution to the evolution of biometric technology. Biometrics would not have advanced to their present level without the help of the Department of Defense, National Security Agency, Department's of Justice, Energy, Treasury and the National Institute for Standards and Technology.

Despite the fact that the United States pioneered the development of many biometric technologies, we lag behind the rest of the world in their deployment. Many other countries use biometric authentication features in national identification cards, border crossing documents, voter registration, driver's licenses, etc. Domestically, some efforts have been made to incorporate biometrics into government issued identification cards but they have fallen short of realizing the full potential of the technology.

The use of biometrics in the entry visa application process would significantly augment security when compared to current "look-out" list systems. Databases such as fingerprints and photographs exist worldwide. Encoding biometric data into passports, visas, identification cards and other travel documents can provide positive identification of the bearer and speed the entry process.

At the same time, passive biometric technology such as facial recognition can play a significant role as a surveillance tool at our airports, ports of entry and virtually any potential "high threat condition" facility or event. This technology is easily integrated into many existing surveillance camera systems. Unlike individual "profiling", biometric technology provides a neutral assessment, as opposed to a subjective assessment that is prone to human error.

Biometrics alone is not a panacea, nor can any single biometric technology meet all application requirements. Successful applications require selection of the proper technology that can be easily integrated into existing solutions. Biometrics offer great promise for a significant advancement in security while protecting our privacy and maintaining a low impact on how we go about our daily activities. Biometrics can play a significant role in the protection of our Nation's critical infrastructure and have applications in virtually all aspects of our society.

As an emerging technology, significant advances have been made in establishing industry standards and addressing issues of interoperability. The efforts of the government's Biometric Consortium, co-chaired by National Security Agency and the National Institute for Standards and Technology, working with the General Services Administration, the International Biometric Industry Association, The Biometric Foundation, West Virginia University – Center for Identification Technology Research along with it's other academic partners, and the member companies of organizations such as the BioAPI Consortium have been instrumental in bringing the industry to it's present level. Compared to many other technology-based industries, the biometric community has done a remarkable job in the development of standards. In fewer than five years several biometric standards have been developed and adopted by both the US and international community. To date, most of this work has been accomplished with little, or no funding from the government or outside institutions.

The task before us is to quickly incorporate biometrics into the identification process in response to current and future threats. To facilitate rapid deployment, an Application Profile can be developed based on several existing standards:

- ANSI X.509 (where the data resides on the document)
- ANSI X.9.84 (how to secure the data)

- NIST / Common Biometric Exchange File Format (insures interoperability)
- BioAPI (integration into existing systems)

This Application Profile can be constructed in such a way as to provide for current and future requirements. Only a fully portable, technology neutral approach will insure the optimum performance of biometrics in future large scale civil and government programs. Provisions must be made for new technologies, incorporation into various documents and credentials, multiple or layered biometrics and various data storage mediums including smart-cards, optical cards and two dimensional bar codes.

Establishing compliance criteria and test suites would insure that the biometric segment of a secure document or credential would significantly reduce, or eliminate fraudulent identities. This same secure positive identification standard could also be applied to other government and even commercially issued credentials such as driver's licenses and travel cards.

In anticipation of this requirement, several months ago The Biometric Foundation identified the most qualified resources to accomplish the task of developing such a profile in the time specified. We have assembled a team of experts, most of whom were key members of the applicable standards bodies that are prepared to work with the administration under the guidance of NIST, and in cooperation with the Center for Identification Technology Research at WVU and the National Biometric Security Project, to insure this requirement is completed on schedule.

This partnership between government, industry and academia is our country's best resource for the successful integration of biometrics into our border crossing and visa process.

Thank you Mister Chairman

Statement for the Record

Dr. Arden L. Bement Jr.
Director
National Institute of Standards and Technology
U.S. Department of Commerce

For the

Subcommittee on Immigration
Committee on the Judiciary
United States Senate

"S 1749/HR 3525 Enhanced Border Security and Visa Entry Reform Act"

April 12, 2002

Mr. Chairman and Members of the Subcommittee, thank you for the invitation to submit this statement for the record. This statement describes part of the critical technical work that needs to be done to accomplish the objectives of S.1749 (and its companion bill, HR3525), the Enhanced Border Security and Visa Entry Reform Act. Specifically, I would like to discuss the work and expertise of the National Institute of Standards and Technology (NIST) in developing technical standards of the types specified in this legislation. I will also describe some of the programs that our sister agency, the National Oceanic and Atmospheric Administration (NOAA), is conducting in support of enhanced border security.

