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# PROPOSED WESTERN HEMISPHERE PASSPORT RULES: IMPACT ON TRADE AND TOURISM

## HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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# PROPOSED WESTERN HEMISPHERE PASSPORT RULES: IMPACT ON TRADE AND TOURISM

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**FRIDAY, DECEMBER 2, 2005**

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP, OF THE COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 1:36 p.m. in Room 111, Texas A&M International University, Western Hemisphere Trade Center, Laredo, Texas, Hon. John Cornyn, Chairman of the Subcommittee, presiding.

Present: Senator Cornyn.

## OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Chairman CORNYN. Good afternoon and welcome. The purpose of today's hearing is to review the Western Hemisphere Travel Document Initiative and how it will affect trade and tourism. Currently, U.S. citizens and some citizens of other countries in the Western Hemisphere are not required to present a passport to enter the United States when traveling from certain Western Hemisphere countries.

The 9/11 Commission, recognizing the obvious vulnerability of this policy, recommended in its final report that Americans should not be exempt from carrying biometric passports when they enter the United States, nor, they said, should Canadians or Mexicans.

In response, the U.S. Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004. That law mandates that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require U.S. citizens and foreign nationals to present a passport or other secure document when entering the United States. The law requires that the plan be in place by January 1, 2008.

The Departments of State and Homeland Security recently published an Advanced Notice of Proposed Rulemaking, the first formal statement by the administration on how it plans to implement the new passport requirements. That notice indicates that the agencies will implement the Western Hemisphere initiative in two stages.

First, the agencies will apply the passport requirement to all air and sea travelers by December 31, 2006. A year later, those requirements will go into place for land-border crossers. Phasing in

these requirements makes sense. The land-border crossing environment is very different from an air or sea port of entry, and while we all agree that we have a responsibility to protect our borders and to know who crosses through our ports, the process needs to be done in a manner that is least disruptive to legitimate travelers, businesses, and tourism.

There is no question that this initiative will have an impact. For individuals, a passport costs approximately $100, plus an additional $60 if a person wants expedited processing. For a family of four, the cost to cross the border could be close to $400.

One need only look at the economy of Laredo to understand how a small change in the travel document requirement could have a significant negative impact on the economy. Around $80 billion in goods, 1.6 million loaded trucks, and nearly 7 million other vehicles carrying millions of people flowed across Laredo border in 2003, the last year for which we have complete statistics.

A study by the director of the Texas Center for Border Economic and Enterprise Development at Texas A&M International University, where we are today, found that a 1 percent decrease in border crossings would cost Laredo $19 million in additional sales and increase unemployment by 7.2 percent.

Understandably, the business communities along the border are concerned, and I am concerned. In 2004, the Perryman Group, which conducted an analysis at the request of the McAllen Chamber of Commerce, found that the proposed passport initiative will cost 19,000 jobs in the border region and 215,000-plus jobs in the state of Texas. That same group said the initiative would cause the loss of approximately $10 billion in personal income and the loss of approximately $16 billion in gross product for the state of Texas.

Many of the same economic concerns were raised when the US–VISIT program was implemented in 2004. Thanks to the input of leaders here in this room, US–VISIT has since processed over 44 million travelers and has led to the identification of over 900 criminals and the denial of 12,000 visas, all the while not unnecessarily delaying people at ports of entry. But, we know the greatest challenges for the US–VISIT program are yet to come.

Nevertheless, US–VISIT has, so far at least, demonstrated that measured, careful implementation, which includes consultation with and guidance from local business communities can improve security while minimizing the disruption of cross-border travel.

The questions we wish to answer today are what documents these agencies will accept in lieu of a passport and whether the agencies can meet the proposed deadline without delaying cross-border traffic. In November, the Department of State announced that it is considering SENTRI, NEXUS, and FAST program cards as acceptable alternatives. We will hear some testimony about what exactly those cards are. These documents are currently used, though, by frequent travelers, registered frequent travelers.

The Department also announced that it anticipates the border-crossing card or laser visa will also be an acceptable alternative. I think that is good news and movement at least in the right direction.

I understand that the Departments of State and Homeland Security are evaluating other options, including creation of a new travel

document that would be issued to U.S. citizens but which would also cost less than a passport.

[The prepared statement of Senator Cornyn appears as a submission for the record.]

I look forward to hearing from our government witnesses today about the progress they have been making in identifying alternatives to the passport. Before we swear in the witnesses, though, I want to recognize Mayor Betty Flores. Elected in 1998, the first woman to hold that office in this city's 240-year history, Mayor Flores has established effective relationships with state and Federal officials on a broad range of issues, including border commerce and security.

Mayor Flores, I thank you for being here today and for your service and work on the important issues that we have discussed already and that we will discuss during the remainder of this hearing, and I would like to turn the floor over to you for any welcoming remarks that you may care to make.

**STATEMENT OF HON. ELIZABETH G. FLORES, MAYOR, CITY OF LAREDO, TEXAS**

Mayor FLORES. Thank you very much, Senator. It is such an honor for us in Laredo to have you here and to have this hearing here, because I believe that—and you will find out— that during the course of the afternoon, you are going to hear some very specific recommendations, and I think obviously these recommendations are not only going to protect what we have built for so many years here, but also are going to encourage what Congress has in mind, and that is safety and security.

So thank you very much for being here. I want to thank the staff Committee at the Senate Judiciary Committee, Subcommittee on Immigration, Border Security and Citizenship. My name is Elizabeth G. Flores, and I am the mayor of this great city of Laredo. Thank you for bringing this Subcommittee to Laredo, to listen to our community give comments on the Western Hemisphere Travel Initiative.

The city of Laredo is at the center of the trade routes connecting Canada, the United States and Mexico, and I think you almost gave my speech in your opening remarks, Senator Cornyn. The port of Laredo is the largest inland port on the U.S.-Mexico border, and it is located mile marker 1 of Interstate Highway 35, also known as the NAFTA Highway, mile marker 1 of the I–69 corridor, and mile marker 1 of the new Ports-to-Plain Corridor.

The city of Laredo built and owns the four international bridges that exist at our port. These consist of its two passenger vehicle bridges and its two commercial bridges which handle more than 40 percent of all overland trade between the United States and Mexico. On a daily basis, as you have said, there are more than 9,000 commercial crossings at our two commercial bridges and over 10,000 trucks driving through the streets of Laredo every day.

Notably, Laredo is recognized as the fourth largest Customs district in the world. With cross-border shipments totaling over $90 billion recorded in 2004, Laredo is topped only on this list by the ports of Los Angeles, Long Beach, New York City, and Detroit. As such, Laredo's economy continues to be strongly tied to border

trade and transportation and is directly impacted by the continuing ability to move border trade expeditiously.

The success of trade is due to the relationship the citizens of these communities have and the communication that takes place on a very daily basis. Citizens in border communities cross to visit family or friends, to attend schools, or visit shopping centers. Even our health community is greatly affected by the cross-border traffic.

You see, our MSA is not totally in the USA. The general concept of a metropolitan statistical area, an MSA, is one of a large population nucleus, together with adjacent communities that have a high degree of economic and social integration with that nucleus. Texas border communities are like other MSAs in Texas. Yet we are penalized, because the street that divides our community is not made of asphalt but of water.

The Rio Grande River, as it is known in Washington, is the Rio Grande Avenue to many of our citizens. Nuevo Laredo is like your Arlington, Virginia. Every day people cross the Potomac to do the very same things we do: visit family, friends, restaurants and shopping centers. The difference is that when you cross your river, you do not congest the bridge with countless regulations.

Every day, Customs agents process more than 20,000 pedestrians and more than 30,000 vehicles, both Mexicans and U.S. citizens. In April of 2005, the Department of State announced that U.S. citizens would be required to use a passport as a required travel document when entering the United States from Mexico or Canada at the end of 2007, just around the corner.

The city of Laredo is a community that will be great affected by this new regulation, as you have well stated. It supports efforts to secure our country's borders and safeguard against threats to our Nation. It is imperative, however, that any and all security initiatives serve the needs of commerce and the community affected, that the Western Hemisphere Travel Initiative not be a financial burden on the citizens or a detriment to our daily routine, that additional personnel for the Customs and Border Protection Department be hired for this new regulation so that we do not add to congestion on our bridges.

Border communities rely greatly on the economic impact that tourists bring to communities like Laredo. Any challenges for one citizen group brings about delays for all citizen groups. These delay affect the economy of our communities, the state and our country. I have seen the proposed land-crossing card that the State Department passed and will show us this afternoon. Mr. Frank Moss was very nice to receive me in Washington just two weeks ago.

I think this will be the best and most cost-effective method that meets the directive of this travel initiative. Again, we believe that this card should be a universal card, used for everyone and anyone that crosses a Southern or the Northern Border. A border identification card could serve many purposes. Having one uniform card used by all three NAFTA countries can be filled with all types of biometric information, a security card that would be uniform, affordable and accessible and that would be utilized to allow for expeditious processing at the port of entry and operate in a similar manner to the frequent traveling cards through the dedicated SENTRI lanes.

The financial institutions in this country—some are represented here today— with their advanced technology can even help us add a swipe for crossing fees that are deducted each time we cross the bridges, the toll roads, or get into the metro or subway, just like I can use my credit or debit card anywhere. The challenge for our communities is how we make your technology work at our ports.

It is necessary that the appropriate technology, infrastructure, training and marketing be in place at the various ports of entry prior to the implementation of any new security ID procedure. We ask that you stagger the implementation of new processes until such time that those improvements are in place so that commerce and travel will not be hindered.

Given that this Federal mandate is time-sensitive, it is critical that funding be made available to port owners to facilitate such improvements. In Laredo, we understand the importance of security and appreciate you listening to us today. I cannot stress enough just how much technology and personnel are crucial to a successful border port. I have spent the last eight years visiting Washington and many years before that advocating for the proper infrastructure for Federal agencies located here in Laredo.

The Customs agents do wonders with the few resources given to handle the regulations they adhere to today. If we are to give the border new regulations, then we need to make sure that these regulations come with the proper tools. Nothing is more important to our two cities of Laredo and Nuevo Laredo than the security of our families and our extended families. We understand your reasoning, but have concerns with the methodology.

Creating policy without including the individuals who those policies will affect is detrimental to the success of any new regulation, as you have well stated. I ask that you include the leadership and continue to include the leadership of each community and create a process that assures safety and economic security to each port of entry. I ask that the Congress, the Department of Homeland Security, and the Department of State spend the necessary time studying the impact of all new regulations affecting our border, the effect it will have on the Federal Governmental agencies and the citizens along the border of these United States, as well as the rest of the country.

The time it takes to obtain a passport is now extremely long. We know that there is a lack of personnel to handle today's traffic much less tomorrow's regulations. I ask that you do extensive research and continue to examine these results, as you are doing here today, closely with the communities affected; also that you extend your deadline so that together we can guarantee that this new regulation is the proper course needed to reach the goal that you have set for the Department.

Cities cannot be asked to handle cross-border traffic, yet not given the tools or the Federal resources. Laredo has long carried the burden of Federal regulations and has done it quietly and proudly, but we need your help now more than ever. Responding to the legislative decisions of two very powerful countries has put a great deal of weight on the shoulders of our citizens for many years. Now in the midst of more serious security concerns, we know we will continue to play an even more important role in securing

our borders. That means that when you help our border cities, you help all the people of the United States. Your leadership now more than ever will assure a future of economic growth and prosperity that surely leaves no one behind.

Thank you so much, Senator.

Chairman CORNYN. Thank you very much, Mayor, for those eloquent remarks and for your leadership on this issue and other issues. I look forward to continuing to work with you.

Mayor FLORES. Thank you, sir. And as you requested, we have submitted copies 48 hours before the testimony and have extra copies of this. Thank you so much. Welcome and have a wonderful afternoon. I know you will get an earful.

Chairman CORNYN. Thank you very much.

I want to extend my personal thanks to Dr. Keck for his hospitality, and it is great to be back here on your campus. I was privileged to give the commencement address last year, and it was a wonderful, uplifting experience, at least for me. I am not sure about the students, but it was for me.

I also want to recognize Senator Kennedy's staff and other staff of the Senate Judiciary Committee who are here. Welcome to Texas, and Senator Kennedy does a great job as the Ranking Member of the Subcommittee on Immigration, Border Security and Citizenship. He is a master legislator, and I learn a lot from him every day, but it is important that the staff be here and that members of the United States Senate understand exactly what life is like here along the border as described by Mayor Flores and others.

That is the most common question I hear from people on the border. I was in McAllen and Harlingen on Monday, and the most common refrain is, "Why don't people understand what life is like along the border?" I say, "Well, they have not been here to see it and experience it themselves and talk to people and sort of let that seep into their pores and their consciousness." So, I think it is important we have this hearing here today in Laredo, at this wonderful institution, and we have representation by the staff on the Senate Judiciary Committee and particularly on the Subcommittee.

We have statements by various members of the Subcommittee, including one here from Senator Charles E. Schumer, which will be made part of the record without objection.

I anticipate other senators will likewise have written statements. Senator Kennedy has a written statement which will be made part of the record without objection.

I have had a chance to read part of Senator Schumer's statement before I came here, and of course, as you might imagine, he is concerned about the impact of this initiative, not on the Southern Border but on the Canadian border, so this has a broad impact across the country in a way that we need to evaluate and we need to plan for.

We are pleased to have a distinguished panel here today with us from the Department of Homeland Security and the Department of State. I will introduce the panel, and we will ask them to give brief opening statements. Now, in order to get our job done here today, we are going to limit the opening statements, please, to 5 minutes, and then we will have time for some questions, and then we will move on to our second panel.

Elaine Dezenski is the Acting Assistant Secretary for Policy and Planning within the Directorate of Border and Transportation Security of the Department of Homeland Security, effective March 1, 2005. Ms. Dezenski is the principal advisor to the Border and Transportation Security Directorate Undersecretary for Policy Development in the substantive areas within that directorate, including immigration and customs inspections and investigations, cargo and trade policy, transportation security, counter-narcotics and Federal law enforcement training. So, I suggest that members of the audience who are interested in all those issues please give her an earful before she leaves Laredo. I am sure you have already taken advantage of that to some extent, but we are glad to have you here with us. Thank you for coming.

Joining Assistant Secretary Dezenski on our first panel is Frank Moss, who has already been alluded to. Mr. Moss is the Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs for the Department of State. Since 2003, he has been responsible for managing the Department's efforts to adjudicate and produce passports for more than ten million American citizens each year.

Why don't we begin with you, Ms. Dezenski, and then we will turn to Mr. Moss. And, let me remind you, I think the microphones are on, but if you will pull it close to you so we can all hear you, and again I would ask you to limit your statement to 5 minutes. We have a handy light down here to my right, your left, to give you some indication when time is up, and then that will provide enough opportunity to ask some questions by way of follow-up.

So we will turn to you now. Thank you.

**STATEMENT OF ELAINE DEZENSKI, ACTING ASSISTANT SECRETARY FOR POLICY, OFFICE OF POLICY, PLANNING AND INTERNATIONAL AFFAIRS, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.**

Ms. DEZENSKI. Thank you so much, Mr. Chairman. I am delighted to be here today in Laredo, together with the State Department, to talk to you about the progress that we have made on the Western Hemisphere Initiative. I would like to request first that my written testimony be submitted for the record.

Chairman CORNYN. It will be without objection.

[The prepared statement of Ms. Dezenski appears as a submission for the record.]

Ms. DEZENSKI. Thank you. I think it is appropriate that we are here in Laredo. This is the meeting point or the nexus, if you will, of a lot of transportation systems and critical infrastructure. Interstate 35, Mexican highways, railroads, they all converge here, and when you look at the full picture and all of the infrastructure combined, you start to get a sense for the economic and security issues that are faced here.

Chairman CORNYN. Ms. Dezenski, could I ask you to pause for a moment. I forgot to do something very important and that is to administer the oath to both you and Mr. Moss.

Ms. DEZENSKI. Oh, absolutely.

Chairman CORNYN. So if you will stand and raise your right hand.

[Witnesses sworn.]

Chairman CORNYN. Excuse the interruption. Please proceed.

Ms. DEZENSKI. No problem. That is important.

Each day, our DHS officers throughout the country inspect about 1.1 million people at our collective borders. In fiscal year '05, over 84,000 individuals were apprehended trying to cross the border with fraudulent documents and claims, and that is one of the issues that we are trying to address through this Western Hemisphere Initiative.

The 9/11 Commission report, as was mentioned earlier, highlighted travel documents and specifically the ability for people to travel without appropriate identification within the Western Hemisphere as a security vulnerability, and I think as many in the border communities know, there has been a longstanding documentation exemption for travel within the Western Hemisphere that would include Canada, Mexico, Bermuda, and the Caribbean.

Congress recognized the issue when it passed the Intell Reform bill in 2004, and through that mandate, DHS and State are required to develop and implement a plan to close this loophole. The Western Hemisphere Travel Initiative is designed to achieve this by requiring all travelers, including U.S. citizens, to carry documents that establish two things: identity and citizenship. And that would now be a requirement to enter or re-enter the U.S. In essence, we are elevating travel within the Western Hemisphere to the same travel document standards that we apply to travel to and from other parts of the world.

While the goal of the effort is to strengthen border security and facilitate entry of legitimate travelers, we do understand the potential implications for industry, business, the general public, as well as implications for our neighbors to the north and south. Under the Security and Prosperity Partnership of North America, or the SPP, we are working closely with officials in Canada and Mexico to develop standards for lower-cost, secure proof of status and nationality documents that would facilitate cross-border travel.

President Bush, Prime Minister Martin, and President Fox announced this initiative in March of 2005. They agreed on an ambitious security and prosperity agenda that will keep our borders closed to terrorists and open to trade. The SPP is based on the premise that security and economic prosperity are mutually reinforcing. Our commitment to work with both Canada and Mexico to develop secure documents will be consistent with the Intell Reform mandates and will also take into account the realities of our mutual borders.

In the proposed Western Hemisphere implementation plan, the new document requirements are to be rolled out in phases, providing as much advance notice as possible. Air and sea requirements are proposed for January of 2007, and land requirements would be implemented in January of 2008. This phased implementation acknowledges that we will have the greatest impact at the land borders and thus we do need more time.

We also realize that the U.S. passport is not necessarily the optimal solution, particularly at the land border and for communities along the Northern and Southern Border areas. The new statute specifically mandates that agencies implementing this program consider the concerns of border communities. I have spoken with

hundreds of constituents about their concerns, from the impact on the tourism industry to work-related travel, and I can tell you that we are working diligently to balance convenience and flexibility while closing a security loophole.