The mission of NIST, which is part of the Technology Administration of the Department of Commerce, is to develop and promote measurements, standards, and technology to enhance productivity, facilitate trade, and improve the quality of life. NIST works with the private sector and government agencies to develop and assist in the application of the technologies, measurements, and standards needed for new and improved products, services, and capabilities.

NIST has a history of responding to national needs. In times of crisis NIST is available with its expertise and technical advice to help protect U.S. citizens from natural disasters and other various types of threats, like the terrorists threats that we are currently facing. Now the nation needs to protect homeland security, and again, NIST is ready to respond. Our researchers are providing technical support to other agencies that are involved in this national emergency.

The USA Patriot Act (PL 107-56) and the proposed House and Senate follow-on bills seek to provide appropriate tools required to intercept and obstruct terrorism in our country. Specific provisions of this legislation call for:

- Denying visas to those foreign nationals identified as having a criminal record or as being on a "lookout list;" and

- Verifying that a person seeking admission to the U.S. with a legitimate visa is the person to whom the visa was issued.

Under this legislation, NIST would be tasked to develop and certify accuracy standards for biometric technologies in support of these identification and verification functions. The basic need to be addressed is accurate identification to ensure that terrorists are not admitted into the United States.

Biometrics play a critical role in accurate confirmation of identity. Biometrics is the science of recognition of a person based on a physiological characteristic or group of characteristics. Biometrics systems can be subdivided into two modes, identification and verification. In identification mode, a biometrics system identifies a person from an enrolled population by searching a database for a match. In verification mode, the system uses biometrics to authenticate a person's claimed identity based on his or her previously recorded pattern.

The biometrics to be included in the NIST studies, and which would require certification are: ten rolled fingerprints for matching, ten (or less) flat fingerprints for matching, single flat fingerprint verification, and face-based verification. Using available fingerprint and facial databases, NIST will construct and conduct tests for use in setting standards for certifying the accuracy of proposed fingerprint and facial biometric technologies.

The proposed new statute accelerates an already aggressive timeframe for delivering technical standards -- from two years to one year. In this one-year period, NIST would provide technical standards for three biometrics – ten-print rolled fingerprint matching for identification, single-finger flat fingerprint verification, and face-based verification. If the original two-year period as called for in the USA Patriot Act were maintained, NIST could also develop and perform tests for face recognition under different kinds of scenarios, such as variations in lighting, head pose, facial expression, and how far apart in time the images are taken, as well as develop guidelines and standards dealing with the quality of face images and fingerprint images, and their relation to accuracy.

NIST has already contributed greatly in laying the foundation for interoperable data exchange of one of the primary biometric technologies under consideration – that is, for fingerprint technology. NIST, working closely with the FBI, Department of Justice, state and local law enforcement agencies, product vendors of fingerprint classification systems, and several foreign law enforcement agencies, recently completed a joint American National Standards Institute and NIST standard for the data format for exchange of fingerprint information. This standard promotes the exchange of fingerprint data among different law enforcement agencies using systems from different vendors. A copy of the standard is at (ftp://sequoyah.nist.gov/pub/nist_internal_reports/sp500-245-a16.pdf).

NIST is also currently working on standards to allow the exchange of biometric templates. These templates hold the biometric information on an enrolled subject. In addition, improved interoperability of the diverse government systems can be achieved by using existing standards for exchange of data. These technologies include standardized mark-up languages (such as XML) and query languages for databases (such as SQL), standards for multimedia data (including MPEG-7), and Unicode for foreign language information. NIST work with the FBI on standardizing the format for criminal histories has demonstrated that these tools can be successfully used for interoperable exchange of data.