As described in our Advanced Notice of Proposed Rulemaking, a variety of travel document options are under consideration, in particular for the land borders. First of all, we are looking at a State Department-produced alternative called the passport card. I know Frank is going to discuss that in further detail, so I will just mention that we see it as a convenient and affordable alternative to the U.S. passport that would be the size of a driver's license and roughly had the price point of a passport. We think that is a good option for border residents or other frequent travelers across the land border, as they would be able to apply for this at more than 7,000 passport-acceptance facilities around the U.S.

Second, we are exploring other existing documents, such as the SENTRI, NEXUS and FAST program cards. These are programs that are already in place and operating for international frequent travelers.

In a study performed by BearingPoint for the State Department, it was found that over 48 percent of land-border crossings are performed by only 2 percent of travelers. In other words, out of 100 border crossings, two people make 48 out of those 100 crossings. This is exactly the target population we want to reach with "trusted traveler" type programs.

The program applicable to Laredo and the rest of the Southern Border is the Secure Electronic Network for Travelers Rapid Inspection or SENTRI program. To date, we have issued 75,000 SENTRI cards, and we expect to increase SENTRI enrollment by 130,000 over the next 2 years. In addition, we expect to expand to six additional locations at the Southern Border, including dedicated lanes on Bridge II in Laredo, which I was able to see today.

In conclusion, I would like to emphasize that this issue stems directly from the critical security concern. If implemented correctly, we will not only be able to close that loophole but potentially facilitate cross-border traffic as well. By creating greater assurance of documents presented by individuals, we can focus our resources on other critical security concerns such as border-related crime, drug cartels, coyotes, and other criminal activity that affects communities on both sides of the border.

The Western Hemisphere Initiative is an important step in protecting the protecting the homeland, and I know that we are committed and will use our resources to implement this initiative by the deadline set forth in law. We look forward to working with Congress and with the public to ensure that the needs of border communities, as well as our security objectives, are addressed by this plan. Thank you.

Chairman CORNYN. Thank you, Ms. Dezenski. I appreciate that very much, and we will have some questions to follow up in a moment, but next we will hear from Mr. Frank Moss from the Department of State.

**STATEMENT OF FRANK E. MOSS, DEPUTY ASSISTANT SECRETARY FOR PASSPORT SERVICES, BUREAU OF CONSULAR AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, D.C.**

Mr. MOSS. Thank you, Chairman Cornyn, and thank you for the opportunity to appear here today in Laredo to describe how the State Department, working in close partnership with our colleagues at the Department of Homeland Security plans to strengthen U.S. border security and facilitate international travel through the Western Hemisphere Travel Initiative. As Ms. Dezenski's comments have focused largely on the why we are doing this, I would like to focus more on how we plan to do this.

In the aftermath of the events of 9/11, the Department of State conducted a comprehensive review of the adjudication, security and issuance of U.S. travel documents, including passports. As the 9/11 Commission noted, travel documents today are as valuable to terrorists as weapons, and the U.S. passport is arguably the most valuable travel and identity document in the world. Recognizing this reality, the Department of State has implemented a number of steps to improve the security features of U.S. passports, to reinforce the underlying passport adjudication process, and to rationalize requirements for passport use.

The 9/11 Commission and the Congress, looking at this issue, then, of course, passed the legislation establishing the Western Hemisphere Travel Initiative which Elaine and I are here to discuss how we will implement today.

As you noted in your opening remarks, Senator, the program will be implemented in two phases. The first will be at the end of December 31, 2006, and will apply to air and sea travel to Canada, Mexico, the Caribbean and really throughout all of Western Hemisphere, and then a year later, December 31, 2007, it will be implemented for cross land-border travel.

The Department of State is very much aware the Western Hemisphere Travel Initiative will have its greatest impact at the land borders. We also recognize that the U.S. passport may not be the optimal solution for travel for communities along the Northern and Southern Borders for a number of reasons, including cost and size. We recognize further the economic implications this program has for industry, business, local governments, and the general public. Thus, in developing this program, we have been particularly careful to seek to expedite the travel of frequent travelers, especially those who reside in border communities.

Based on a study undertaken for the Department of State at the land borders by BearingPoint Corporation, we estimate that approximately 23 million U.S. citizens cross the land borders into Canada and Mexico each year and make a total of nearly 130 million trips. Of these land-border crossers, about one-half are frequent travelers, making the trip at least once a year, and as Elaine noted in her testimony, some 2 percent of that number, or roughly 450,000 people, do 48 percent of the travel.

There is no question that extending WHTI to land-border crossers is a challenge. Looking at these 23 million land-border crossers from a document perspective, only 40 percent report that they possess a U.S. passport or other suitable document. Over 8 million of them report that they would seek a passport in the first year, and

this is understandably of intense interest to the Department of State.

Here is how we plan to meet this challenge. We will first increase our capacity to adjudicate and produce passports and a new travel card. We already have more than 7,500 passport-application acceptance centers around the United States, including 321 in the state of Texas. In addition, we have a program underway to increase our adjudication capacity for passports from the current level of 10.1 million we experienced last fiscal year to 17 million applications in 2008. I want to take this opportunity thank on behalf of the Department of State the Congress for their support in funding that expanded capacity.

We also recognize, as I said earlier, that for a number of U.S. citizens to make regular land-border crossings and for families whose international travel consists solely of crossing the land border, a traditional book-style passport is unlikely to be the practical document of choice. Therefore, we are working with DHS to develop a travel card that could provide a convenient and affordable alternative for land-border crossers, and I have here for you, Mr. Chairman, a sample of such a document.

Based on our initial thinking, this card would establish both a person's identity and U.S. citizenship, would fit easily in a person's wallet or purse, and would cost significantly less than a book passport. U.S. citizens who are border residents or frequent travelers across the land borders would be able to apply for the travel document at the same 7,500-plus facilities around the U.S. that currently accept passport applications. I should add in that regard that we are also discussing with the U.S. Postal Service expanding that total program by about 2,000 additional sites, approximately of which 80 are here in the state of Texas.

We also expect that the travel card would be valid for the same 10-year period for adult and 5-year period for children as applies to U.S. passports. We recognize that there are a host of issues that must be addressed thoroughly to implement the WHTI smoothly and successfully, including public participation in the regulatory process. With this in mind, we have just completed an Advanced Notice of Proposed Rulemaking process that generated over 2,000 public comments.

A large number of these comments reflected concerns about the economic impact that the WHTI initiative could have in discouraging travel across the land borders. We believe that the solutions we are considering could make the crossing far more efficient, because all travelers will be identified by a limited number of highly secure identity and citizenship documents.

The public, I must add, will have additional opportunities to review and comment upon our plans as we move into the next phase of our rulemaking when we issue at least one and more likely two Notices of Proposed Rulemaking. We are eager to receive and integrate practical solutions, always keeping in mind the ultimate goal of making our borders more secure while also facilitating the movement of people.

Finally, I would be remiss in presenting this testimony if I did not mention a way for Congress to help the Department of State

meet the challenges embodied in implementing Section 7209 of the Intelligence Reform and Terrorism Prevention Act.

As a result of record passport demand already being generated by IRTPA and the additional biometric measures we are incorporating in response to the Enhanced Border Security and Visa Entry Reform Act, the administration has requested legislative authority for the State Department to collect and retain a surcharge to cover the costs generated by Section 7209. The surcharge would be used to support additional Department of State expenses that we will incur in order to meet the demand generated by WHTI.

Once again, thank you, Mr. Chairman, for holding this important field hearing and inviting me to participate. At this time, I am prepared to answer any questions that you may have, and again, I apologize for my informal attire, but sometimes baggage goes one place and the traveler goes another. Thank you very much.

[The prepared statement of Mr. Moss appears as a submission for the record.]

Chairman CORNYN. Well, we are ordinarily pretty informal in Texas and South Texas in particular, but no problem.

I wanted to start with you, Mr. Moss. Did I understand you correctly? There are approximately 43 million travelers making 130 million trips a year?

Mr. MOSS. I must have misspoken. Excuse me, Mr. Chairman.

Chairman CORNYN. Well, I may have misheard. That is why I am asking.

Mr. MOSS. It is 130 million land-border crossings by 23 million travelers, or when you do the math, approximately five to five-and-a-half crossings per traveler per year.

Chairman CORNYN. That is why I wanted to ask, because I was not sure if I understood that correctly. Twenty-three million travelers, making approximately 130 million trips. How many of those 23 million currently have passports?

Mr. MOSS. Based on the survey that was done for us at the land-border crossings by BearingPoint this summer, using a firm called Westat, they reported that 40 percent of the people who responded to their survey said that they already had either a passport or one of the other documents that Ms. Dezenski mentioned in her testimony.

Chairman CORNYN. Okay. Forty percent.

Mr. MOSS. Correct.

Chairman CORNYN. In any event, if that is accurate or not, it sounds like the State Department is going to have to really gear up to meet this requirement in roughly a year's time, if, in fact, that deadline holds. Is that correct?

Mr. MOSS. You are absolutely right, Mr. Chairman. And I should say in that regard we have already begun to deal with that demand. In fiscal year 2003, the Department of State issued about 7.1 million passports domestically.

In fiscal year 2004, that number increased to 8.8 million, last year to 10.1 million. This year already we have seen an increase in demand of between 25 and 30 percent so far for this fiscal year. We had planned to issue and process about 12 million passport applications this year. We actually think the number will be closer to 13 million, and then we have a plan that takes us to 15 million ca-

pacity by next year, and then a sustained capacity of 17 million a year, beginning in 2008. We believe that that will be adequate to meet the demand as we understand it right now.

Chairman CORNYN. And we understand that a passport costs roughly $100 currently for an adult. How much would the passport card alternative cost?

Mr. MOSS. Well, first, Mr. Chairman, that is a very good question. First I should explain what the passport—how we get to the $100 fee. There are actually three fees that are involved in a passport. The first is a $30 fee, normally paid to the U.S. Postal Service or a county clerk of court or a city official who serves as an acceptance agent. That money does not come back to the Federal coffers.

There is a $55 passport fee which goes to the Treasury, and then a $12 security surcharge fee that the Department of State retains to underwrite the cost of biometric improvements and other steps we have already taken to strengthen the U.S. passport.

The price point we are aiming at is to reduce the cost by at least 50 percent from that $97 figure. We are working not only with DHS on this objective; we are making decisions within the Department of State as to how we allocate costs so that we minimize the cost we actually shift to the bearer of the travel card.

And the last issue we have underway is a comprehensive effort with the U.S. Postal Service to reduce the execution fee or the acceptance agent fee so that they would have, ideally, a family maximum. All these steps together, we are hoping we will be able to reduce the fee by at least 50 percent. I am hesitant to give a price point right now, because we are still looking at technology issues, and quite honestly, I have not heard back from the Postal Service as to whether an idea that we have discussed with them is one that they can accept, but that is our goal.

Chairman CORNYN. Is that the cost of actually producing the card, or are there some revenue-raisers embedded in this cost?

Mr. MOSS. Mr. Chairman, that is actually the cost of producing the card. There are really two costs we have to think about in this case. One is the cost of the raw card and then putting a person's picture on it, and that runs probably about $4 per card, even with an RFID technology embedded in it.

The other and more significant cost is the cost of actually having a decision made that an individual is, in fact, a U.S. citizen and eligible for a passport, and that costs us in the range of roughly $20 of government personnel time, contractor time, and obviously expenses like rent. I should say in that regard we have a network of 17 facilities, including one here in Houston, Texas, which are able to adjudicate these things very quickly for travelers. We are looking at a variety of things to try and bring that cost down.

I should also add that there are some costs which we currently shift to the passport bearer. These are costs for what we call citizen services abroad. Our policy decision is we will continue to embed those costs in the passport and not shift any of that cost to the travel-card bearer, to reduce the costs further.

Chairman CORNYN. Well, it has become apparent, just in the description here, in discussing what alternative documents might be available, we have got a proliferation of different documents. I am not being critical necessarily, but I am wondering to myself how

many different types of cards we are going to be dealing with, and I think ultimately Congress is going to have to come to terms with whether a single document as opposed to multiple documents will serve essentially multiple purposes.

Do you have any observations about that, Ms. Dezenski?

Ms. DEZENSKI. Sure. If I could elaborate a little bit more on the concept of the passport card and the connection to the programs that we have within the Department of Homeland Security, we have the NEXUS program which is used at the Northern Border, the SENTRI program at the Southern Border, and the FAST program which is for commercial drivers. NEXUS and SENTRI are very similar. They are just administered at the two borders respectively.

What we are working on right now with the State Department is a broader architecture for these cards, so we expect, for example, that the passport card will be something we can issue in the short term. However, we know that there is technology available that would allow us to write registered traveler-type functions to that same card, so if a traveler wanted to, in fact, use a SENTRI lane or a NEXUS lane, they could at some point in the future write those types of privileges to the card. They would have to go through some additional security checks, but it would be a multifunctional type of platform. That is one piece of it.

The second piece is we are looking within the Department to harmonize the registered traveler programs that we have and use a global enrollment process so it becomes a little bit easier to facilitate those programs, and it becomes a more harmonized effort.

Chairman CORNYN. Well, I would just note that, of course, the US-VISIT program, I know there is a card being designed with the RFID technology to determine when people actually exit from the country, the laser visa holders, so we are talking about a new card there. Congress has mandated the real ID for state driver's licenses when it is used, of course, for Federal purposes. It just sounds apparent to me that Congress is going to have to come to grips there ought to be some economy and certainly some efficiency obtained by perhaps coming up with some sort of universal card, or as you point out, one that could be programmed without the holder having to visit some location or apply for another privilege under that card, but it could be used much like a toll tag, I guess, would be used.

Let me ask you, Ms. Dezenski. According to some reports, the US-VISIT fingerprinting process has actually sped up inspection times at the port of entry for some travelers. Presumably, this is because there is improved technology and a standardized process for travelers and inspectors. Has the Department conducted any analysis on how the new passport requirement will impact inspection times?

Ms. DEZENSKI. We have done some preliminary work, but we probably will not have a full handle on that until we have a final decision on what types of documents we will be accepting under the new requirements. I think it is fair to say that implementing any kind of additional check has the potential to add time onto processing, but our goal is to get that delta down as small as possible or as we have had success in the US–VISIT entry procedures and

actually reducing the facilitation times, that obviously would be the goal, and we get there through technology.

RF technology that Frank mentioned earlier, radio frequency, has some capabilities that can help us with pre-positioning data, but there are trade-offs. RF technology is in early stages, and we have important decisions to make about whether those investments are the ones we want to make now or whether those are things that we would incorporate in the future. So I think we have to work through those technological issues, get a better handle on the cost estimates, make the final decisions on the types of documents that we want, and then we will have a much better sense for the implications.

Mr. MOSS. Could I add—

Chairman CORNYN. Mr. Moss, please.

Mr. MOSS [continuing]. A thought to that as well? And that is, Mr. Chairman, you mentioned a multiplicity of documents. I think it is also important to realize that currently a border inspector could be presented with perhaps 8,000 different types of birth certificates being presented by American citizens. There are literally multiple types of driver's licenses being issued by all the States around the United States. So, in fact, even though when we run down a list of a travel card, a SENTRI card, a NEXUS card, et cetera, a new generation border crossing card, we are actually moving towards, if you will, minimization of the number of such documents. We believe especially in the case of the travel card, that the inspectors will have confidence in the underlying integrity of the process that led to the issuance of that, and that may actually have positive effects on our ability to make the border work more smoothly.

So we are trying to do a variety of things here. But we are also confronted with the reality right now where literally you can present one of 8,000 different types of birth certificates, and that is obviously an impossible function for the inspector to determine whether the one you present happens to be valid for that municipality or county at that date. Thank you.

Chairman CORNYN. Well, I think we all understand the rationale behind a secure card that has integrity because of the proliferation of document fraud and counterfeiters that are capable of producing the most realistic-looking fraudulent copies of anything from a passport to a driver's license to other things. So, it is certainly important to have some sort of secure identification, and that is a staggering figure, Mr. Moss. I had not heard that before.

One of the frustrations for non-U.S. citizens is that the inspections and standards vary from port to port. For example, I hear there are times when the same tourist faces different standards at different ports of entry. What steps is the Department of Homeland Security taking, Ms. Dezenski, to ensure consistent application of the law along the border with regard to ports of entry?

Ms. DEZENSKI. I think we do a pretty good job of training our folks to implement our regulations and our rules in an effective fashion, and we certainly strive to do it consistently. There are lots of factors that go into a process when someone approaches a point of entry, and our inspectors look for different types of behavior patterns, different types of indicators that give us a sense for whether

that person is a risk or not a risk or should be pulled aside for secondary or let by with no further issue, so it is hard for me to specifically say that it is going to be the same amount of processing time for a particular person.

It really depends on the situation at that POE, but I can tell you that we do strive to ensure that our border inspectors have the training that they need to ensure that there is a consistent application of rules and regulations.

Chairman CORNYN. Well, I would want to mention to you a conversation I had with former Secretary Tom Ridge in talking about the laser visa and the implementation of US–VISIT. We were successful in getting a rule changed that would increase the length of time a laser visa holder could come from Mexico into the United States from 72 hours to 30 days.

But, Secretary Ridge told me at the time that that was done that the goal was to treat all of our visitors, all of our guests, no matter what country they come from, precisely the same. And, certainly I am going to hold his successor, Secretary Cherthoff, and the Department to that standard. I do not see any reason why there should be inconsistency between ports of entry. I do not think there should be any inconsistent treatment with regard to visitors depending on which country they come from. We ought to strive for a goal of uniform, courteous treatment to all of our lawful visitors in this country.

Finally, let me just mention sort of just a personal observation. I have been struck, as I have traveled along our U.S.–Texas border with how much time and effort we put in to screening, credentialing, and burdening lawful traffic and commerce across the border. That is not meant to be a criticism, but I must say that it is a stark contrast with the complete unwillingness, at least until recently, of the Federal Government to live up to its obligations to enforce the border security and our immigration laws between the bridges and between the lawful ports of entry.

And, I look forward to working with other members of the Congress and the President, to try to come up with a comprehensive policy that does not just burden lawful commerce and legitimate visitors who certainly are not going to come here to do us harm. Typically they are going to come here and spend money. They are going to stimulate the economy. They are going to create jobs along the border region.

And, we simply need to narrow the gap between the uniform treatment and make sure that we do treat all aspects of border entry the same, while we need lawful means for people to enter. We need to know who they are, why they are here. We also need to deal with the vast gaps in our border security between the bridges, which I think are obviously the cause of a lot of concern to a lot of Americans, which are stimulating a lot of debate, important debate.

It is ironic that the Federal Government has so long neglected its responsibilities along the border. Now the border is getting a lot of attention, and I will tell you from the standpoint of my constituents, not all of it is welcome. But, we look forward to continuing to work with the Department of State and the Department of Homeland Security in the discharge of your responsibilities. We ap-

preciate your service to our country, and we appreciate your presence here today.

I hope you will stay a while, and you will get to know a little bit more about this region, because it is unique. We do have some wonderful opportunities and some challenges, but nothing we cannot get through by working together. So, thank you very much for being here today.

Ms. DEZENSKI. Thank you, Mr. Chairman.

Mr. MOSS. Thank you very much, Mr. Chairman.

Chairman CORNYN. Could we have our second panel of witnesses come forward, please, and take your seat.

[Pause.]

Chairman CORNYN. Gentlemen, could I ask you, please, to stand and raise your right hand.

[Witnesses sworn.]

Chairman CORNYN. Thank you very much.

We are pleased to have such a distinguished second panel with us today, and these are citizens from the border community who I think have an awful lot of personal insight and expertise to offer to the subject matter we are discussing today.

Our first witness is Pete Sepulveda, Chairman of the Border Trade Alliance. The Border Trade Alliance represents individuals and businesses that conduct cross-border NAFTA commerce.

Also joining us today is Dennis Nixon. Mr. Nixon is Chairman and CEO of the International Bank of Commerce. He represents the largest bank holding company in the state of Texas, whose corporate headquarters remains on the U.S.–Mexico border.

And, finally, Guillermo Trevino joins us today. Mr. Trevino is board Chairman of the Laredo Chamber of Commerce and former Chairman of the Laredo Board of Development Manufacturing Association.

I welcome you here today on behalf of the Judiciary Committee and particularly the Subcommittee on this important topic. We will be happy to hear any opening statement you would care to give. If you would hold it to 5 minutes or so, then we can get around to some Q&A, which I think may be productive as well. But, Mr. Sepulveda, we would be glad to hear from you first.

## STATEMENT OF PETE SEPULVEDA, JR., CHAIR, BORDER TRADE ALLIANCE, LAREDO, TEXAS

Mr. SEPULVEDA. Thank you, Chairman Cornyn. The BTA is a grassroots organization consisting of individuals, entities, and businesses which conduct legitimate cross-border business in the NAFTA marketplace. As such, we have a unique perspective on the challenges facing our land borders. We believe that as a nation, we can have a regulatory and enforcement environment that result in both increased border security and improved facilitation of legitimate trade and travel.

I would like to make a couple of points, and I will begin with the BTA believes that there are certain alternatives to the passport that we must continue to accept at United States' ports of entry. In their *Federal Register* notice, the Departments of State and Homeland Security indicated the NEXUS cards, SENTRI cards,

Border Crossing Cards, and FAST driver identification cards may be accepted i lieu of a passport.

The BTA is adamant in its belief that these identification cards recognized by the Departments of Homeland Security and State should be deemed acceptable alternatives to a passport for hemispheric travel. Our recommendation in this area is based on the fact that holders of these documents have been vetted through various security check databases and that the documents are tamper-resistant, machine-readable, and technologically advanced, including such features as biometrics.

SENTRI cards, which give holders access to special commuter lanes on the border, are not a practical alternative for all border residents, as these lanes in but three of over 40 ports of entry on the U.S.–Mexico border, although some more are on the way.

Second, we urge, the Departments to conduct a feasibility assessment of establishing a traveler document that may be obtained by U.S. and Canadian citizens that confirms one's identity and citizenship and can be placed in one's wallet, providing more durability than the booklet-style passport. Some have referred to this as a North American Travel Document. Although we cannot speak to the name, we certainly agree that this concept should be considered as an alternative for the long-term implementation of this initiative.

Third, it is imperative that this initiative be fully integrated with other efforts currently underway or proposed. The BTA believes that this new requirement has the potential to inflict a new burden on travelers, especially casual travelers across the U.S. and Canadian borders, and it could put tourist dollars at risk. Border region retail sales and tourism stand to suffer if visitors are not in possession of proper proof of citizenship.

A study conducted by the University of Texas at Pan American cites Winter Texans' impact at an annual contribution of over $420 million to the area's economy in the Rio Grande Valley of Texas.

The BTA is concerned that the burden of the cost of obtaining a passport could inflict on the working families of the U.S.–Mexico and U.S.–Canada borders. For example, a family of four living in South Texas who routinely crosses the border to visit family and friends in mexico may not have the means to secure the requisite number of passports for each member of their family. At $97 per passport for individuals over 16 years of age and $82 for individuals under 16, this rule has the potential create a huge financial burden for many citizens who live in some of our country's poorest communities.

Fourth, making the passport the only acceptable document raises additional concerns, in particular the ability of the Department of State to issue on a timely basis the potential several million new passports that may be required. This initiative could hinder a lawful traveler's ability to leave or enter the United States. Although we have seen assurances by the Department of State to issue many more passports on an annual basis, we still have very clear in our memories the experience of the issuance of millions of laser visas for Mexican travelers who suffered through long waits for their visas.

Fifth, we must focus on the intent of the law and not just on the deadline. The BTA recommends that on regular intervals between now and December 31, 2007, the responsible Departments assess their ability to meet this deadline, with the understanding that a final decision on the deadline be made 6 months prior, to ensure that the Departments are fully prepared to implement the rule without negatively impacting the traveling public.

The BTA has serious concerns about the effect this rule will have on casual, as well as frequent travelers, across our shared borders. The communities on both sides of the U.S.–Canada and U.S.–Mexico borders are inextricably linked, both culturally and economically. Thus we are reluctant to support any program that puts our unique cross-border relationships at risk and therefore urge the Department of Homeland Security and Department of State to commit to undertaking an extensive outreach campaign aimed at the traveling public.

Mr. Chairman, the BTA is committed to working with you and your Subcommittee to ensure that by simply focusing on a deadline, we are not foregoing improvements to the security of the homeland, to the welfare of the border region, and to the relationship with our two most important partners, Mexico and Canada.

The BTA remains committed to supporting initiatives that will make our homeland more secure while making the traveling experience for our visitors and for U.S. citizens a better one. Once again, Mr. Chairman, I thank you for the opportunity to submit our comments for the record, and I look forward to working with you on this issue in the coming months.

Chairman CORNYN. Thank you, Mr. Sepulveda. And any other comments you would like to make part of the record will be made part of the record without objection.

Mr. SEPULVEDA. Thank you.

[The prepared statement of Mr. Sepulveda appears as a submission for the record.]

Chairman CORNYN. Mr. Trevino, we would be glad to hear from you next.

**STATEMENT OF GUILLERMO TREVINO, CHAIRMAN, BOARD OF DIRECTORS OF THE LAREDO CHAMBER OF COMMERCE, LAREDO, TEXAS**

Mr. TREVINO. Senator Cornyn, my name is Guillermo Trevino, and I am Chairman of the board of directors of Laredo Chamber of Commerce and a member of a privately-held business with operations on both sides of the U.S.–Mexico border. Like most of the 850 active business members of the Laredo Chamber of Commerce, my businesses depend on the legal flow of commerce and visitors between Northern Mexico and the U.S.

We have a keen interest in border policy, because border policy directly impacts people's lives and businesses. The Western Hemisphere Travel Initiative is not an abstract discussion for us, because the stakes are high and the effect could be huge on an area of the country that already faces stiff economic challenges. Before any policy is adopted, it should meet a variety of tests.

The first should be, Do no harm. In medicine, this is important, because you want to make sure the cure is not worse than the dis-

ease. With this policy is there a better than average probability that the rules will make the overall situation worse instead of better? Chances are good that the WHTI will add crossing time to the entry and exit process. People do not dispute this. The discussion generally centers on how much of an increase.

Any added time will add congestion to an already time-consuming cross process. Anecdotally, we are already hearing from visitors that though they are not eliminating trips to the border, they are reducing the frequency because of the wait time. A reduction in trips means a blow to the local, state and national economies of the U.S. and Mexico.

Second test: Will it achieve the policy objective of making the United States safer? All our representatives in Washington are in a tough position, because voters are demanding that they do something to make them feel more secure, and building walls and increasing requirements for legal commerce and travel sounds good and can be implemented, because law-abiding citizens will comply. But will it deter international criminals and terrorists any more than our current systems?

Relying simply on this increased documentation requirement alone I do not believe will improve the situation. Added congestion means more opportunity for errors and people slipping by already overworked people at check points. Increased staffing and manpower will be necessary to ensure and act on information generated by the system, and we are back to the fundamental flaw and current problem at our borders: that we do not have adequate staffing and manpower at our ports of entry. Why implement a new process at increased expense to people who may have difficulty affording it when we cannot currently staff and administer existing processes and procedures?

Third test: Is it possible and at what cost? We have a seen a variety of systems and plans being tested, from current bar code technology to biometrically triggered radio frequency identification devices. There is no question that some system can be deployed to speed things, but the current plans we have seen so far are cost-prohibitive and years away from real-world use. The danger we see is that we have a promising technology like some form of RFID that we are told that even Wal-Mart will implement soon.

Homeland Security says that it will be ready by the date necessary to implement WHTI. The technology has limited success or is too expensive at the time of implementation, but Homeland Security implements the overall plan without the key promising technology that we are told will fix everything, and we have huge delays at ports of entry.

I spoke with someone from Wal-Mart after a recent presentation on US–VISIT's passive RFID tests, and Wal-Mart has delayed their hard RFID deadlines, because they are having serious data integrity issues. The pushback will be, But it only took us X number of years to implement after we started the program. But over the course of those X years, commerce is interrupted, businesses close or suffer, and trade patterns are changed.

We think about things like wait times in micro. It will only add 5 seconds; the passport will only cost $97. But just as when you multiply wait times, when you multiply the number of people who

do not have a passport, who might cross into Mexico times $97, you are talking about a significant amount of money that will not be spent in local communities and will come out of already strapped budgets.

WHTI or any documentation program cannot do the job alone but must be part of a comprehensive plan that also takes into account immigration reform, because as important an issue as WHTI is by itself, it is part of the overall problem of legal immigration. The best estimates I have seen for growth in Mexican GDP next year are around 3.5 percent. According to an economist I spoke with the other day, the Mexican economy would need to grow 7 percent to create enough jobs to employ everyone entering the workforce in any given year.

The difference between jobs created and population growth will be the approximate size of the number of new workers entering the U.S. from Mexico, either legally or illegally, next year. Please check these figures with your own staff, but the point is extremely important. If the Mexican economy grows at the best possible rate next year, there will still be a huge number of people looking for work, no matter how many agents we add or fences we build.

Curiously, the problems we face on the Southern Border are also what will make the United States stronger and more competitive in the future, because these are young workers, and as our population ages, we will need more and more young workers. By allowing and essentially encouraging huge amounts of illegal immigration by not finding a way to work them into some kind of legal framework, we weaken Mexico's ability to function as a normal state. How can a city or region function normally when large percentages of their most productive human capital have left? We also provide financial support to people involved in criminal activity, and we drive a large part of the U.S. and Mexican economy into the shadows, and that is not good for any society or government.

So in closing, I would again like to thank the Committee for listening to these comments and ask that you remember to apply the tests I mentioned, but the most important one is, first, do no harm. Thank you.

[The prepared statement of Mr. Trevino appears as a submission for the record.]

Chairman CORNYN. Thank you, Mr. Trevino. You have put this in an important overall context. Thank you for your testimony.

Mr. Nixon, we would be glad to hear your opening statement.

**STATEMENT OF DENNIS E. NIXON, CEO AND CHAIRMAN, INTERNATIONAL BANK OF COMMERCE, LAREDO, TEXAS**

Mr. NIXON. Thank you, Senator. I will move quickly, because on the border, we do not ever want to get the red light.

[Laughter.]

Mr. NIXON. Mr. Chairman, my name is Dennis Nixon, and I am CEO and Chairman of International Bank of Commerce. It is the largest—

Chairman CORNYN. Could I get you to pull your microphone a little closer to you, so everybody else can hear?

[Pause.]

Chairman CORNYN. Thank you very much.

Mr. NIXON. As the largest bank holding company in the State of Texas whose headquarters remains on the U.S.-Mexican border, I can tell you that the Western Hemisphere Travel Initiative will have tremendous impact on our customers, the communities we serve, and the Texas and American economy.

This issue has drawn attention from coast to cast, and the majority of the focus has been on either the type of document we should use or how much it will cost the average American family. But the real issue is getting lost in the debate. For Americans, crossing the Rio Grande should be no different than crossing the Potomac. Just like crossing the Potomac, crossing the Southern Border as a U.S. citizen has normally not required producing identification document.

What if it took you 4 hours just to reach the Key Bridge in Arlington, Virginia, on your daily commute to the Capitol? And then upon arriving at the bridge, you had to stop, show your identification, and answer a bunch of questions—Where are you going? Where have you been—all consuming additional time.

This debate has wrongly focused on what we are going to do at the bridge, when the problem is we cannot even get to the bridge, so it makes no difference what document you order. You are just going to add to the logjam to the border.

The biggest issue with the proposed rules and the programs is as a country, we have become so wrapped up in specific procedures that we have lost sight of the big picture and those procedures adding value. We increase procedures without corresponding staffing that needs to go with it. We frustrate the very people who seek nothing more than to spend money in our country, visit families or conduct business. We are truly destroying the dream of NAFTA.

Eighty-four percent of all the border crossings occur at land ports. Space is at a premium at these bridge crossings and begs these questions: How will American citizens be processed if they fail to produce the correct documentation? Where will they be processed? Where will they be detained during that processing? And how will this affect growing wait times already caused by US–VISIT? Will we require extensive exit procedures to ascertain that U.S. citizens have the necessary identification to depart and reenter the country?

The Department of Homeland Security will brag that US–VISIT program does not apply to Americans, and for others, it only takes 15 seconds to pass through the inspection process. Tell that to the last person in the queue, the American, the Guatemalan, the Canadian or the Australian. The fact is no matter who you are or what country or hemisphere you come from, you are commingled in the queue until you get to the bridge. You have a long wait.

Texans cross the Rio Grande, as those in Virginia and Maryland cross the Potomac, to eat, to shop, to see a concert, conduct business or visit family. Our economies are intertwined as a result of this, and therefore, any proposed rules that affect how people are entering the country, specifically the Southern Border, are of great interest to us. Today bridge crossings are down in Laredo, and people are crossing less because of hassles of getting back into the United States. Even with this slow-down, wait times are up.

As recently reported in *USA Today* and confirmed by GAO, delays at airport customs get worse; long lines and understaffing at Customs checkpoints continue to worsen. So if there is not enough staff to accommodate 16 percent of the border crossings, then how in the world does the Government expect to handle 84 percent of the crossings that enter the country through the land ports like Laredo? Even with this report on record, DHS continues to rave about the success of the US–VISIT. These accolades are clearly without merit.

Back in September, we logged numerous complaints from our customers in Laredo and San Antonio and other markets as a result of the extensive wait and delays during Diez y Seis, Mexican Independence Day, weekend. This is an important holiday wherein thousands of Mexicans travel to the U.S. to vacation and spend huge sums of money buying goods and services in the United States. While many of our customers withstood long lines of up to 4 hours in their attempt to enter the United States, others attempted to cross at another bridge in Laredo only to discover that it closes at midnight.

This seems to be a never-ending problem that occurs during peak periods and holidays. If we know when holidays are and can anticipate other peaks, then why cannot CBP adequately prepare for the high number of visitors expected during these dates? The ripple effect of this lack of preparation translates into fewer tourists and business customers coming into Laredo in order to avoid the long lines and delays.

If frequent travelers pose no risk, then they should be allowed to cross our borders expeditiously. That way, we do not interrupt the flow of people and commerce unnecessarily, but frequent travel programs have not worked because once a drug seizure is made, these frequent traveler lanes become parking lots just like the other lanes because inspections are then intensified.

For years, IBC strongly supported additional funding for Customs. However, today what we have witnessed is that as we begin losing CBP officers through retirement, transfer and attrition, new DHS resources are being applied to the Border Patrol on other enforcement duties. This means that more emphasis is being placed on illegal immigration or drug enforcement, while people and cargo that are attempting to enter our country legal channels suffer as a result of understaffing. We seem to be devoted to damaging our relationship with legal visitors.

This is a major reason why we oppose the requirement to force U.S. citizens to use passports to re-enter the United States. We oppose the requirement of any document as a general use instrument, because we have neither the infrastructure nor the staffing to handle the capacity at the land ports. The inspection of any document held by a U.S. citizen will delay entry and create more problems, because inspection equals time, which equals delay.

No uniform document should be required without the mandatory requirement to add staffing that is necessary. Again, we oppose any such document requirement until DHS can prove to Congress that DHS has the adequate staffing to oversee such a process. They have not proven that at the airports.

As a country, we have become so wrapped up in the specific procedures, we have lost sight of the big picture. The national dialogue on illegal immigration has reached a fever pitch, and unfortunately, issues such as wait times at the bridges are getting lost in the shuffle.

We have also heard a lot of people talking about constructing a wall on the Southern Border in the name of security. My question is: Is that really security? Then why are not we talking about building a wall on the Northern Border? After all, the 9/11 terrorists did not come through the Southern Border. They entered our country by legally crossing the U.S.–Canadian border.

We need a systematic approach that includes reform of our immigration laws and measures that truly help security and do not merely provide Americans a false sense of security we have added more process. These feel-good procedures are destroying our ability to cross our borders.

After all, with the increased procedures and without the corresponding staffing that needs to go with it, we frustrate the very people who seek nothing more than to spend money in our country, visit family, and conduct business, and if procedural, bureaucratic red tape continues to hamper the flow of goods, services, and visitors, then it is the American economy that will suffer the most, and that means the terrorists will have won in the name of security because we have lost sight of the big picture.

We must stop imposing processes on the system in the name of anti-terrorism, because feel-good procedures are clogging the borders, killing the economy, and causing the loss of jobs. Thank you.

[The prepared statement of Mr. Nixon appears as a submission for the record.]

Chairman CORNYN. Thank you, Mr. Nixon. Well, you raise a lot of important questions about our commitment in terms of staffing and making sure that whatever requirements are ultimately posed are administered in a way that is, in the end, counter-productive of legal commerce.