NIST currently is not working on any other database interoperability issues relevant to the proposed Act. The NIST position is that providing standards for certifying the accuracy of biometrics should be the highest priority effort, since knowledge of the accuracy of the biometrics is critical to a successful implementation and deployment of any system based on biometrics.

NIST has demonstrated its technical competence in developing standards and performance evaluation in security and many other technical areas, including fingerprint and other biometric technologies. It has a successful history in working with law enforcement agencies and with product vendors to establish interoperability standards, which ensure successful exchange of image data. NIST wants to assure the Chairman and the Subcommittee members that we are eager to continue to fulfill our technical standards role in this very important effort for the security of our Nation.

I would now like to provide the Subcommittee with information regarding NOAA's programs which support border and port security. When discussing the issue of border security one must think of ports of entry on land *and* sea. It is in this context that the Subcommittee may find the NOAA's programs relevant to its consideration of S. 1749.

As gateways to our largest cities and industries, United States seaports are vulnerable choke points and strategic targets for attack. Our economy – the foundation of national security – depends upon the unimpeded flow of commerce into and out of our ports, particularly as 95% of U.S. foreign trade enters and leaves by ship. The U.S. military also relies on commercial ports for national defense and deployment missions. As the volume of international maritime cargo doubles over the next twenty years, any weakness in U.S. seaport security will lead to increasing vulnerability to criminal and terrorist activities. The intentional release of hazardous chemicals; the introduction of weapons of mass destruction; the sinking of ships to blockade ports; manmade obstructions mining our entry channels; the protection of critical infrastructure in or near ports; these are but a few of the concerns for those maintaining seaport security.

Because of its unique roles as coastal steward and producer of navigation data, the National Oceanic and Atmospheric Administration (NOAA) offers assistance that is of great benefit to the Coast Guard, the Navy, the Federal Emergency Management Agency, port authorities, marine pilots and others committed to port security while continuing

critical support for maritime commerce. NOAA provides the nation with valuable nautical charting and hydrographic services that can help strengthen port security and develop the tools and infrastructure to improve Maritime Domain Awareness.

Mine-like objects and Quick Routes

Drifting mines pose a major threat to the U.S. coast. High-resolution hydrographic data in navigable routes are required for effective Mine Counter Measure (MCM) operations.

NOAA's surveying expertise with multi-beam and high resolution side scan sonar imagery is essential for characterizing the water column and bottom environments. These data provide the baseline for change detection, which has been documented as an effective approach to defend against mines. Once baselines are established, waterways must be maintained. Effective MCM maintenance must be performed at intervals appropriate for the situation (vessel traffic, silting, dredging, etc.) and consists of an identical high-resolution survey to compare against the baseline to determine bottom differences. These differences are evaluated and prosecuted as required by Naval MCM assets to provide safe routes, or Quick Routes, for vessels to move through ports, harbors, or other restricted waters.

NOAA will focus on the high priority commercial ports as determined with the U.S. Coast Guard. The abundance of ports makes these tasks formidable. It is proposed that Navy maintain the principal routes to major Defense bases and facilities. NOAA used a major proportion of the monies provided by Congress in FY2002 for hydrographic equipment upgrades to meet these goals. This equipment will enable NOAA to collect the same data as the Navy MCM operational groups, and supply the raw data to the Navy for processing. Operations are planned for April 2002.

Office for Law Enforcement - Vessel Monitoring System (VMS)

The National Oceanic and Atmospheric Administration (NOAA) Fisheries Office for Law Enforcement currently operates a national Vessel Monitoring System (VMS) program. VMS is a near-real time satellite based monitoring and surveillance system with two-way communications capabilities in most areas throughout the U.S. Exclusive Economic Zone (one-way communications only in Alaska). The position reports, which are available 365 days a year, are monitored by NOAA Fisheries Office for Law Enforcement and later this year a live feed will be sent directly to U.S. Coast Guard assets on the water.

Current VMS systems are used to enforce fishery management measures. NOAA has approximately 500 VMS units deployed with an additional 600 units to be added in June of 2002. VMS clearly supports an enforcement mission; however, it has direct ancillary benefits to Homeland Security activities. Therefore, NOAA is currently exploring opportunities to substantially accelerate the current VMS program.