I noticed that the travel document requirements currently, under the current deadline, assuming they hold, are scheduled to go into effect at the end of the calendar year, in the middle of the busy commercial travel period when tourism is perhaps at a peak. Based on your experience—and I think I know what you might say about it, based on what you said about Diez y Seis—how concerned should we be about imposing any new travel requirement during that time of year, as opposed to some other alternative strategy?

Mr. NIXON. Well, as we have talked about since we are so understaffed and the lines and the traffic congestion is so bad already, you know, adding the checking of another document which currently people who are U.S. citizens do not get their documents checked—I have crossed the border—I mean, I do not know—maybe thousands of times, and I have never been asked to produce a document that identifies myself, and so we just know through experience that a document inspection is going to cause delays.

So, I mean, obviously the Christmas season is the busiest time of the year. That and Easter and some of these Mexican holidays would be absolutely the worst time, but any process that is going to add inspection of millions of more people who heretofore have

been asked simply, Are you a citizen, and in many cases pass on through is going to disrupt a lot of people. I mean, if you have got three people in a car and suddenly you are fumbling around and trying to gather documents and having somebody swipe that document or review that document or in some way look at it or being the questioning process is going to add significant time to that process. We just do not have the staff in place to do that.

Chairman CORNYN. I have heard it commented upon that one of the problems we have with trying to staff up Federal agents at the border is just our inability to train sufficient numbers fast enough in order to get up to speed. Currently Border Patrol agents, we are told in Congress that they have no more than a capacity to train about 1,500 a year, and under some proposals, including the one Senator Kyl and I have proposed, we will call for basically doubling the number of Federal agents on the border over the next 5 years, but obviously there is a huge challenge associated with that.

But, it seems to me one of the other challenges—and it may not be as clear—is sort of the turnover in agents and perhaps the lack of sensitivity or awareness of some of these agents who may come from different places to the people and the customary flow and, frankly, who the frequent travelers are, because a lot of what a Border Patrol agents call upon is their judgment and intuition to determine whether a more lengthier, in-depth investigation ought to take place.

What is your observation, Mr. Nixon, about the Federal agents that are at the border in terms of how well they are trained to do their job? How much variation is there in terms of how they treat people or travelers, and is that a real concern?

Mr. NIXON. Well, I think it has always been a concern. I mean, we have been working with these issues for a long time, and I would have to say that by and large, most of the people that man those positions are good people. They are trying to do their job well, and there is no debate about that, but it is always a wild card situation, and there has been issues always over long periods of time where we have had abuse and, you know, management processes that change. One manager has a different attitude about how to do the same job as another—as a different manager, and so things change, and there is a variety.

As it was reported early and testified early, there is no cookie-cutter approach to inspection and there cannot be, because if you take away the judgment of the inspector, then you have lost the ability to make those quality assessments that are necessary to do the job. And so it is very difficult to create a mandate to process people in 30 seconds or 15 seconds. And so that is what happens a great deal, and we have a lot of debate over whether people should be checked so much in primary and so much in secondary.

And we have had that debate since I have been involved in it for 25 years, and we see Customs and Immigration inspectors that have held people up in the primary lanes for multiple questioning and opening trunks and doing all kinds of inspection process, which we are clearly told by their management people they should not do that; they should refer those people to secondary.

So all of those kinds of stumbling processes create delay, and when you have got traffic backed up for miles, adding a minute or

2 minutes or 3 minutes to an inspection, when you multiply that times 1,000 cars, it just—the numbers are just catastrophic in terms of the wait time. And so we have to do more to get the numbers up.

We have a border that has exploded. NAFTA has been a tremendous success. The numbers are growing rapidly. It is—we are expanding at seven, but we are staffing at three, and we have been doing that for years, and then we are diverting commercial and visitation-type inspection people off into enforcement, and we have not really added people in the primary areas that we need. We have many of our bridges are not being fully used, and all inspection lanes many times are not being fully used. We have erratic behavior, depending on whether we are in overtime periods or not in overtime periods.

We have got work rules that are difficult. You know, there is a whole laundry list of problems that we have in the administration of the border that need to be solved and worked on, not only that, including just the pure size of these facilities. What happens to all these people who do not hear the message and go across the border during this period, and then we do not let them back in because they do not have a document. We are going to keep American citizens out.

And if you have been down to the border, where would you put 500 or 800 American citizens, trying to process back into the United States without a proper document, one of those 8,000 birth certificates that they would not have on them? I have not found my birth certificate for years, so I do not know where I would find it. So it is very difficult for me to believe that any of that is going to be handled properly, especially in a short-term period when we know that it takes anywhere from 18 months to 2 years to recruit, train, and deploy an agent, so where are we going to get that done in a 2-year time frame to implement this?

Chairman CORNYN. Mr. Trevino, you touched on a critical issue in your testimony, and that is how comprehensive reform will impact border trade and security. You note in your testimony that when the flow of people is underground and outside of the law, we provide financial support to people involved in criminal activity. I could not agree with you more.

By improving legal channels for workers to enter the United States when no U.S. worker is available, we can improve border security, I believe, and free up resources that could be dedicated to improving law enforcement. Stated another way, illegal immigration actually hurts legal immigration by diverting resources and slowing down inspections for legitimate travelers.

What are your thoughts on how improved legal channels will benefit legitimate trade and commerce?

Mr. TREVINO. Well, first off, I was very encouraged to read your letter to the editor in the *Laredo Morning Times* the other day. I think it was on Thursday. It was exactly spot on. I mean, we need to go ahead and figure out ways to separate legal people or people crossing for legitimate reasons from people who are not. To that point, I think the majority of people crossing into the United States, either legally or illegally, want to cross for legitimate business reasons.

And by not finding a way to accommodate that, we are pushing people who would normally be actively involved in the regular economy, guys just looking for jobs, we push them to areas and meeting with people who are involved in criminal activity. So by the nature of our own policies, we are driving people into the shadows and into connections and into working with people who are involved in crime, so it is necessary to figure out a way to separate out legitimate commerce, legitimate people crossing for legitimate reasons, and people who are not.

Once we do that and we figure out a way, which is not an easy task—I do not envy your position in trying to figure out this mess of immigration. But legal immigration as opposed to illegal immigration, I think, is the key to everything here, because once you separate that out, you are right. You free up resources for the Border Patrol and everything else.

The person crossing Dennis's ranch at two o'clock in the morning, the probability is raised that that person is a bad guy, instead of a person looking for a job in the United States. How you deal with that person changes radically, so what we try and do is we try and raise the probability of the people who are crossing for illegal reasons, and enforcement and how we deal with enforcement should change.

I mean, you talked about building a wall. Dennis talked about building a wall. If you have 400,000, 500,000, 600,000 people unable to get a job in Mexico and you build a wall and you stop it—let's say it is successful. Let's say for some reason we spend tens of billions of dollars. It is successful. Now you have 6-, 700,000 people in Mexico without a job, and what will that do to the stability of Mexico?

You know, we talk about the problems we are having in Iraq. They pale in comparison from a national security perspective with an unstable Mexico, and I am not suggesting that Mexico will be come unstable, but that point is real. If people are talking about completely shutting off the Southern Border, what are the ramifications? It is a complicated issue, and there is no simple solution to it, regardless of the sound bites on television or in the paper. And I was very encouraged by your letter to the editor, because it acknowledged these facts.

Chairman CORNYN. Thank you very much.

Mr. Sepulveda, the Border Trade Alliance consists of both individuals and businesses, many of whom support increased border security. Your organization, therefore, I think, has an important perspective on this issue. Can you tell the Committee whether any security improvements implemented in the past have actually made inspection processes faster or more reliable for your members?

Mr. SEPULVEDA. I think with any new implementation, any changes in law, if it comes with the resources that are necessary for technology, for staffing, then the chances of that succeeding are good. I think what we have seen in the past is changes that are made, and the proper or necessary resources have not been there to get the staffing or the technology in place.

One example is the laser visas. I remember when the laser visa issue came up, and that was implemented, and I am speaking for the port of entry in Brownsville, because that is where I work for

Cameron County. Even though individuals might have had the laser visa, DHS did not have or Department of State did not have the equipment or technology at the port of entry to be able to read that visa. So unless changes and implementations are done with the necessary funding to go with them, it is not going to work.

Those days of the laser visas, a lot of people stood in lines for hours and hours. A lot of people waited for months and months to get an appointment just to get a laser visa, and then when they try to cross into the U.S., you know, they found out that, you know, the laser visa would not be used, because they could not read it. So I think one of the things that needs to happen also for any type of change to have any success is for the Federal Government to work hand in hand with the local community.

The local community, we are there 365 days a year. We know what goes on every single day of the year, and if there is any chance for success, then the local community has to get involved so that it can make it work and so that it can assure the local community that the economy will not be implemented in a negative manner.

Chairman CORNYN. I have been intrigued by the testimony we heard earlier with regard to the small percentage of travelers across the border who account for the huge number of trips. Two percent of the border travelers account for almost 48 percent of border crossings. I confess that I am mystified why we have not been able to come up with a good solution at the airports on this issue.

I am one of those who travels probably more than the average individual by airplane, but seems to me that we have not moved quickly enough to let people perhaps sacrifice some of their personal privacy to have a background check and get a card or get certified, so that you can move across the border in an expedited manner.

I would be interested in, Mr. Sepulveda, your observations or your opinion on how we implement a registered traveler program for those frequent travelers without adversely affecting the occasional traveler, such as the Winter Texan that comes down from cold places to warm places like this and spends a lot of money and helps the economy.

Mr. SEPULVEDA. Well, I am probably going to say that the majority of the Winter Texans that, you know, visit or frequent South Texas do not have a passport, and basically what happens right now is, you know, as they go into Mexico and when they come back, a lot of times, the officer at the primary inspection booth will not ask for an identification, and in the event that they do, a driver's license is what is used right now as that identification or a birth certificate.

Now, in South Texas we also have the same situation with spring-breakers. During the month of February and March, we get spring-breakers who go to South Padre Island, and I can tell you during Texas week, daily we get about 25,000 students that cross from Brownsville into Matamoros, and obviously those 25,000 come back into the United States. So I think it needs to be—those type of issues and situations need to be treated differently.

Obviously Winter Texans, spring-breakers, and other visitors from throughout the U.S. are not going to have a passport, are not

going to have a border-crossing card, are not going to have a SENTRI card or a FAST card, so I think we need to find a national card that is going to have the information that is required to prove citizenship.

Now, the BTA has not taken a position on the use of a driver's license or a birth certificate for proof of citizenship. We are open to the discussion, but we also understand that there are some issues in that, because, you know, we have got 50 states. That means that there is 50 different type of documents and driver's licenses that would be used to prove citizenship.

So I think as far as the BTA is concerned, a lot of our sponsors are from the border area. We want to be able to have a seat at the table when these discussions are being taken place. When discussions of implementations are taking place, we want to be there so that we can provide our input and ensure that our economy along the border is not going to be negatively impacted by this change in law.

Mr. NIXON. Senator, could I comment on that issue?

Chairman CORNYN. Yes, Mr. Nixon, please.

Mr. NIXON. One of the disappointments in the FAST lane process in the Southern Border has been that most of the bridges, you cannot access them. Once the traffic builds up for any kind of activity level, then you get into—

Chairman CORNYN. You cannot access the FAST lane?

Mr. NIXON. You cannot access the bridge, and so you really do not gain anything by having this process, then we have found over time that—I know that there has been several areas where FAST processing has been tried, but as soon as somebody in the underworld determines that that is an easy way to get across, that they get into that process, and they may have a drug interdiction, and then they revert to intensified inspections again to avoid using it as a drug lane.

So this whole infrastructure problem that I talked about earlier is a real problem unless we have the ability to really segregate people. You know, at the airport, it is reasonably simple, because when you get off an airplane, you know, and you have all the different queues and you can go to different areas. The problem that we have at the border, land borders, especially coming out of Mexico, is that you normally enter those areas in very restricted areas, and the traffic builds up, and to try to break into one of those lanes, you give up your life.

And so to get to a point where you can even enter a FAST lane, you may have to wait an hour, so you really diminish the capability of doing that, plus then you get into the process of if you have a drug interdiction, that may stop or slow down that lane for a long period of time, because there is intensified inspections that go on, trying to prevent that from occurring. So it all just continues to domino into delay, delay, delay, so there needs to be a massive review of the infrastructure and the personnel on the borders before we go put more process into an already dysfunctional system.

Chairman CORNYN. Well, gentlemen, thank you for your testimony today. It has been enormously helpful to me personally and I know to the other members of the Subcommittee and the Judiciary Committee. We certainly have our work cut out for us.

We are going to be undertaking the whole issue of border security and comprehensive immigration reform in the January and February time frame in the United States Senate. These issues that we are talking about here today, as complex and as difficult as they are, probably pale in complexity to those issues, but they are all important. And, of course, we want to make sure that Americans are safe. We want to make sure, though, that we do not kill the goose that laid the golden egg, and the economy which has created opportunity and prosperity for this region and for the entire border region is, we know, so dependent on that lawful commerce and traffic across the border.

So, you have my assurance that I will continue to work closely with you and the leadership here in this community and across the border, to try to make sure that we strike the right balance. I am sure that we will not get it right every time, but we sure will try our very best to work with you to make sure your voices are heard. I am confident that in the process, we can effect public policy and the procedures in a way that will ameliorate some of the potential harm that I know you are concerned about, and I certainly am concerned about. But, we certainly have our work cut out for us.

Thank you very much for your testimony. We will leave the record open until 5 p.m., next Friday, December 9, for members of the Subcommittee to submit additional documents for the record and to ask any questions in writing of any of the panelists. I might warn you that there may be some senators who were not able to be here today who will have some questions in writing for you, so if you will keep an eye out for those and respond on a prompt basis, it would help us as part of our work going forward.

With that, this hearing is adjourned.

[Whereupon, at 3:13 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

# SUBMISSIONS FOR THE RECORD

U.S. Senate Judiciary Subcommittee on Immigration, Border Security and Citizenship
**U.S. Senator John Cornyn (R-TX), Chairman**

**"Proposed Western Hemisphere Passport Rules: Impact on Trade and Tourism"**

**Friday December 2, 2005, 1:30 p.m., Texas A & M International University**

* * *

Good afternoon, and welcome. The purpose of today's hearing is to review the government's *Western Hemisphere Travel Document Initiative* and how it will affect trade and tourism.

Currently, U.S. citizens and some citizens of other countries in the Western Hemisphere are *not* required to present a passport to enter the U. S. when traveling from certain Western Hemisphere countries.

The 9/11 Commission, recognizing the obvious vulnerability of that policy, recommended in its Final Report that Americans should not be exempt from carrying biometric passports when they enter the United States; nor should Canadians or Mexicans."

In response, Congress passed the *Intelligence Reform and Terrorism Prevention Act of 2004*. That law mandates that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require U.S. citizens and foreign nationals to present a passport, or other secure document, when entering the United States. The law requires that a plan be in place by January 1, 2008.

The Departments of State and Homeland Security recently published an Advance Notice of Proposed Rulemaking, the first formal statement by the administration on how it plans to implement the new passport requirements. That notice indicates that the agencies will implement the Western Hemisphere Initiative in two stages.

First, the agencies will apply the passport requirement to all air and sea travel by December 31, 2006. A year later, the requirements will go into place for land border-crossers.

Phasing in these new requirements makes sense. The land border crossing environment is very different from an air or sea port of entry. And while we all agree that we have a responsibility to protect our borders and to know who crosses through our ports, the process needs to be done in a manner that is least disruptive to legitimate travelers, businesses, and tourism.

There is no question that this initiative *will* have an impact. For individuals, a passport costs almost 100 dollars, plus an additional 60 dollars if the person wants expedited processing. For a family of four, the cost to cross the border could be close to 400 dollars.

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One need only look at the economy in Laredo to understand how a small change in the travel document requirement could have a significant impact on the economy in this region. Around $80 billion in goods, 1.6 million loaded trucks, and nearly 7 million other vehicles carrying millions of people flowed across the Laredo border in 2003. A study by the director of the Texas Center for Border Economic and Enterprise Development at Texas A&M International University found that a 1 percent decrease in border crossings would cost Laredo $19 million in annual sales - and increase unemployment by 7.2 percent.

Understandably, the business communities along the border are concerned. In a 2004 study, the Perryman Group, which conducted an analysis at the request of the McAllen Chamber of Commerce, found that the proposed passport initiative will cost 19,000 jobs in the border region and 215,044 jobs in Texas. That same group said the initiative could cause the loss of approximately $10 billion in personal income and the loss of approximately $16 billion in gross product in the state.

Many of the same economic concerns were present when US-VISIT was implemented in 2004. US-VISIT has since processed over 44 million travelers and has led to the identification of over 900 criminals and the denial of approximately 12,000 visas. While US-VISIT has not led to delays at the ports of entry, the greatest challenges for that program are yet to come.

Nevertheless, US-VISIT *does* demonstrate that measured, careful implementation – which includes consultation with and guidance from local business communities - can improve security while minimizing the disruption to cross-border travel.

The questions we wish to address today are what documents these agencies will accept *in lieu* of a passport and whether the agencies can meet their proposed deadline without delaying cross-border traffic. In November, the Department of State announced that it is considering SENTRI, NEXUS, and FAST program cards as acceptable alternatives. These documents are currently used by registered, frequent travelers. The Department also announced that it anticipates that the Border Crossing Card, or "laser visa," will also be an acceptable substitute.

I also understand that the Departments of State and Homeland Security are evaluating other options – including creation of a new travel document that would be issued to U.S. Citizens but that would also cost much less than a passport. I look forward to hearing from our government witnesses today about the progress they have made regarding alternatives to the passport.

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TESTIMONY OF ELAINE DEZENSKI

ACTING ASSISTANT SECRETARY FOR POLICY

OFFICE OF POLICY, PLANNING AND INTERNATIONAL AFFAIRS

DEPARTMENT OF HOMELAND SECURITY

BEFORE

THE SENATE JUDICIARY COMMITTEE,

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

"THE WESTERN HEMISPHERE TRAVEL INITIATIVE"

December 2, 2005

Laredo, Texas

Chairman Cornyn and other distinguished Members, I am pleased to join you in Laredo today to discuss how the Department of Homeland Security (DHS) is moving swiftly to mitigate vulnerabilities at our borders, in particular, our efforts to strengthen documentation requirements in the Western Hemisphere. The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) includes important mandates that are designed to close long-standing vulnerabilities at our ports of entry and to help ensure that our border installations are not compromised by those who seek to do us harm.

Section 7209 of IRTPA mandates that, by January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require U.S. citizens and foreign nationals to present a passport or other approved

documentation in order to enter or re-enter the United States. The documentation must confirm both identity and citizenship. Under current regulations, U.S. citizens who travel solely within the Western Hemisphere do not require passports to return to the United States. A similar "exemption" applies to most Canadian and Bermudian citizens entering the United States. This proposal to extend documentation requirements closes a long-standing security vulnerability at our borders. We must move forward quickly, not only to be responsive to the legislative mandates, but also to ensure that our ports of entry are not compromised by those who are not required to carry appropriate documentation. At the same time, we must also be careful not to hinder commerce in the process.

This initiative, which we have designated the Western Hemisphere Travel Initiative (WHTI), will require all U.S. citizens, Canadians, and citizens of Bermuda and Mexico, as well as citizens of Caribbean countries currently exempt from the passport requirement pursuant to section 212(d)(4)(B) of the Immigration and Nationality Act, to have a passport or other authorized secure documentation denoting nationality and identity when entering the United States. It will also standardize the documents which may be presented at ports of entry to demonstrate both identity and citizenship.

Together, DHS and the Department of State (DOS) have identified the passport as the principal document of choice in the airport and seaport environments. However, we are also exploring the use of other secure documents, or combination of documents, denoting identity and citizenship for land borders where we face the most pressing implementation challenges. We anticipate a variety of options, including a Department of State-produced travel card and an expansion of the registered traveler type programs that will expedite low

risk travelers, particularly those who reside in border communities, and make trips across the border as a routine part of their life activities.

While the goal of WHTI is to strengthen border security and facilitate entry of legitimate travelers into the United States, we do understand the implications for industry, business, the general public or even our neighbors to the north and south. Under the Security and Prosperity Partnership of North America (SPP), we are working closely with officials in Canada and Mexico to develop standards for lower-cost, secure proof of status and nationality documents to facilitate cross-border travel and work to achieve optimal production before January 2008. President Bush, Prime Minister Martin, and President Fox announced the SPP in March, agreeing on an ambitious security and prosperity agenda that will keep our borders closed to terrorists and open to trade. The SPP is based on the premise that security and economic prosperity are mutually reinforcing. Our commitment to work with Canada and Mexico to develop secure nationality documents will be consistent with the IRTPA mandates while also taking into account the realities of our mutual borders.

To ensure that affected stakeholders will be able to submit their concerns, we are using a robust rulemaking process to allow multiple opportunities to comment on the proposed rule. In addition, we have attended over 30 listening sessions and town halls and have met with 670 community leaders and stakeholders to discuss this initiative. We are committed to working with affected stakeholders to mitigate potentially adverse effects as this initiative gets underway.

As acknowledged by both the Administration and emphasized by the public, this is an enormous challenge. Given the magnitude of change this initiative will entail, DHS and DOS, in consultation with other government agencies, have proposed a two-phased implementation plan for WHTI. This approach was outlined in the Advanced Notice of Proposed Rulemaking (ANPRM), which was published in the Federal Register on September 1, 2005, and had a 60-day public comment period. In the ANPRM, we proposed air and sea implementation on December 31, 2006, and land implementation on December 31, 2007. In response to our proposal, approximately 2,000 public sources submitted comments; however, fewer than 800 of those were unique. These distinct comments were submitted by Governors, Mayors, Police Chiefs, Tribal leaders, business leaders, and border community members. We are currently considering the comments. Both DHS and DOS recognize the unique issues that this initiative will raise, and we will remain flexible when working with affected entities and communities.

It is important to keep both security and facilitation in mind when determining the best approach to this initiative. Each day, DHS officers inspect approximately 1.1 million people at our borders, and over 84,000 individuals were apprehended trying to cross the border with fraudulent claims or documents in Fiscal Year 2005. The security layers we add to our inspections processes should take into consideration appropriate facilitation efforts, from document standardization to technological improvements that can act as force multipliers, such as current DHS "trusted traveler" programs.

Although a decrease in the number of documents presented to agents will assist with facilitation at the land border, some of our largest gains may come from an expansion of

current facilitation programs that already have acceptable documentation in place. In a recent survey of border crossers it was found that roughly 2% of travelers at the border are responsible for nearly 48% of all cross-border trips made. These types of statistics have implications for the solutions that may be most effective, especially at the land border where we propose a number of current travel documents as acceptable documentation to cross the border..

The first of these travel documents is the Border Crossing Card, or the BCC, which the U.S. government issues to Mexican nationals who are coming across to the U.S. on a regular basis. In order to obtain a BCC, a traveler must have a passport, and, since the BCC is a B-1/B-2 visa when presented with a passport, the process is nearly identical to issuance of a visa, with the attendant background checks and interviews necessary for security purposes.

Another card that we have proposed as a suitable alternative document is the SENTRI card. SENTRI, which stands for Secure Electronic Network for Travelers Rapid Inspection, is also a program that facilitates travelers at the southern border. In order to obtain a SENTRI card, the traveler must provide proof of citizenship, such as a passport, or a birth certificate, a BCC, if required, as well as other identity documentation, such as a driver's license or ID card. A background check is also required. The SENTRI card is designed for use at the southern border. To date, we have issued 75,000 SENTRI cards and we expect to increase SENTRI enrollment by 130,000 over the next two years, and to expand to 6 additional locations, including a dedicated lane on Bridge II in Laredo.

On the northern border, working with Canada, two existing programs could be applied to meet the WHTI requirement. The first is the NEXUS card, which is similar to the SENTRI card in that it facilitates travelers who routinely cross the border. To obtain a NEXUS card the traveler must provide proof of identity and citizenship, such as a passport, or a birth certificate in addition to an ID card, such as a driver's license. We then use the collected information to enroll and run a thorough background check on the traveler.

DHS is also considering the acceptance of the FAST card, or Free and Secure Trade card, which applies to commercial truck drivers at both the northern and southern borders. It is commercially focused with the goal of facilitating cargo coming across the border, while enhancing security associated with the truck driver of that particular truckload. With the FAST program, we have specific requirements, including background checks, documentation requirements and biometric requirements.

Finally, DHS and DOS are developing plans to produce an alternative to the U.S. passport, envisioned as a wallet-sized card, convenient to obtain, and at a lower cost than a passport. DoS will adjudicate eligibility for the travel card in the same way that it adjudicates eligibility for the traditional book passport. The card will contain security features and will use technology to link the identity and citizenship of the bearer to a U.S. government database. Travelers will be able to use this card only to cross the land borders between the United States, Canada and Mexico. DHS is working with DOS to determine what type of facilitation technologies the card will utilize.

As we move forward, DHS will continue to look at options as they may become available, whether a global registered traveler program that could be applied at either border, looking at specific programs that can be expanded, creating new documents in partnership with the DOS, or assessing the viability of other documents.

Many within Congress have recognized the importance of addressing border security and immigration reform. As an initiative that has been recognized throughout the government, and legislatively mandated, WHTI does not stand alone, but joins a cadre of programs created to provide layered security at our borders. As you know, the President recently signed into law the Department of Homeland Security Appropriations Act for Fiscal Year 2006. That legislation included more than $7 billion to secure our borders – funds that will enable us, among other things, to hire an additional 1,000 Border Patrol agents and add almost 2,000 detention beds. Also, in Houston Secretary Chertoff recently announced the Secure Border Initiative (SBI), a high priority initiative within DHS that will ensure we move towards the right balance of people, technology and infrastructure to gain control of our borders.

Addressing any major issue at the border presents challenges, with over 7,000 miles of shared borders with Canada and Mexico and over a million people crossing the border a day, including many people in border communities who cross legally and contribute to the economic prosperity of our country and that of our neighbors. Maintaining this flow is critical; however, we must be confident in our determinations of <u>who</u> is crossing our border.

By creating greater assurance of the documents presented by individuals crossing the border, we can focus our resources on other critical issues, such as border-related crime, drug cartels and coyotes, and other criminal activity that affects communities on both sides of the land border. WHTI is an important step in protecting homeland security, and DHS and DOS will use our resources to implement this travel initiative by the deadline set forth in law.

Mr. Chairman and Members of the Subcommittee, I want to thank you for the opportunity to join you today in Laredo. I would be pleased to respond to your questions.

**STATEMENT OF EDWARD M. KENNEDY**
**Senate Immigration Subcommittee Hearing**
**"Proposed Western Hemisphere Passport Rules: Impact on Trade and Tourism"**
**Texas A & M International University Laredo, Texas**
**December 2, 2005**

I commend the Chairman for holding this important field hearing on the Western Hemisphere Travel Initiative, and I regret that I can't be there in person.

The National Intelligence Reform Act which Congress passed last year is a tribute to the skill of the 9/11 Commission in diagnosing the basic faults in our intelligence and border control policy, and in recommending responsible ways to improve it and protect our national security more effectively. As part of this legislation, the Western Hemisphere Travel Initiative addresses the threat of terrorist travel and the need for enhanced security, while also perfecting the vital flow of international commerce and travel.

The new passport rules under the Initiative require a U.S. citizen or a foreign national to present a passport or other secure document when entering the United States. The former rules permitted travel without such documents in certain circumstances.

The Subcommittee hearing will examine the progress being made to implement the new cross-border travel rules and consider some of the concerns about unintended effects of the rules on travel, tourism and trade.

According to experts in the travel and trade industry, the new rules will have a major impact on legitimate travel into and out of the United States. For Canadian visitors, a passport requirement would result in an annual loss of 3.5 million outbound trips to the United States, with an estimated loss to the U.S. tourism industry of $670 million yearly. Equally alarming is the potential impact on trade, since Canada is our largest trading partner, with $1.2 billion in goods and services crossing the 4,000-mile border daily.

Our goal is to strengthen the security of our borders without unduly impeding the legitimate flow of people and commerce. More than 30 million foreign nationals enter the United States legally each year as tourists, students, or temporary workers. Over 400 hundred million visitors a year cross legally from Canada or Mexico to conduct daily business or visit family members. Our economy counts on billions of dollars being spent each year by international tourists. Our universities reap the intellectual benefits of attracting the best international students, and our scientific establishment benefits from a climate of open exchange.

Our policies and regulations must be fully funded and effectively implemented, but they must also be carefully evaluated, so that our policy of "Secure Borders, Open Doors" does not become "Secure Borders, Closed Doors."

I look forward to reading the testimony of today's witnesses, and to learning their assessment of the proposed passport rules and their recommendations on these important issues.

**Hearing before the Senate Committee on the Judiciary**

**Subcommittee on Immigration, Border Security and Citizenship**

on

**"Proposed Western Hemisphere Passport Rules:**

**Impact on Trade and Tourism"**

Friday, December 2, 2005

1:30 p.m. at Texas A & M International University

Western Hemisphere Trade Center

Room 116

5201 University Blvd.

Laredo, TX

# Testimony of Janice L. Kephart

## *Submitted for the Record*

Former counsel, The National Commission on Terrorist Attacks Upon the United States and an author of *September 11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States* and "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel"

**Senate Committee on the Judiciary**

**Subcommittee on Immigration, Border Security and Citizenship**

**"Proposed Western Hemisphere Passport Rules:**

**Impact on Trade and Tourism"**

**December 2, 2005**

**Testimony of Janice L. Kephart**

## Introduction

Thank you for the opportunity to submit testimony for the record on *terrorist travel* and the *Western Hemisphere Travel Initiative*. My testimony is based on the following work:

- As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information prior to 9/11;
- As a counsel on the 9/11 Commission "border security team" which produced the *9/11 Final Report* draft recommendations and analysis;
- As an author of the 9/11 staff report, *9/11 and Terrorist Travel*;
- As the senior consultant for the Investigative Project on Terrorism on a to date unpublished report entitled "An In-Depth Analysis of the Structure of Al Qaeda and Militant Islamic Terrorist Groups in the United States: The Enterprise of Terror in the United States" in March 2005; and
- As the author of a September 2005 Center for Immigration Study report, "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel."

At the Commission, I was responsible for the investigation and analysis of the INS and current DHS border functions as pertaining to counterterrorism, including the 9/11 hijackers' entry and acquisition of identifications in the United States. My current work includes developing policy and operational solutions against terrorist travel and towards a more comprehensive border strategy.

Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. I want to thank both Chairman Cornyn for holding this field hearing on the Western Hemisphere Travel Initiative in Laredo, Texas. I am glad the Committee is supportive of the policy we put forth in the *9/11 Final Report* of securing our borders alongside assuring facilitation for low risk commerce and commuters.

It is my hope that this Committee will continue to exercise their oversight authority on the important issue of terrorist travel and overall border security from the vantage point

of the small business community. I hope your Committee will help insure that our Government works with the private sector to implement the lessons learned as a result of the tragic events of September 11, 2001 in a manner that first and foremost assures the national security of the American people. To do so, we must scrutinize effectively those who seek to come here. September 11 has taught us that secure borders are a matter of national security.

We must treat our borders as they truly are: as a marker of U.S. sovereign rights to assure that people who seek to come here are who they say they are, and will not cause a public safety or terrorist threat to American citizens. At the border, the passport is the manner in which we as a nation can better assure that the people who seek to come here do so for legitimate reasons. A top priority in all we do in border security must then be to assure practical, on the ground security measures at our ports of entry and physical borders.

However, let me be clear: we need not give up privacy nor give up commerce to attain border security. In fact, with efficient and streamlined security, privacy and commerce are both enhanced. People and goods that should make it through the system in an efficient manner are more likely to be when the acceptable forms of travel documents go from dozens to one, and trusted or registered traveler/commercial programs augment the system as also being acceptable as an alternate to a federally issued travel document.

Below I discuss: (1) new laws addressing terrorist travel; (2) why the 9/11 Commission made the recommendation for a passport requirement for all entrants; (3) why a terrorist threat exists at both borders; and (4) why the Western Hemisphere Initiative is an essential first step in addressing that threat.

## New laws addressing terrorist travel

### National Intelligence Reform Act of 2004

I wish to applaud Congress for passing the National Intelligence Reform Act of 2004, and the Chairman and the members of this committee that voted for it. That law contains many important terrorist travel provisions, including the new passport rules that are the subject of today's hearing. I look forward to working with this Committee in supporting the Administration's attempt to implement this law in step with the *9/11 Final Report* recommendations.

My understanding of the rollout for the Western Hemisphere Travel Initiative is that because there was a delay in getting the initial rulemaking out and the comments for that rulemaking just closed on October 31, 2005, the new rollout is as follows:

1. December 31, 2006 – Requirement applied to all air and sea travel to or from Canada, Mexico, Central and South America, the Caribbean, and Bermuda.
2. December 31, 2007 – Requirement extended to land border crossings as well as air and sea travel.

A two-tiered rollout is absolutely essential. Kinks in implementing the Initiative can be worked out prior to execution at the land border ports of entry, which experience so much higher volumes of incoming applicants alongside commercial, and commuter traffic. A delayed roll-out until the statutory deadline of January 1, 2008 will not only unnecessarily impact our national security, but will nearly assure a bureaucratic death for a new program which requires both the technology and the border officers to work seamlessly in practice.

Working within the mandate of the Intelligence Reform Act, the State Department is working on alternatives to a passport for the communities adjacent to our physical borders with Canada and Mexico. To accommodate the concerns expressed in the hundreds of comments on the rulemaking, the State Department is planning to introduce a Department of State-produced "North America Travel Card" that can act as an alternative to the U.S. passport but with all the security features and vetting of a U.S. passport. DHS and State have agreed that the biometric taken will be the same as the U.S. passport- a facial image.

As planned, it will be available at the 7,000 offices that already process passports and cost about half as much as a U.S. passport. It will look much like a driver's license and fit into a wallet, but will not actually contain biometrics (identity) and registration information (citizenship). Instead, it will link back into a State/DHS database that will verify the cardholder with the card information (thereby protecting privacy).

The North American Travel card will also serve as a platform to which DHS can add privileges for registered travelers. If the traveler wants to add these "privileges", Customs and Border Protection will need to collect 10 fingerscans, and conduct a full criminal background check and an interview. Again, those "privileges" will be registered in a joint run DHS-State database, not the card, and can expire or be revoked by DHS. The biometric feature will allow DHS to identify the benefits to which the traveler is entitled. Along with this card, NEXUS (northern border commuters), SENTRI (southern border commuters) and FAST (northern border commercial drivers), and the Border Crossing Card (Mexican laser visa) will also likely be an acceptable as a substitute for a passport and a visa for traveling to the United States from North or South America, including the Caribbean.

This card will be a better selling point to the border communities and others who will benefit from it if and when DHS and the State Department must resolve if and how RFID technology will be added to it, or whether those with the travel card will have dedicated lanes. A traveler will then not only have the added value of an easy carrying and cheaper option for a passport, but have the added value of possession of the card truly facilitating entry at land POEs. With the proper physical and technological infrastructure and human resources in place, the potential for increasing security and facilitating trade and travel is manifold.

**REAL ID Act of 2005**

I also want to thank Congress for their work in making driver licenses meet minimum standards of verification and authenticity. The REAL ID Act was passed in large part to counter the ease with which the 9/11 hijackers attained 14 driver licenses and 10 state issued identifications from California, Florida, Maryland and Virginia.[1] We know that at least 6 hijackers presented these ids on the morning of 9/11 to disguise their lack of affiliation with the United States.[2]

The policy behind the REAL ID Act is to make it more difficult for terrorists and those who seek to circumvent U.S. laws to embed in the United States. The law brings identifications issued within the United States closer in step (although not completely) with our latest requirements for secure and verifiable travel documents for entry into the United States. I must be clear about another matter: state issued driver licenses can never replace U.S. passports for the purpose of entry into the United States by U.S. citizens.

First, states are not required to follow the requirements of the REAL ID Act, so we can not be assured that all driver licenses presented to border officers meet the requirements of the REAL ID Act. Second, REAL ID requires lawful presence in the United States, not citizenship, so even under REAL ID nationality cannot be determined by simply presenting a driver's license. Third, applicants are not vetted for national security concerns. Nor do driver license applicants receive an automatic check for fraud in the manner that passport applicants do via checks by the State Department's Diplomatic Security investigators. Fourth, driver licenses do not contain the same type of biometric information required in passports and checked by U.S. Visit or the registered traveler programs like NEXUS and FAST. Without the biometric that can be verified in real time, border officers are denied the opportunity for a real time verification of, for example, a digital photo on the driver license as matching the applicant for entry.

## The 9/11 Commission Recommendation regarding Passports

In a now oft-repeated quote from the 9/11 Final Report, we summarized our findings based on 18 months of research into how the 9/11 hijackers got in and stayed in the United States as follows:

> For terrorists, travel documents are as important as weapons. Terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack. To them, international travel presents great danger, because they must surface to pass

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[1] See *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States* (Franklin, Tenn.: Hillsboro Press, 2004) at p. 44. It is available in book form at http://providence-publishing.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=PP&Product_Code=9ATT&Category_Code=FTANR.