NOAA believes that increased border security correlates directly with increased risk within our EEZ and along our coast line for illegal entry. In March of this year the President announced his "Citizen Corps" initiative, which includes the expansion of "Neighborhood Watch" to include the participation of ordinary citizens in detecting and preventing terrorism. By expanding the number of U.S. fishing vessels operating with VMS, NOAA is expanding our capability to detect and prevent terrorism and other criminal activity in one of our most vulnerable areas; the U.S. Exclusive Economic Zone.

VMS provides two-way satellite communications capability, which can be used to report suspicious activities or vessels directly to NOAA Fisheries Special Agents, Enforcement Officers and the U. S. Coast Guard. VMS also supports the Coast Guard's "Coastal Watch" initiative, which was developed in response to their homeland defense activities. Under "Coastal Watch", the Coast Guard requests fishers to report suspicious activities for investigation and intelligence purposes. Furthermore, critical decisions on the deployment of enforcement assets can be based on VMS surveillance reports. Satellite communication can also update essential information during a law enforcement response.

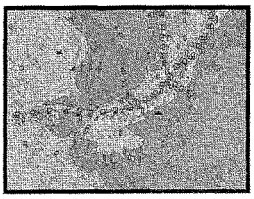
Through expanded participation, investigative methodologies will be enhanced via surveillance data maintained within VMS, such as, easily identifying potential witnesses to incidents, locating U.S. vessels in areas of suspicious activity for assistance and support and increased intelligence gathering capabilities.

Electronic Navigational Chart with U.S. Coast Guard Automatic Identification System

In addition, NOAA's Electronic Navigational Chart (ENC) will integrate with the U.S. Coast Guard's Automated Identification System (AIS) to help track and manage vessel movement in our Nation's ports. This will be an important component of the Coast Guard's efforts to improve Maritime Domain Awareness and port security, and to reduce the potential for maritime threats without unreasonably disrupting the free flow of commerce.

The Coast Guard is developing AIS as a navigational tool for collision avoidance and vessel tracking. In its simplest form, AIS consists of a VHF radio transmitter that sends out a ship's name, position, course and speed, along with other data. Other ships can receive and display this information as well as Vessel Traffic System receivers located on shore. Like radar, AIS positions are updated frequently enough to help avoid collisions, but unlike radar, AIS can 'see' around hills and eliminate blind spots caused by coastal topography.

NOAA's ENC is an integral component for AIS because vessel positions obtained by AIS must be displayed on a highly accurate electronic charting backdrop. An ENC is a highly accurate vector database of chart features that shows marine geospatial information such as buoys, vessel



traffic lanes, water depths, wrecks, obstructions, and shoreline features. Because the data are intelligent, computer software can issue warnings to mariners if a ship is approaching danger. For example, if a ship has a draft of 40 feet, and is heading for water depths of 30 feet, a warning can be issued. Likewise, a shoreside AIS monitoring station can identify and sound warning when a vessel strays from its traffic lane.

AIS will be phased in over the next several years so that most commercial vessels will be required to carry some form of AIS in U.S waters. The International Maritime Organization has established a 2002 deadline for all new commercial carriers to be fitted for AIS transponders; large commercial ships constructed after July 1, 2002, are required to carry AIS in U.S. coastal waters. Existing ships must be retrofitted for AIS transponders by 2007. AIS can be used by the Coast Guard to monitor vessel traffic in coastal waters and therefore increase Maritime Domain Awareness.

NOAA's Office of Coast Survey, as the U.S. national hydrographic office, is exclusively responsible for production and authorization of ENC data in U.S. waters. NOAA is building its ENCs to the International Hydrographic Organization's S-57 electronic charting standard. In order for an electronic chart to gain type approval as an Electronic Chart Display and Information System (ECDIS), it must be fueled by ENCs. However, ENCs are not only for ECDIS use. ENCs can fuel any Electronic Chart System (ECS) that reads the S-57 format.

Again, I would like to thank the Subcommittee for this opportunity to submit this statement for the record. If the any Senator or staff has any question regarding any program or effort discussed I would be happy to provide answers for the record.