[2] Ibid at p. 43.

> through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points.
>
> In their travels, terrorists use evasive methods, such as altered and counterfeit passports and visas… immigration and identity fraud. These can sometimes be detected. (p. 384)

The Report continues later with clear recommendations:

> Americans should not be exempt from carrying biometric passports or otherwise enabling their identities to be securely verified when they enter the United States; nor should Canadians or Mexicans. Currently U.S. persons are exempt from carrying passports when returning from Canada, Mexico, and the Caribbean. They current system enables non-U.S. citizens to gain entry by showing minimal identification. The 9/11 experience shows that terrorists study and exploit America's vulnerabilities.
>
> To balance this measure, programs to speed known travelers should be a higher priority, permitting inspectors to focus on greater risks. The daily commuter should not be subject to the same measures as first-time travelers. An individual should be able to preenroll, with his or her identity verified in passage. Updates of database information and other checks can ensure ongoing reliability. The solution, requiring more research and development, is likely to combine radio frequency technology with biometric identifiers. (p. 388)

## Terrorist Travel and Passports

Terrorists need to travel in a manner that shields them from detection or suspicion. In the Al Qaeda Afghan training camps, we know that terrorists were well trained in travel and travel document forgery. Terrorists were instructed in how to move into Afghanistan through Iran or Pakistan, and what travel facilitators to use for acquiring travel documents and travel. Digital copies of travel documents were kept in e-files in safehouses (we obtained a couple of 9/11 hijacker passports from such files), and Adobe Photoshop was a favorite tool for manipulating multiple forms of identifications, including passports. Upon leaving training camps, Khalid Sheikh Mohammed (mastermind of the 9/11 plot) would instruct new recruits on how to behave to pass into the West unsuspected.

We know 9/11 operational ringleader Mohammad Atta used his training as well to manipulate passports to hide travel and substitute information that would leave a fraudulent trail of less suspicious travel.

For the terrorist, the underlying purpose of the travel will often determine how he decides to travel. For example, the nineteen 9/11 hijackers had a mission which required a relatively short time for legal admission into the United States, but also required that none of them be compromised for failure to obey immigration law. (Violations of law

did exist; it was the federal government that failed exercise its authority under the law.) Therefore, they needed to appear "clean" to immigration authorities.

They thus worked hard to appear to follow the rules. They all had passports. (Thirteen acquired new passports within three weeks prior to seeking U.S. visas. A number had indicators of extremism that remain classified today and still other passports contained fraudulent manipulations.) They all had visas (22 or 23 applications were approved). They all sought entry through immigration inspection kiosks at U.S. international airports (a total of 34 times over 21 months). In the five times 9/11 hijackers were pulled into secondary, only once did a hijacker resist questioning, and then quickly became cooperative once a new inspector was assigned to conduct the questioning. In two cases terror alerts or visa revocations were placed in the immigration system; but it was too late-- in August 2001, subsequent to the last successful 9/11 hijacker entry in July 2001.

In other words, the 9/11 hijackers had been taught what to do to attain successful entry into the United States. The frustrating irony is that at least some of the hijackers could have been denied admission into the United States if critical information had been provided to border officers via lookouts or regarding the passports themselves. Today, we have the ability to provide that information to our border security personnel *as long as a passport or verifiable biometric equivalent is required for admission.* However, where there is no passport or equivalent biometric travel document required for admission, as is currently the de facto case in the Western Hemisphere, our border personnel have little to no baseline upon which to make an initial judgment about whether a particular individual may pose a terrorist or public safety threat to the United States.

## Terrorist Travel and the Importance of the West Hemisphere Travel In

Today, terrorists with Canadian or Mexican citizenship can move in and out of the United States right virtually unconcerned about detection. There are legitimate concerns about both the southern and northern borders. Notwithstanding the plethora of news accounts about debris being found on the physical border of Islamic postcards, notebooks, and prayer rugs, we know of one convicted terrorist you managed to cross the southwest border in a car. A Hizballah operative Mahmoud Youssef Kourani left Lebanon to travel to Mexico after bribing a Mexican consulate official in Beirut with $3,000 to obtain a Mexican visa. Once in Mexico, he sought entry into the United States. Around February 2001, Kourani succeeded: he illegally entered the United States across the southwest border by hiding in a car trunk.[3]

In November 2003, a federal grand jury indicted Kourani on charges of conspiring to provide material support to Hizballah, a designated foreign terrorist organization. The indictment alleges that Kourani was a "member, fighter, recruiter, and fundraiser for Hizballah who received specialized training in radical Shiite fundamentalism, weaponry, spy craft, and counterintelligence in Lebanon and Iraq." It also claims that Kourani

[3] USA v. Kourani. EDMI 03-CR-81030. "Government's Written Proffer in Support of its Request for Detention Pending Trial." Jan. 20, 2004.

recruited and raised money for Hizballah while in Lebanon.[4] Kourani pled guilty to significant terrorism charges in April 2005.

And on the northern border, there are numerous dangerous terrorists who have Canadian citizenship. (See my testimony before the House Small Business Committee of November 17, 2005 for further insight here.) According to reporting about FBI public statements:

> Al Qaeda recruiters are aggressively enrolling youths, with U.S., Canadian or Western European passports and good command of the English language and the Notrth American interior. While the network had always tried to recruit people with U.S. and other Western passports, FBI counter-terrorism chief Larry Mefford recently revealed that al-Qaeda was 'refocusing its efforts' to sign on disaffected Americans, green-card holders and Muslims who had spent time in the U.S. as students or visitors who had a good command of English and a working knowledge or American society and culture.[5]

The Western Hemisphere Travel Initiative thus becomes an important first step in at least chilling terrorist travel between the U.S. and Canada/Mexcio. This includes any variety of terrorist—a Mexican Islamic convert (as sought out by Al Qaeda) or Canadian.[6] Terrorists do not like to be detected or detectable, nor do they want their identity "frozen". (We know, for example, from detainee reporting after 9/11, that the tightening of immigration admission standards for persons traveling from countries of interest resulted in Al Qaeda leaders seeking out young recruits and others with easy access to the West—U.S. citizens, Canadians, Mexicans and those with access to Visa Waiver passports.)

Even if terrorists choose to acquire a passport with a false identity and with false underlying support documents (as Ahmed Ressam did) that identity is at least frozen and aliases to cross the border (as Ressam did use) are not possible. What would have caught Ressam was a biometric in that passport that then linked up to the watchlist Ressam was indeed listed on in Canada. Today, a hit on a terrorist such as Ressam would most likely occur through either a DHS TECS Lookout provided by U.S. or foreign law enforcement, a U.S. terror watchlist hit, an IDENT or FBI IAFIS hit, or through a biometric wanted notice now available to our border inspectors through Interpol.

The staff report I co-authored with my 9/11 Commission border teammates, *9/11 and Terrorist Travel,* details in even greater depth how the 9/11 hijackers exploited our vulnerabilities using our legal border system. Part of the everyday business of terrorist travel is the bustling black market in doctored and false passports. In addition, an

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[4] USA v. Kourani. EDMI 03-CR-81030. "Indictment." Nov. 19, 2003.

[5] Elaine Shannon. "Al-Qaeda Seeks Canadian Operatives To get around tighter U.S. security, Osama bin Laden is trying to recruit disaffected Muslims north of the border." July 8, 2003.

[6] For more information about the threat of Canadian terrorist entry over the northern border, see my testimony of November 17, 2005 before the House Small Business Committee, "Building a Wall Between Friends: Passports to and from Canada?"

estimated 10 million lost or stolen passports or national identification cards worldwide afford terrorists easier access to world travel.[7] This permits easy travel based on aliases, fake or stolen identities that, at a land border, may or may not be subject to a database check. Requiring U.S. citizens to carry a passport or biometric equivalent also means U.S. border officers no longer need to play a guessing game as to who is and who is not a U.S. citizen. On the Canadian and Mexican sides of the border, having a combination of the standard passport or equivalent and registered traveler programs that limit what a border officer must review gives border officers a better chance of snuffing out Canadian, Mexican or other Western Hemisphere passports that might be fake or stolen.

To break down the national security policy implications further of the effect that the Western Hemisphere Travel Initiative will have on the terrorist, here are the options that exist for a terrorist today: (1) use a legitimate passport using his or her real name and risk showing up on a database check; (2) use a whole variety of other documentation such as driver licenses or birth certificates that can be neither verified for content nor authenticated as government issued documents; or (3) enter illegally over the physical borders. For the terrorist today, the most optimum form of travel, then, is to use option (2), identification that can neither be authenticated nor its contents verified and contains no biometrics. By eliminating option (2), the terrorist now has to make a choice: either risk exposure to the government of his identity and whereabouts or enter illegally. Requiring use of a biometrically based passport under option (1) is what the United States needs to do to lower its risk of terrorist entry. In regard to option (3), we must take measures against illegal entry as soon as possible. There is reason for concern here, however, as Secretary Chertoff's recently announced Secure Border Initiative almost singularly focuses on the southwest border.

## Nexus and FAST

Streamlining the admission process for low risk travelers augments U.S. national security by permitting the immigration and customs officers who enforce U.S. immigration law at the border to focus on those seeking entry who may pose a national security risk. This does not mean that sleeper cell style terrorists could not exploit, for example, NEXUS and FAST, on the northern border or SENTRI on the southern border. Of course they could. However, there is little incentive for them to risk being vetted in watchlists and criminal databases and having an enrollment in a U.S. government program that could highlight their identity, freezes their biometric and travel patterns. The result is that programs like these, as long as they are tamper proof on a number of levels, should be sufficient to replace the passport as a viable biometric travel document. Our *9/11 Final Report* and the findings of my team's *9/11 and Terrorist Travel* both support that conclusion.

In addition, these programs—once they have achieved a threshold of enrollment-- are proving their worth in cutting down wait times at northern land ports of entry for all entrants, siphoning off the SENTRI, NEXUS and FAST drivers and passengers into

[7] Levine, Samantha. "Terror's Best Friend." US News & World Report. December 6, 2004.

dedicated lanes and allowing wait times for remaining travelers to be reduced as well. Right now, SENTRI exists at three locations on the southern border with 30 lanes operating and NEXUS exists at 12 land border ports of entry and has 15 lanes. FAST is in place at 35 land ports of entry and has 136 dedicated lanes. Canadian NEXUS now exists at eight land border ports of entry for commerce flowing from the United States into Canada. NEXUS has reduced processing time from a potential stop by a border officer to a guaranteed five to seven second crossing time once at the border station.

The result is that commerce—in terms of commuter and commercial traffic, as well as tourism- is enhanced across the board, a win-win situation. Americans commuting to Canada will find a similar upgrade in their wait times when the Canadians expand their version of NEXUS, with a contract just recently awarded for a Canadian NEXUS to be developed further and installed over the next few years.

## Conclusion

As I have testified on a number of occasions, our U.S. border security is in dire shape. However, there are a few bright lights. Along with U.S. Visit and a new emphasis on increasing interior and physical border law enforcement under the Secure Border Initiative, the Western Hemisphere Travel Initiative is an essential step to fulfilling the first and foremost requirement of border security—to provide security at our borders against terrorist entry and embedding and cross-border terrorist travel traffic. That must be a high priority objective.

However, that does not mean it need be achieved to the exclusion of commerce; it need not be. In fact, facilitation of low risk travelers and commerce is a necessary step in enhancing border officers' ability to focus on higher risk applicants for entry into the United States. I therefore applaud the work of the administration in moving ahead the Western Hemisphere Travel Initiative and hope they can meet the deadlines they have set forth, as our national security may indeed depend on just that.

**Statement of Senator Patrick Leahy**
**Senate Committee on the Judiciary**
**Subcommittee on Immigration, Border Security and Citizenship**
**Field Hearing on "Proposed Western Hemisphere Passport Rules: Impact on Trade and Tourism"**
**December 2, 2005, Laredo, TX**

We all watched the President's speech last Monday, November 30, with interest, as he discussed the Administration's proposals for comprehensive immigration reform. When the President first described these ideas almost two years ago, I was concerned that his approach lacked sufficient resources and commitment to make border security the priority that it needs to be. My concerns have not been put to rest.

There are between eight and fourteen million undocumented aliens living in this country. America needs a system that allows us to identify those who are crossing our borders and living here. When it comes to making immigration reform and border security a high priority, the Administration has talked the talk but has not walked the walk. In particular, the Administration has ignored Congress's clear and consistent calls for substantial staffing increases for the Border Patrol.

For years we have lurched along with piecemeal steps. I added a Northern Border security section to the 2001 PATRIOT Act, which authorized doubling the patrol staff along the border as well as adapting new technologies to improve security and flow across our border with Canada. Then, nearly a year ago, Congress passed a bill that mandated an increase of at least 2000 more Border Patrol agents, with at least 20 percent of them to be assigned to the Northern Border. But when the White House drew up its budget plans to implement that new law, the President suggested only enough to add 210 border agents -- fewer than 11 percent of Congress's mandate, and with no new agents for the Northern Border. Congress again stepped in, boosting border staffing by 1500.

Much of what is driving the immigration debate has to do with our porous Southern Border. As a result, a major concern facing Vermont and other Northern Border states is that that the President will try to impose a one-size-fits-all approach that imposes unwise and unworkable restrictions on the Northern Border. We have much at stake in drawing appropriate distinctions between the two borders.

One example of this one-size-fits-all approach is the subject of today's hearing. It is the implementation of a piecemeal border law, enacted a year ago as part of the Intelligence Reform and Terrorism Prevention Act of 2004, commonly known as the "Intelligence Reform Bill." The process to enact that bill was hard fought, and the final product contained many compromises. One section, which has the potential to harm the tourism industries and economies of our Northern Border states, needs to be revisited.

Section 7209 of the law, called the Western Hemisphere Travel Initiative, requires that any person, including a U.S. citizen, present a passport or equivalent proof of identity and

citizenship, when seeking to enter the United States from neighboring countries such as Canada or Mexico. The Bureau of Customs and Border Protection recently published proposed rules to implement this law.

We have long enjoyed less-formal immigration policies with our neighbors, and especially with Canada. These policies encourage tourism to the United States, fuel international trade and promote goodwill between our nations -- benefits that are particularly important to states on the Northern Border. Regulations like these threaten the economies of many northern communities.

The proposed rules require all travelers crossing the border to prove their citizenship and identity. Passports are the obvious choice, but at a cost of about $100 each, passports can be expensive and difficult to get, especially for families. This cost will slap a new burden on U.S. citizens and quite possibly discourage Canadians from visiting our nation.

My home state of Vermont enjoys significant trade with Canada. Last year alone, Vermont exported $1.516 billion worth of products to Canada, and we have steadily improved our trade balance with our northern neighbor. Policies that hamper this trade have obvious and serious consequences for Vermont businesses and workers.

Equally troubling is the potential impact of these proposed rules on tourism in Vermont. In 2003, more than two million Canadians visited Vermont and spent $188 million while here. If these new burdens discourage Canadians and other foreign visitors from traveling to Vermont, our tourism industry will feel it.

These concerns are not unique to Vermont. The Small Business Committee of the House of Representatives held a hearing on this topic on November 17, 2005, with a focus on border crossings to and from Canada. A witness at that hearing, H. Thomas Chesnut, the CEO of AAA of Western and Central New York, summarized the threat to tourism succinctly. He testified, "For how strong and important the travel and tourism industry is to both countries, it is just as fragile. Consider that cross-border trips have already fallen 20 percent since the tragic events of 9-11, due to wait times, hassles, uncertainty and perceptions. Confusion over further and changing regulations, as discussed today, will cause an additional decline. We know that travelers want freedom and ease of mobility—something that AAA has championed for over 100 years. We believe that border-crossing regulations should facilitate safe, secure and efficient movement of travelers between countries. The Departments of Homeland Security and State must strike a correct balance to implement the law, and avoid procedures that discourage leisure travel between our two countries."

Finally, we all know that the economic health of many small towns along the border depends upon their access to neighboring Canadian towns. In some cases, these towns share emergency services, grocery stores and other basic services. Residents sometimes cross the border on foot several times a day. The public opera house and library in Derby Line, Vermont, literally straddles the border with part of the building sitting on property in Stanstead, Quebec.

We need to be smart about border security, not just to sound "tough" about it. A clear example is the proven value of the federal government's Law Enforcement Service Center in Williston, Vermont, whose staff offers real-time, round-the-clock criminal record checks to law enforcement officers across the nation to help in making prompt and accurate decisions about possible immigration violations.

I have written to the Bureau of Customs and Border Protection to urge approval for allowing use of alternative forms of identification that are secure, cost-efficient, and convenient for our citizens to use. We must ensure that our border agents will accept secure and reliable forms of identification from Canadians. Until Congress acts to modify the law, Americans on both the Northern and Southern Border should urge the federal government to ensure that these policies do not unduly disrupt our daily lives.

We need border control practices that are sensible and appropriate -- not reflexively stifling and needlessly bureaucratic.

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# The Western Hemisphere Travel Initiative

Subcommittee on Immigration, Border Security and Citizenship
Committee on the Judiciary
United States Senate

Testimony of

Frank E. Moss
Deputy Assistant Secretary for Passport Services
Bureau of Consular Affairs

December 2, 2005
Laredo, Texas

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Chairman Cornyn and Members of the Committee:

Good afternoon and thank you for providing me with the opportunity to describe at this field hearing how the Department of State, in close cooperation with the Department of Homeland Security, plans to strengthen U.S. border security and facilitate international travel through the Western Hemisphere Travel Initiative (WHTI), the new program for U.S. citizens and foreign nationals entering the United States from neighboring Western Hemisphere countries. It is expected that WHTI will help secure and streamline the entry process into the United States, allowing border management officials to review documentation and determine eligibility for entry quickly, efficiently, and accurately, and to do so in a fashion that does not disrupt the critically important movement of people and goods across our land borders.

In the aftermath of September 11, the Department of State's Bureau of Consular Affairs conducted a comprehensive review of the adjudication, security, and issuance of U.S travel documents, including U.S. passports. As the report of the 9/11 Commission noted, travel documents today are as valuable to terrorists as weapons, and the U.S. passport is arguably the most valuable travel and identity document in the world. Recognizing this reality, the Department of State has implemented a number of steps to improve the security features of U.S. passports, to reinforce the underlying passport

adjudication process, and to rationalize requirements for passport use. I will focus most of my remarks for today on that last point.