Families of EgyptAir 990, Inc.
P.O. Box 1771
Portage, IN 46368

James A. Brokaw II, President

April 10, 2002

Subject: S 1749 – "Enhanced Border and Visa Entry Act of 2001"
Hearing – Subcommittee on Immigration of the Senate
Committee of the Judiciary.

Mr. Chairman:

My name is James A. Brokaw, II. I live in Ogden Dunes, Indiana. My father, Richard Spohn Brokaw, 76 and my stepmother Virginia Chaplin, 72, were passengers aboard EgyptAir Flight 990, which crashed 60 nautical miles off Nantucket on October 31, 1999. All 217 crew and passengers were killed, including 100 citizens of the United States. Two years ago, I organized Families of EgyptAir 990, Inc, which I continue to lead. Our organization includes about 140 households in Egypt, the United States, Canada and elsewhere, all of whom lost an immediate family member in the crash.

At the request of the Egyptian government, NTSB conducted an extensive investigation and concluded that the cause was not mechanical but, rather, flight control inputs by the relief first officer, an Egyptian citizen.

In turn, the investigation brought some facts to light that might well have prevented issuance of a visa to the relief first officer, had the proposed legislation been in place in October 1999.

We fully support S 1749, the "Enhanced Border Security and Visa Entry Reform Bill of 2001" and most specifically Title IV Section 402, Passenger Manifests, (b) Departure Manifests as well as Title IV, section 403, Pre-arrival messages from other vessels destined to United States Ports, paragraph (5) (A), clause (xv). Title II – Interagency Information Sharing and Title III – Visa Issuance is of crucial importance.

Had S 1749 been in force and implemented in October 1999, our loved ones would still be with us.

We respectfully request that our Statement above be made part of the Records of the Hearing on S 1749 to be held on April 12, 2002.

Respectfully,

James A. Brokaw II

The Honorable Edward M. Kennedy, Chairman
Subcommittee On Immigration
Senate Committee On the Judiciary
Washington, DC

P.O. Box 1553, Great Falls, VA 22066 • 800-568-8399 • www.familiesofseptember11.org

Dear Senator :

On September 11, 2001, terrorists attacked America. They hijacked four planes and crashed into the World Trade Centers and the Pentagon. They took over 2800 lives, they left 15,000 children without one or both parents, and they ruined thousands and thousands of families. They left America in fear.

Senate Bill 1749, The Enhanced Border Security and VISA Entry Reform Act addresses immigration security issues. The events of September 11 illustrated most clearly the weaknesses of our immigration monitoring systems and Congress responded with this well thought out and carefully written legislation. It passed in December, without delay, in the House.

It is disturbing to learn that this legislation is presently blocked from a vote on the Floor of the Senate. In honor of our loved ones lost, our organization, the Families of September 11, Inc., is committed to promoting legislation and policies which will prevent the recurrence of such a horrific tragedy. We implore you, as an elected official of this country, not just of your state, to do the same. All legislation necessary to improve homeland security must be passed without delay. There is no justification to compromise the safety of the United States of America. Senate Bill 1749 needs to be passed, and it needs to be law.

This is not a time for politics in our country, it is a time for action. The families affected by the events of September 11 have already paid the ultimate price for freedom. We have a reasonable expectation that neither we, nor anyone, should have to pay such a great price as ours for the liberty of this country again. And we have a reasonable expectation that it should be your obligation to ensure this. Please exert any effort necessary to effect a vote on S1749 on the Floor of the Senate. And please vote in its favor, homeland security needs to be of the utmost priority in these dangerous times.

Thank you for your attention and dedication to the resolution of this issue.