While the passport has been the standard identity document for international travel and entry into the United States from most parts of the world, there has been a longstanding exemption to this requirement for travel within the Western Hemisphere, including travel to Canada, Mexico, Bermuda, and the Caribbean. Because there is no requirement for U.S. citizens to present a U.S. passport or any other prescribed document, Customs and Border Protection officers at ports of entry meeting U.S. citizens returning from these countries must currently examine a wide variety of documents, including birth certificates issued by state or local authorities, baptismal records issued by churches, certificates of naturalization issued by federal immigration authorities, and a multitude of state and provincial driver's licenses which may corroborate identity but do not in themselves establish citizenship. It is particularly difficult to know whether a birth certificate or baptismal record is authentic because such documents might be extremely old -- as old as any living person -- and have been issued by so many different authorities.

In light of the post-9/11 threats we know all too well, the Department and the 9/11 Commission concluded that this exemption is a weak link in our layered approach to border security. Congress and the President took action through the enactment of section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement by January 1, 2008, a plan requiring all travelers, U.S. citizens and foreign nationals alike, with certain highly limited exceptions, to present a passport or other authorized document or combination of documents sufficient to denote identity and citizenship when entering or re-entering the United States. The Departments of State and Homeland Security agree that acceptable documents must establish the citizenship and identity of the bearer in a way that can be electronically verified and must include significant security features. Ultimately, all documents used for travel to the United States are expected to include biometrics, such as photographs that comply with facial recognition technology or fingerprints that can be used to authenticate the document and verify identity.

Given how great this change will be in practice, the Departments of State and Homeland Security, in consultation with other government agencies,

have agreed to adopt a phased implementation plan for WHTI, providing as much advance notice as possible. The planned timeline is as follows:

1. As of December 31, 2006, WHTI will apply to all air and sea travel to or from Canada, Mexico, Central and South America, the Caribbean, and Bermuda.

2. As of December 31, 2007, WHTI will extend to land border crossings as well as air and sea travel.

There are a number of advantages to phasing in the requirement in an orderly fashion over the next two years. First, we will begin to accrue the security advantages and build up the capability to administer such a program, as well as benefit at an earlier stage from the travel facilitation envisioned by the Congress in crafting the legislation. Second, phased implementation will give us time to reach out and inform the tens of millions of travelers who will be affected by the changes. Third, it will allow us to ramp up our document production capacity to meet the anticipated surge in demand that will coincide with each implementation phase.

The Department is very much aware that WHTI will have its greatest impact at the land borders. We also realize that the U.S. passport might not be the optimal solution for travel for communities along the northern and southern borders for a number of reasons including cost and size. We recognize the economic implications this has for industry, business, and the general public, as well as for our neighboring countries – important partners in this initiative. Thus, in developing WHTI, we have been particularly careful to follow the statutory direction to seek to expedite the travel of frequent travelers, including those who reside in border communities.

To help assess the land border implications of this program, the Bureau of Consular Affairs contracted with Bearing Point Incorporated to survey land border crossers this past summer. Based on the survey data, we estimate that approximately 23 million U.S. citizens cross the land borders into Canada and Mexico a total of nearly 130 million times each year. Another 4 million U.S. citizens travel to Canada and Mexico by air or sea, while 2 million travel to the Caribbean. Of the 23 million land border crossers, about one-half are frequent crossers, making the trip at least once a year. A relatively small number of U.S. citizens make the journey every business day and are

responsible for 18 percent of the crossings, while 2 percent of border travelers account for almost 48 percent of the total annual crossings.

There is no question that extending WHTI to land-border crossers is a challenge. Looking at these 23 million land border crossers from a document perspective, only 40 percent report that they possess a U.S. passport. Nearly 33 percent, or a little over 8 million of them, reported that they would seek a U.S. passport within a year to fulfill WHTI documentary requirements. This is understandably of intense interest to the Department of State.

We will meet this challenge by increasing our capacity to adjudicate and produce passports, including both the traditional book passports and a new travel card to meet the unique needs of land border crossers, which I will describe momentarily. We already have more than 7,500 sites around the country (including more than 322 in Texas) located at post offices, court clerk offices, or other government offices where U.S. citizens can apply for a passport. In addition, we have a program underway to increase our adjudication capacity from its baseline level of 10.1 million applications in FY-2005 to a sustainable level of 17 million applications in FY-2008. This expansion program is solidly on track.

In addition, we have recognized that for a number of U.S. citizens who make regular, if not daily, land crossings, and for families whose international travel consists solely of crossing the land border, a traditional book passport is unlikely to be the document of choice, both for reasons of affordability and practicality. Of those surveyed last summer, 11 percent reported that they would not seek a U.S. passport in the future and would presumably prefer a practical alternative. Therefore, we are working with DHS to introduce a Department of State-produced travel card that could provide a convenient and affordable alternative to a traditional U.S. book passport for land border crossings. Based on initial thinking, this card would establish both a person's identity and U.S. citizenship as required by law, would fit easily in a person's wallet or purse, and would cost less than a book passport. The card would contain security features and would use technology to link the identity and citizenship of the bearer to a U.S. government database, in order to protect the privacy of the bearer and the integrity of the document. We are also working with DHS to ensure that this travel card can serve as a platform for expanded registered traveler programs.

U.S. citizens who are border residents or frequent travelers across the land borders would be able to apply for the travel card at the same 7,500 plus facilities around the U.S. that currently accept passport applications. Furthermore, the Department of State would adjudicate eligibility for the travel card in the same way that it adjudicates eligibility for the traditional book passport, and applicants would, in fact, be able to apply for both at the same time. While we are still making important technical decisions regarding this travel card and thus do not have a final fee set as yet, we hope that we can provide it at a cost of half or less than that of the book passport.

Of course, other existing documents issued by the Department of Homeland Security, such as SENTRI, NEXUS, and FAST program cards, are also under consideration as acceptable documents for land border crossings. We also expect that the Border Crossing Card, a travel document issued to Mexican nationals (the BCC – also known as a "laser visa"), will remain acceptable as a substitute for a passport and a visa for Mexican nationals traveling to the United States border areas from contiguous territory.

Both the Departments of State and Homeland Security recognize that there are a host of issues that must be addressed thoroughly to implement the WHTI smoothly and successfully. A critical part of successful implementation is public participation in the regulatory process. With this in mind, we have just completed an Advanced Notice of Proposed Rulemaking (ANPRM) process that generated over 500 public comments. A large number of these comments came from businesses and individuals concerned about the economic impact that the WHTI initiative could have in discouraging travel across the borders. The solutions we are considering could, we believe, facilitate and expedite travel by making the crossing far more efficient, because all travelers will be identified by a limited number of secure identity and citizenship documents.

The public will have additional opportunities to review and comment upon our plans. The regulatory process will provide another opportunity for public comment, and we encourage the business community, state and local governments, and other members of the public to comment at that time. We are eager to receive the suggestions of those most directly affected by the proposed change and intend to integrate practical suggestions as much as is feasible, always keeping in mind the ultimate goal of making our borders more secure.

Finally, I would be remiss in presenting this testimony if I did not mention a way for Congress to help the Department of State meet the challenges embodied in implementing section 7209 of the IRTPA. As a result of record passport demand generated by IRTPA, and the additional biometric measures we are incorporating into our passports in response to the Enhanced Border Security and Visa Entry Reform Act, the Administration has requested legislative authority for the State Department to collect a surcharge to cover the costs generated by Section 7209. The surcharge would be used to support additional Department of State expenses that we will incur in order to meet the demand generated by WHTI, such as increased passport direct hire and contractor staff, staff training, outreach programs, additional passport facilities, and related systems support.

Once again, thank you, Mr. Chairman and the members of the Committee, for holding this important field hearing and inviting me to participate. We at the Department of State look forward to working with Congress, local officials such as have gathered at this hearing and the public to ensure that the needs of border communities as well as our border security concerns are addressed by this plan while we continue to facilitate legitimate travel. At this time, I am prepared to answer any questions you may have.

**Senate Judiciary Committee**
**Subcommittee**
**on**
**Immigration, Border Security and Citizenship**

**December 2, 2005**
**Laredo, Texas**

**Testimony of Dennis E. Nixon**
**CEO & Chairman**
**International Bank of Commerce**

Mr. Chairman, for the record, my name is Dennis Nixon, and I am the CEO and Chairman of International Bank of Commerce.

As the largest bank holding company in the State of Texas whose corporate headquarters remains on the U.S. / Mexico border, I can tell you that the Western Hemisphere Travel Initiative will have a tremendous impact on our customers, the communities we serve and the Texas and American economies.

This issue has drawn attention from coast to coast and the majority of the focus has been on either:

- the type of document we should use; or,
- how much it will cost the average American family.

**But, the real issue is getting lost in the debate.**

For Americans, crossing the Rio Grande should be no different than crossing the Potomac. Just like crossing the Potomac, crossing the Southern Border as a U. S. citizen has not normally required producing an identification document. What if it took you four hours just to reach the Key Bridge in Arlington, Virginia on your daily commute to Capitol Hill? And then upon arriving at the bridge, you had to stop to show your identification and answer a bunch of questions - where are you going? Where have you been? All consuming additional time.

This debate has wrongly focused on what we're going to do **at** the bridge, when the real problem is, we can't even get **to** the bridge. So, it makes no difference what document you order - you are just going to add to the logjam on the border.

The biggest issue with these proposed rules and other programs is that, as a country, we have become so wrapped up in specific procedures, that we have lost sight of the big picture – are these procedures adding value?

With increased procedures, and without the corresponding staffing that needs to go with it, we frustrate the very people who seek nothing more than to spend money in our country, visit family, or conduct business. We are destroying the dream of NAFTA.

Eighty four-percent of all border crossings occur at land ports. Space is at a premium at these international bridge crossings, and that begs these questions:

- How will American citizens be processed if they fail to produce the correct documentation?
- Where will they be processed?
- Where will they be detained during that processing?
- And how will this affect the growing wait times already caused by the US-VISIT program?
- Will we require extensive exit procedures to ascertain that U.S. Citizens have the necessary identification document to re-enter the USA?

The Department of Homeland Security will brag that the US-VISIT program does not apply to Americans, and for others it only takes 15 seconds to pass through the inspection process. Tell that to the last person in the cue – American or Guatemalan, Canadian or Australian. The fact is, no matter who you are, or what country or hemisphere you come from, you are co-mingled in the cue until you get to the bridge – you have a long wait.

Texans cross the Rio Grande, as those in Virginia and Maryland cross the Potomac – to eat, shop, see a concert, conduct business or visit family. Our economies are intertwined as a result of this, and therefore, any proposed rules that affect how people are entering the country – specifically the southern border – are of great interest to us.

Today, bridge crossings are down in Laredo and people are crossing less because of the hassles of getting back into the U.S. Even with this slow down, wait times are up.

As recently reported in USA Today, and confirmed by the GAO, "Delays at airport customs get worse, long lines and understaffing at customs checkpoints continue to worsen." So if there isn't enough staff to accommodate 16 percent of the border crossings, then how in the world does the government expect to handle 84 percent of the border crossings that enters the country through land ports like Laredo? Even with this report on record, DHS continues to rave about the success of US-VISIT. These accolades are clearly without merit.

Back in September, we logged numerous complaints from our customers in Laredo, San Antonio and other markets as a result of the extensive wait times and delays during "Diez y Seis" -- Mexican Independence Day weekend. This is an important holiday wherein thousands of Mexicans travel to the USA to vacation and spend huge sums of money buying goods and services in the United States.

While many of our customers withstood long lines of up to 4 hours in their attempt to enter the United States, others attempted to cross at another bridge in Laredo only to discover that it closes at midnight.

This seems to be a never-ending problem that occurs during peak periods and holidays. If we know when the holidays are, and can anticipate the other peak periods, then why can't CBP adequately prepare for the high number of visitors expected during these dates? The ripple effect of this lack of preparation translates into fewer tourists and business customers coming into Laredo in order to avoid the long lines and delays.

If frequent travelers pose no risk, then they should be allowed to cross our borders expeditiously. That way, we do not interrupt the flow of people and commerce unnecessarily, but frequent travel programs have not worked because once a drug seizure is made, these frequent traveler lanes become parking lots just like the other lanes because of intensified inspections.

For years, IBC strongly supported additional funding for Customs. However, today, what we have witnessed is that as we begin losing CBP officers through retirement, transfers or attrition, new DHS resources are being applied toward the Border Patrol on other enforcement duties. This means that more emphasis is being placed on illegal immigration or drug enforcement while people and cargo that are attempting to enter our country through legal channels suffer as a result of understaffing. We seem to be devoted to damaging our relationship with legal visitors.

This is a major reason why we oppose the requirement to force U.S. Citizens to use passports to re-enter the United States. We oppose the requirement of any document as a general use instrument because we have neither the infrastructure nor the staffing to handle that capacity at land ports. The inspection of any document held by a U.S. citizen will delay entry and create more problems because inspection equals time, which equals delay.

No uniform document should be required without the mandatory staffing that needs to accompany it. Again, we oppose any such document requirement until the Department of Homeland Security can prove to Congress that DHS has the adequate staffing to oversee such a process. They have not proven that at our airports.

As a country, we have become so wrapped up in the specific procedures, that we have lost sight of the big picture. The national dialogue on illegal immigration has reached a fever pitch, and unfortunately, issues such as wait times at the bridges are getting lost in the shuffle.

We have also heard a lot of talk about constructing a wall on the southern border in the name of security. My question is, that if this is really about security, then why aren't we talking about building a wall on the northern border? After all, the 9/11 terrorists did not come through the southern border. They entered our country by legally crossing the U.S./Canadian border.

We need a systematic approach that includes reform of our immigration laws and measures that truly help security and don't merely provide Americans a false sense of security because we're adding more processes. These "feel good" procedures are destroying our ability to cross our borders.

After all, with increased procedures, and without the corresponding staffing that needs to go with it, we frustrate the very people who seek nothing more than to spend money in our country, visit family, or conduct business. And if our procedural, bureaucratic red tape continues to hamper the flow of goods, services and visitors, then it is the American economy that will suffer the most - and that means the terrorists will have won "in the name of security" because we lost sight of the big picture.

We must stop imposing processes on the system in the name of "antiterrorism" because these "feel good" procedures are clogging the borders, killing the economy, and causing the loss of jobs.

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**STATEMENT OF SENATOR CHARLES E. SCHUMER ON THE PROPOSED WESTERN HEMISPHERE TRAVEL INITIATIVE**
**December 2, 2005**

I want to thank Senator Cornyn for holding this hearing on the Western Hemisphere Travel Initiative (WHTI). I know that this proposed rule could have serious consequences for constituents and businesses in his home state of Texas, as well as in other states along the Southern Border. As a representative of thousands of New Yorkers from Northern Border communities whose businesses and way-of-life have come to rely upon regularly and efficiently crossing the border between the United States and Canada, I submit the following statement on the proposed WHTI:

We in New York State know too well how important it is to make our borders more secure and keep potential terrorists from entering the country. However, the WHTI as proposed could have an enormously harmful impact on communities along the Northern Border, and throughout New York, that rely upon Canadian business and that have made regular travel into Canada a part of their day-to-day lives. Requiring passports, or a document similarly expensive and cumbersome to obtain, at the border will cripple our local economies and harm New York's commercial relationship with Canada, our largest trade partner. As we continue to make efforts to improve security at our borders, we must also do so in a way that protects commerce. There must be a balance, and our policies should work to keep us safe while continuing to encourage our important trade relationship with Canada.

Therefore, any acceptable alternative document required at the border must, at a minimum, be *convenient* to travelers, *affordable* and *efficient* to obtain. Otherwise, the WHTI could translate into a deterrent for lawful residents, visitors and businesspeople to cross the border. Department of Homeland Security Secretary Michael Chertoff acknowledged the need for an alternative that meets these three criteria when I asked him about it in a recent Senate Judiciary Committee hearing, and I look forward to working with him on this very important issue for my constituents and for our country.

Canada is New York's largest trading partner, and Canada trade is related to 348,000 jobs in New York State. In October, officials from both the Department of Homeland Security and the Department of State had the opportunity to speak firsthand with business and community leaders from both sides of the border in Buffalo, Watertown and Plattsburgh, New York. I know that these officials must have come away with a greater understanding of the challenges these communities could face under the WHTI. I have explained just a few of these challenges for the record, below.

**An alternative travel document must be convenient for travelers.** From Buffalo and Rochester to Alexandria Bay and New York's North Country, people travel back and forth across the border, sometimes daily, to shop, to seasonal homes and to attend cultural and sporting events. Much of the commercial and tourist economy along our border depends on day-trip and

spontaneous travelers. However, requiring passports at the border would essentially eliminate this kind of traffic – visiting family from out-of-town may not think they need to bring a passport if they decide to spend the afternoon in Niagara Falls or Toronto, Ontario. Therefore, any alternative document should be something that is convenient for people to carry.

**An alternative travel document must be affordable.** Passports currently cost approximately $97, plus the price of a photo. As an article in the *Buffalo News* recently pointed out, "if your only international travel is across the Niagara River to swim, take in a play, go to a Blue Jays game or shop, that passport requirement just might be enough to convince you to stay home." Will a family of five pay hundreds of dollars to make a casual trip to the mall or to a hockey game? At the new Fast Ferry recently launched between Rochester and Toronto, if the required documentation were to be limited to a passport or to an expensive border crossing card, it might cost a family wishing to travel via the Fast Ferry a few hundred dollars extra, on top of the cost of tickets, to purchase the documents necessary to cross via the ferry. This same family could save hundreds of dollars by taking a few extra hours to drive around the lake -- or worse by canceling their trip altogether.

**An alternative travel document must be efficient to obtain.** Right now it takes months to get a passport. Any new document must be more efficient to obtain for it not to unduly damage our local economies. This is one of the major drawbacks of the border crossing card currently being looked at by the Department of Homeland Security – it is more convenient and slightly less expensive than a passport, but it still follows the existing and cumbersome passport application process.

**The proposed new rule will be devastating to local economies.** If the WHTI moves ahead without modification, the rule is predicted to reduce visits to the United States from Canada by 3.5 million by 2008, resulting in the loss of $785 million to the United States in potential tourism revenue.

Businesses in the Buffalo area would be hit particularly hard by the proposed rule. Thousands of Canadians come to Buffalo to cheer on the Buffalo Bills, as well as to enjoy theater, music, shopping and restaurants. For example, one of every five skiers at Kissing Bridge just outside Buffalo is Canadian. Approximately 18 percent of the shoppers at the Walden Galleria Mall in Cheektowaga are Canadian. A substantial number of hockey fans at Buffalo Sabres games also cross the border from Fort Erie, Ontario to attend. Furthermore, the new rule could cause harm not only to existing businesses, but also to the businesses that are trying to grow in Western New York.