Sincerely,

MaryEllen Salamone
Director, Families of September 11

Carie Lemack

President, Families of September 11

GRAND LODGE
FRATERNAL ORDER OF POLICE ®

309 Massachusetts Avenue, NE
Washington, DC 20002
Phone 202-547-8189 • Fax 202-547-8190

STEVE YOUNG
PRESIDENT

JAMES O PASCO, JR.
EXECUTIVE DIRECTOR

Statement of Steve Young
National President, Fraternal Order of Police

On S. 1749, the "Enhanced Border Security and Visa Entry Reform Act"

Senate Committee on the Judiciary,
Subcommittee on Immigration hearing

12 April 2002

Good Morning Mr. Chairman, Ranking Member Brownback, and members of the Subcommittee on Immigration. My name is Steve Young, and I am the National President of the Grand Lodge, Fraternal Order of Police. With more than 300,000 members, the F.O.P. is the largest law enforcement labor organization in the United States. I am submitting testimony today on behalf of our membership regarding Section 601 of S. 1749, the "Enhanced Border Security and Visa Entry Reform Act of 2001." As you know, Section 601 grants "law enforcement officer" or "6(c)" retirement status to Immigration Inspectors of the Immigration and Naturalization Service, providing these officers with the same status and benefits currently received by all Criminal Investigators and several Federal police agencies.

The expansion of this enhanced retirement system to those Federal law enforcement officers who are currently denied coverage is a priority for our organization. The varied threats with which Federal law enforcement officers must contend from terrorist or individual attack have grown exponentially in recent years, placing an ever-increasing burden on these officers who serve as our first line of defense—as evidenced

by the heinous acts which occurred in Oklahoma City in 1995, here in the United States Capitol in 1998, and in New York City and the Pentagon last September. Each and every day these officers perform their duties anonymously and often heroically in defense of the citizens and institutions that are the foundation of our democracy. However, under current law and the regulations of the Office of Personnel Management, thousands of these same law enforcement professionals with a role in homeland security—whether they are securing America's borders or protecting Federal employees and facilities—are placed on an unequal footing with their Federal law enforcement colleagues.

Despite carrying out their sworn duty to protect and serve with honor and distinction, many of these law enforcement officers are consistently denied equal status under the pay and retirement laws of the government they so proudly serve. They are asked to face the same hazards as their State and local counterparts, and when one of them falls in the line of duty, their names are added to the National Law Enforcement Officers Memorial in Washington, D.C. Yet they must constantly appeal to the Office of Personnel Management or bring a case before the Merit Systems Protection Board to fight for the status to which they are already entitled. This disparity in who does and does not qualify for law enforcement retirement coverage is not based on the duties these brave men and women are asked to perform, and has a substantial impact on the recruitment and retention of qualified personnel.

The "Enhanced Border Security and Visa Entry Reform Act" already recognizes the importance of providing Immigration Inspectors with the same benefits as other law enforcement personnel. As you noted in the introductory statement on this legislation, Mr. Chairman, the "Immigration and Naturalization Service must be able to retain highly

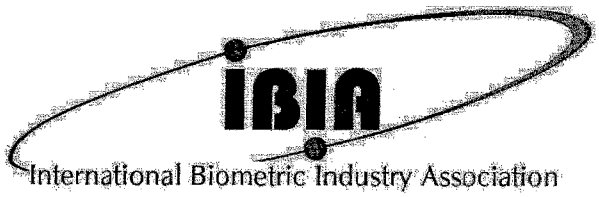
skilled immigration inspectors." By affording "law enforcement officer" retirement coverage to these officers, Section 601 of this legislation will provide the Immigration and Naturalization Service with the tools they need to ensure that they *can* recruit and retain these invaluable employees and, in the process, improve homeland security. We believe that in so doing, Section 601 will provide savings in training costs, assist the agency in maintaining a young and vigorous law enforcement force, and increase the public safety. In short, it will further ensure that our nation's borders are protected by the most highly trained, qualified and professional cadre of officers available. But I would submit that there is an additional law enforcement agency with a similar mission that would also benefit from inclusion in the law enforcement retirement system—the United States Customs Service (USCS).

Like the Immigration Inspectors of the INS, Customs Inspectors and Canine Enforcement Officers work diligently to ensure the overall security of our nation's borders. These law enforcement officers must attend a minimum of eleven weeks of training, and are authorized to carry firearms in the performance of their duties. They are responsible for enforcing the laws and regulations governing the importing and exporting of merchandise, processing and controlling passengers and baggage, interdicting smuggled merchandise and contraband, and apprehending persons involved in violations of the customs laws. As such, they are an important component in the mission to ensure homeland security.

The legislation currently before this committee recognizes the important role filled by the law enforcement officers of the U.S. Customs Service and the INS. Indeed, S. 1749 already contains a provision directing the Secretary of the Treasury and the

Attorney General to increase the number of INS Inspectors, INS Investigative Personnel, Customs Inspectors, and associated support staff by at least 200 full-time employees for each of fiscal years 2002 through 2006. But without the authority to provide the enhanced law enforcement retirement coverage to their employees, the Customs Service's ability to retain these new hires will be severely limited.

That is why we respectfully request that Section 601 of the legislation be amended at the earliest possible opportunity to include all employees of the INS and USCS performing law enforcement duties under the enhanced retirement provisions of Chapters 83 and 84 of Title 5, U.S. Code. In this way, we will ensure that both agencies are able to continue to employ and retain the highest caliber personnel to carry out the critical homeland security functions they are asked to perform. On behalf of the membership of the Fraternal Order of Police, let me thank you again, Mr. Chairman, for the opportunity to submit testimony on this legislation.



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April 10, 2002

The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the International Biometric Industry Association (IBIA), I am writing to express warm support for swift enactment of the Enhanced Border Security and Visa Reform Act of 2001.

The IBIA and other industry stakeholders understand the critical importance of this legislation to help counter vulnerabilities in national infrastructure security that were so tragically demonstrated on 9/11. Incorporating biometric identification technology into the new security program called for by the bill will vitally strengthen border security.

The IBIA and its partner organizations in research and education in biometrics believe that biometrics must be deployed in ways that both advance security and protect privacy and civil liberties. This legislation is consistent with that goal while making great strides toward removing the cloak of anonymity used by those who have no regard for such personal freedoms and the safety of our citizens.

IBIA is a tax-exempt, nonprofit trade association founded in 1998 to advance the collective interests of the biometric industry. IBIA impartially serves all biometric technologies in all applications. IBIA's membership includes leading manufacturers of hand recognition, iris, facial, fingerprint, voice and signature biometrics, and leading integrators of layered biometrics.

Thank you for your farsighted leadership.

Sincerely,

John E. Siedlarz
Chairman

NAFSA

NAFSA: Association of International Educators

1307 New York Avenue NW
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Vice President for Public Affairs
Norman Peterson
Montana State University

Executive Director & CEO
Marlene M. Johnson

April 11, 2002

The Honorable Edward M. Kennedy
Chair
Subcommittee on Immigration
SD-520
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

I write on behalf of the nation's largest association of international education professionals--with more than 8,000 members nationwide, including 474 in Massachusetts--to express our strong support for S. 1749, the Enhanced Border Security and Visa Entry Reform Act.

We have a particular interest in those parts of the bill that pertain to international students and scholars. We have worked closely with your offices to ensure that the bill includes any necessary provisions with respect to visa screening and student tracking, while at the same time maintaining the openness to international students and scholars that is itself important to our nation's security. In our judgment, the bill strikes that crucial balance, and we congratulate you for your work.

We look forward to early enactment of this legislation, and we pledge our ongoing cooperation to ensure its successful implementation.

Sincerely,

Marlene M. Johnson
Executive Director and CEO

NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL
OF THE
American Federation of Government Employees

Affiliated with AFL-CIO

In Reply Please Refer To:

April 11, 2002

The Honorable Edward M. Kennedy
United States Senate
Russell Senate Office Building SR-317
Washington, 20510

Dear Senator Kennedy:

On behalf of the National Immigration & Naturalization Service Council and its 6,800 members, I would like to express our appreciation for your efforts to increase the journeyman pay grade for INS inspectors from GS-9 to GS-11. We believe this is a long overdue step that will help stem the double digit attrition rate currently experienced within the ranks of INS inspectors. It will also begin to close the gap between their pay rates and that of most other federal law enforcement agencies.

For this reason, we want to lend our strong support to S. 1749/H.R. 3525, the Enhanced Border Security and Visa Entry Reform Bill of 2002. We look forward to working with you to secure the necessary appropriation to implement the pay grade increase.

We also look forward to working with you in the future on legislation that would grant immigration inspectors their right as federal law enforcement officers to receive law enforcement retirement benefits. It is a gross injustice that these individuals, who make countless arrests, are required to carry firearms and place themselves in danger on a regular basis and are denied such retirement benefits.

If there is anything we can do to assist you in your efforts to enact this bill, please let us know.

Sincerely,

Charles J. Murphy
President

TO DO FOR ALL THAT WHICH NONE CAN DO FOR ONESELF

Statement of the
Travel Industry Association of America (TIA)
on
S.1749, The Enhanced Border Security and Visa Entry Reform Act of 2001

April 12, 2002

The Travel Industry Association of America (TIA) believes that U.S. border security can be enhanced while simultaneously improving the efficiency by which international travelers are processed into the U.S. For this reason, TIA supports S.1749, The Enhanced Border Security and Visa Entry Reform Act of 2001, with limited reservations.

TIA is the national, non-profit organization representing all components of the $584 billion U.S. travel industry. TIA represents the whole of the U.S. travel industry and works to promote and facilitate increased travel to and within the United States.

International travel to the U.S. is a vital component of our nation's economy, generating over $106 billion in expenditures annually, creating one million U.S. jobs and producing a $14 billion trade surplus. Any legislation seeking to increase border security must take into consideration this critical segment of our economy.

TIA supports the vast majority of the provisions contained in S.1749. Additional personnel for all federal inspection agencies, along with improved technology, training and coordination between agencies will make the U.S. more secure while achieving greater efficiency and professionalism in the processing of inbound international visitors. S. 1749 gives U.S. Customs, the Immigration and Naturalization Service, and other federal agencies the resources to better enforce U.S. immigration law and help guard against further attacks on this nation.

However, TIA is concerned that certain provisions in S. 1749 could have the unintended effect of deterring legitimate international travel to the U.S. While the use of biometric identifiers in passports is a necessary step forward, the October 26, 2003 deadline for Visa Waiver Program (VWP) countries and travelers is unworkable. While we support the exemption for VWP passport holders who have valid passports issued prior to October 26, 2003, this date must still be pushed back or a time-limited waiver must be granted to the Secretary of State in order to expedite uninterrupted international travel to the U.S.

S.1749 strives to achieve the necessary balance between increased border security and the facilitation of inbound international travel. TIA supports this legislation, but urges Congress to address our serious concern regarding deadlines for biometric requirements for Visa Waiver Program countries and travelers.

Travel Industry Association of America
1100 New York Avenue, NW, Suite 450, Washington, DC 20005
P: (202) 408-8422 F: (202) 408-1255 www.tia.org

Mar-01-02 03:38pm From-Labor & Employee Benefits 202-463-5901 T-852 P.02/02 F-415

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1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

March 1, 2002

The Honorable Tom Daschle
Majority Leader
United States Senate
825 Senate Hart Office Building
Washington, DC 20510

Dear Senator Daschle:

On behalf of the U.S. Chamber of Commerce, I would like to urge you to bring to the floor as soon as possible the Enhanced Border Security and Visa Entry Reform Act of 2001 (H.R. 3525/S. 1749). As you know, the Chamber and its members have been long concerned about the security and efficiency of our borders for commerce and travel. We believe this legislation goes a long way toward achieving those goals and is particularly necessary following the tragic events of September 11. The legislation has broad bipartisan support, and already passed the U.S. House of Representatives by voice vote on December 19, 2001.

This legislation takes a careful and reasoned approach to the issue of border security, and we strongly support the provisions to increase resources for technology and personnel for our Immigration and Customs Services, enhance data sharing capabilities, expand pre-clearance and pre-inspection programs, and direct federal agencies to work with our NAFTA partners to ensure our joint security while enhancing the flow of legitimate commerce and travel across our shared borders. These changes are long overdue.

While we understand that Congress must provide adequate funding if the ambitious deadlines set forth in the legislation are to be met, further delay in this legislation will only postpone the needed reforms that can provide both security and efficiency to our inspections processes. Such changes will allow business to look to the future of cross-border travel and trade with some sense of stability.

We look forward to working with you to secure passage of this legislation, and working with the Congress and the Administration on its implementation.

Sincerely,

R. Bruce Josten

O