I am also concerned that the WHTI rule could adversely affect the Shared Border Management agreements being negotiated between the United States and Canada at the Peace Bridge crossing in Buffalo and at the Thousand Islands crossing at Alexandria Bay. Shared Border Management has the potential to enhance security, promote commerce and facilitate better cooperation among law enforcement agencies. The Shared Border Management initiative

is a vital component of the current expansion project taking place at the Peace Bridge. I fear that requiring passports and other equally cumbersome documents at the border could work to undo some of the benefits of Shared Border Management, lead to long waits at these crossings, and put projects like the Peace Bridge expansion in jeopardy.

The new Fast Ferry project in Rochester could also suffer under the proposed rule. In its current form, the rule proposes two implementation dates one year apart from each other: December 31, 2006 for air and sea crossings; and December 31, 2007 for land crossings. Categorizing ferry services as sea crossings (and thereby requiring the new documentation for ferry customers well before the requirement would go into effect at local land crossings) will present a competitive disadvantage for these ferries.

The Rochester Fast Ferry, an important economic engine for both Rochester and Toronto, represents an investment of more than $30 million by the City of Rochester and provides passenger and automobile transit service between Rochester and Toronto in two hours and 15 minutes, at a speed of 52 miles per hour. The Ferry was launched in June, and while the summer 2005 ridership numbers were encouraging, I fear that any competitive disadvantage could jeopardize its future success.

Therefore, the Department of Homeland Security should define all Northern Border crossings as "land crossings" by virtue of their nature simply as alternatives to the traditional land crossings. In order to protect commerce and tourism along the Northern Border under the WHTI, it will be critical to ensure a fair and level playing field for all such entities.

Cross border commerce is the life blood of New York's North Country. In Clinton County, comprised of approximately 80,000 people, the economic impact derived from cross border commerce grew from $784 million in 1994 to $1.4 billion in 2002. The WHTI will stymie that growth. A large part of this growth came from casual trips by Canadians to the shops and restaurants of Massena, Plattsburgh or Rouses Point.

Much of the North Country lies within the Adirondack Park, which was designated "forever wild" in the New York State Constitution over 100 years ago. Development within the six-million-acre park is severely restricted and governed by the Adirondack Park Agency, leaving tourism as the only viable economic opportunity for the communities in the park. Lake Placid has hosted two Winter Olympics and has established itself as an international winter sports capital. The village and its neighboring communities rely on a steady flow of Canadian tourists and sportsmen for their economic survival. This is especially true in the spring and fall, the "slow seasons," when these communities rely upon the Can/Am hockey tournaments where hundreds of Canadian families stay in the hotels and eat in the local restaurants. Because of the development restrictions, there is no other economic generator for the people of the Adirondacks to fall back upon if tourism is threatened.

There can be no doubt that the proposed WHTI, if it proceeds without modification, will

have a devastating impact on the economies of New York State. Therefore, we must work together to find an alternative solution that will keep our borders secure, and that will provide a convenient, affordable and efficient way for the U.S. and Canada to continue our important trade relationship and protect the way of life we have developed along our border communities.

Senate Judiciary Committee
Immigration, Border Security, and Citizenship Subcommittee
Field Hearing Testimony
Pete Sepulveda, Jr.
Chair, Border Trade Alliance
Texas A&M International University
Laredo, Texas
December 2, 2005

Chairman Cornyn, my name is Pete Sepulveda, Jr. and I am the director of the Cameron County Department of Transportation. As you know, Cameron County is one of the fastest growing areas of the country, and our openness to international trade and travel and our proximity to Mexico have played a key role in our growth. On a personal note, I want to highlight that I am a native of the border region, I have been a city manager for two border communities and I have also managed and operated five international bridges between Texas and Mexico. I have family on both sides of the border and crossing the border is an integral component of both my professional and personal life.

But I appear before you today in my capacity as the chairman of the Border Trade Alliance. I want to thank you for this opportunity to offer comments on behalf of the BTA regarding the implementation of the Western Hemisphere Travel Initiative, a program that will significantly impact both Northern and Southern border communities, including my hometown of Rio Grande City, Texas. Our main point here today is to make sure that this initiative does **not** negatively impact our border, our livelihood and our nation.

Founded in 1986, the BTA is a grassroots organization consisting of individuals, entities, and businesses, which conduct legitimate cross-border business in the NAFTA marketplace. As such, we have a unique perspective on the challenges facing our land borders. We believe that as a nation we can have a regulatory and enforcement environment that result in **both** increased border security **and** improved facilitation of legitimate trade and travel.

Upon hearing news of these planned changes to cross-border travel policy in the spring of this year, the BTA was very concerned about the impact this would have on border communities. In September of this year, an Advanced Notice of Proposed Rulemaking regarding the Western Hemisphere Travel Initiative – Section 7209 of last year's Intelligence Reform and Terrorism Prevention Act – appeared in the Federal Register, allowing the BTA and other interested parties to make their feelings known.

Section 7209 states that travel to the United States by U.S. citizens and others from the Western Hemisphere will require a passport or acceptable alternative documents in circumstances where travel was previously permitted without such documents.

First, the BTA believes that there are certain alternatives to the passport that we must continue to accept at United States ports of entry. In their Federal Register notice, the Departments of State and Homeland Security indicated that NEXUS cards, SENTRI cards, Border Crossing Cards and FAST driver identification cards may be accepted in lieu of a passport.

The BTA is adamant in its belief that these identification cards recognized by the Departments of Homeland Security and State should be deemed acceptable alternatives to a passport for hemispheric travel. Our recommendation in this area is based on the fact that holders of these documents have been vetted through various security check databases and that the documents are tamper resistant, machine-readable, and technologically advanced, including such features as biometrics.

SENTRI cards, which give holders access to special commuter lanes on the border, are not a practical alternative for all border residents, as these lanes are in but three of over 40 ports of entry on the U.S.-Mexico border (San Ysidro, Otay Mesa and El Paso), though more are on the way in communities such as Brownsville, McAllen and Nogales.

The same can be said for FAST driver identification cards, which are reserved for the use of commercial truck drivers; and Border Crossing Cards, which are only issued to Mexicans residing in Mexico with a valid Mexican passport, and require an interview with a U.S. consular officer in our U.S. Embassy or consulate office.

Second, we urge the Departments to conduct a feasibility assessment of establishing a traveler document that may be obtained by U.S. and Canadian citizens that confirms one's identity and citizenship and can be placed in one's wallet providing more durability than the booklet-style passport. Some have referred to this as a North American Travel Document. Although we cannot speak to the name, we certainly agree that this concept should be considered as an alternative for the long-term implementation of this initiative. This is of importance for residents of border communities who cross our borders with Canada and Mexico on a daily basis for commercial or personal reasons.

Third, it is imperative that this initiative be fully integrated with other efforts currently underway or proposed. For example, the Department of Homeland Security is currently undertaking a proof-of-concept for Radio Frequency Identification (RFID) technology at two ports on the U.S.-Mexico border and three on the U.S.-Canada border as part of the US-VISIT program. RFID will be used to record the arrival and departure to and from the U.S. for foreign visitors that are required to apply for form I-94. If RFID technology is being considered for one form of travel, then we should analyze if this technology can be incorporated into WHTI, meaning that if a new document is being considered, that this document be technologically enabled to allow the traveler to participate in new or ongoing enforcement and inspection programs.

This new requirement has the potential to inflict a new burden on travelers, especially casual travelers across the U.S. and Canadian borders, and could put tourist dollars, at

risk. Border region retail sales and tourism stand to suffer if visitors are not in possession of proper proof of citizenship.

Border states in the Southwest, Texas and Arizona especially, are often destinations for long-stay winter visitors from throughout the U.S. and Canada. Our climate makes us a predictable winter destination, but our proximity to Mexico takes on importance, too, as a frequent source of recreation. If Winter Texans must carry a passport to make a casual trip to Mexico, then we risk putting a critical segment of our region's economy at risk if we create an inconvenience for those visitors. The McAllen Chamber of Commerce, as part of its economic forecasting, attributes a $225 million contribution to the Rio Grande Valley economy by Winter Texans. A study by the University of Texas at Pan-American cites Winter Texans' impact as even greater, with an annual contribution of $420 million to the area's economy.

We are also concerned with the burden the costs of obtaining a passport could inflict on the working families of the U.S.-Mexico and U.S.-Canada borders. For example, a family of four living in South Texas who routinely crosses the border to visit family and friends in Mexico may not have the means to secure the requisite number of passports for each member of their family. At $97 per passport for individuals over 16 years of age, and $82 per passport for individuals under 16, this rule has the potential to create a huge financial burden for many citizens who live in some of our country's poorest communities.

We must also consider the impacts that this new requirement will have on Mexico and Canada. For example, tourism serves as one of Mexico's top sources of foreign revenue, to the tune of close to $5 billion in 2003, and many of the tourists are Americans visiting without a passport. This is of greater relevance to less frequent travelers that may consider travel to Mexico, or other vacation destination within Mexico once a year. The additional cost to secure the necessary travel documents, we fear, will act as a deterrent to this form of travel.

Fourth, making the passport the only acceptable document raises additional concerns, in particular the ability of the Department of State to issue on a timely basis the potential several million new passports that may be required. This initiative could hinder a lawful traveler's ability to leave or enter the U.S. Although we have seen assurances by the Department of State to issue many more passports on an annual basis, we still have very clear in our memories the experience of the issuance of millions of laser visas for Mexican travelers who suffered through long waits for their visas. If travelers have to wait several months to receive a passport, then we are by default limiting their traveling choices.

Fifth, we must focus on the intent of the law and not just on the deadline. Therefore, the BTA supports a common implementation date for all modes of travel of December 31, 2007. We also recommend that at regular intervals between now and December 31, 2007, the responsible Departments assess their ability to meet this deadline, with the understanding that a final decision on the deadline be made six months prior, to ensure

that the Departments are fully prepared to implement the rule without negatively impacting the traveling public.

The BTA has serious concerns about the effect this rule will have on casual as well as frequent travelers across our shared borders. The communities on both sides of the U.S.-Canada and U.S.-Mexico borders are inextricably linked both culturally and economically, thus we are reluctant to support any program that puts our unique cross-border relationships at risk and therefore urge DHS and DOS to commit to undertaking an extensive outreach campaign aimed at the traveling public. This grassroots outreach, of course, must be a concurrent effort to work with Mexico and Canada to ensure that we find ways to better coordinate our joint efforts to protect all of our citizens.

Mr. Chairman, the BTA is committed to working with you and your subcommittee to ensure that by simply focusing on a deadline we are **not** foregoing improvements to the security of the Homeland, to the welfare of the border region, and to the relationship with our two most important partners, Mexico and Canada. The BTA believes that by looking at all the alternatives, we can come up with a solution that allows our enforcement agencies to better and more reliably identify the traveler; that fosters a travel experience that rewards the low-risk traveler; that incorporates the latest technological advances; and that ensures a cost-effective - **not cost-prohibitive** - option to not only maintain our trade and tourism but to enhance the growth and travel opportunities for our constituents.

The Border Trade Alliance is committed to working with you, the Department of Homeland Security and the Department of State in ensuring that our constituency along our nation's land borders is fully informed of the requirements under section 7209 of the Intelligence Reform bill.

The BTA remains committed to supporting initiatives that will make our Homeland more secure while making the travel experience for our visitors and for U.S. citizens a better one.

Once again, Mr. Chairman, I thank you for the opportunity to submit our comments for the record, and I look forward to working with you on this issue in the coming months.

**Senate Judiciary Committee**
**Subcommittee**
**on**
**Immigration, Border Security and Citizenship**

**December 2, 2005**
**Laredo, Texas**

**Testimony of Guillermo Trevino**
**Chairman of the Board of Directors of the Laredo Chamber of Commerce**
**Principal Southern Distributing**

Mr. Chairman, members of the committee, my name is Guillermo Trevino, and I am the Chairman of the Board of Directors of the Laredo Chamber of Commerce and a member of a privately held business with operations on both sides of the US - Mexico Border. Like most of the 850 active business members of the Laredo Chamber of Commerce my businesses depend on the legal flow of commerce and visitors between Northern Mexico and the US. We have a keen interest in border policy, because border policy directly impacts people lives and business. The Western Hemisphere Travel Initiative is not an abstract discussion for us, because the stakes are high and the affect could be huge on an area of the country that already faces stiff economic challenges.

Before any policy is adopted it should meet a variety of test.

The first should be - Do No Harm. In Medicine this is important; because you want to make sure the cure is not worse than the disease. With this policy is there a better than average probability that the rules will make the overall situation worse instead of better. Chances are good that the WHTI will add crossing time to entry and exit process, people don't dispute this,

the discussion generally centers on how much of an increase. Any added time will add congestion to an already time consuming crossing process. Anecdotally we are already hearing from visitors that though they are not eliminating trips to the border they are reducing the frequency because of the wait time. A reduction in trips, means a blow to the local, state, and national economies of the US and Mexico.

Second Test:

Will it achieve the policy objective of making the United States safer? I think all our representatives in Washington are in a tough position, because voters are demanding that we do something to make them feel more secure and building walls and increasing requirements for legal commerce and travel sound good and will be implemented, because law abiding citizens will comply, but will it deter international criminals and terrorists any more than our current systems? Relying simply on this increased documentation requirement alone will not improve the situation. Added congestion means more opportunity for errors and people slipping by already overworked people at check points. Increased staffing and manpower will be necessary to insure and act on information generated by the system and we are back to the fundamental flaw and current problem at our borders that we do not have adequate staffing and manpower at our ports of entries. Why implement a new process at increased expense to people who may have difficulty affording it in when we cannot currently staff and administer existing processes and procedures.

Third Test: Is it possible and at what cost? We have seen a variety of systems and plans being tested, from current barcode technology to biometrically triggered RFID devices. There is no question that some system can be deployed to speed things, but the current plans we have seen so far are cost prohibitive and years away from real world use. The danger we see is that we have a promising technology like some form of RFID that we are told "that even Wal Mart will implement soon". Homeland Security says it will be ready by the date necessary to implement WHTI. The technology has limited success or is too expensive at the time of implementation, but Homeland Security implements the overall plan without the key promising technology that we are told will fix everything and we have huge delays at port of entries. I spoke with someone from Wal Mart after a recent presentation on US Visit's passive RFID tests and Wal Mart has delayed their hard RFID deadlines, because they are having serious data integrity issues. The push back will be, "but it only took us x number of years to implement after we started the program", but over the course of those x years commerce is interrupted, businesses close or suffer, and trade patterns are changed. We think about things like wait times in micro, it will only add 5 seconds, the passport will cost $70, but just as when you multiply wait times, when you multiply the number of people who don't have a passport who might cross into Mexico times $70, you are talking about a significant amount of money that will not be spent in local communities and will come out of already strapped budgets.

WHTI must be part of a comprehensive plan that also takes into account immigration reform, because as important an issue as WHTI by itself it is part of the overall problem of legal immigration. The best estimates I have seen for growth in Mexican GDP next year are around 3.5 %. According to an economist I spoke with the other day the Mexican economy would need to grow 7% to create enough jobs to employ everyone entering the workforce. The difference between jobs created and population growth will be the approximate size of the number of workers entering the US from Mexico either legally or illegally next year. Please check these figures with your own staff, but the point is extremely important, if the economy grows at the best possible rate next year, there will still be a huge number of people looking for work, no matter how many agents we add or fences we build. Curiously the problems we face on the Southern Border are also what will make the United States stronger and more competitive in the future, because these are young workers and as our population ages we will need more and more young workers. By allowing and essentially encouraging huge amounts of illegal immigration, by not finding a way to work them into some kind of legal framework, we weaken Mexico's ability to function as a normal state, (how can a city or region function normally when large percentages of their most productive human capital has left), we provide financial support to people involved in criminal activity, and we drive a large part of the US and Mexican economy into the shadows and that is not good for any society or government.

So in closing I would again like to thank the committee for listing to these comments and ask that you remember the first test I mentioned, Do No Harm.

TRAVEL BUSINESS ROUNDTABLE

A Strategic Partner to TIA

Travel Industry Association of America

December 7, 2005

The Honorable John Cornyn
Chairman
Subcommittee on Immigration, Border Security and Citizenship
Committee on the Judiciary
United States Senate

The Honorable Edward M. Kennedy
Ranking Member
Subcommittee on Immigration, Border Security and Citizenship
Committee on the Judiciary
United States Senate

On behalf of the members of the Travel Industry Association of America and the Travel Business Roundtable, we would like to thank you for holding a field hearing on December 2nd to focus attention on the opportunities and challenges related to the Western Hemisphere Travel Initiative (WHTI).

As the two leading national organizations representing all segments of the $600 billion U.S. travel and tourism industry, we respectfully request that our joint comments submitted in response to the Advanced Notice of Proposed Rulemaking for the Western Hemisphere Travel Initiative be placed in the record as part of the December 2nd field hearing in Laredo, Texas.

The U.S. travel industry strongly supports enhancements to our nation's border security and agrees that Customs and Border Protection officers should be examining fewer and more secure travel documents at all our nation's ports-of-entry. The challenge is implementing a plan that does not deter international travel in to and out of the U.S. and provides sufficient time to develop alternative travel documents and fully educate the traveling public with a major communications outreach campaign. Travel and tourism stands ready to work with Congress and the Administration to implement WHTI in a fashion that achieves both our homeland security and economic security goals.

Sincerely,

Rick Webster

Rick Webster
Vice President, Government Affairs
Travel Industry Association of America

enclosure

TRAVEL BUSINESS ROUNDTABLE

A Strategic Partner to TIA

Travel Industry Association of America

October 31, 2005

**Department of Homeland Security, Bureau of Customs and Border Protection**
**8 CFR Chapter 1 [DHS 2005-0023] RIN 1651-AA66**

**Department of State**
**22 CFR Chapter 1 RIN 1400-AC10**

**Documents Required for Travel Within the Western Hemisphere (Advanced Notice of Proposed Rulemaking)**

The Travel Industry Association of America (TIA) and the Travel Business Roundtable (TBR) submit the following comments in response to the Departments of Homeland Security and State and the issuance of an Advanced Notice of Proposed Rulemaking concerning *"Documents Required for Travel Within the Western Hemisphere."*

The Travel Industry Association of America is a national non-profit association representing all segments of the $600 billion U.S. travel industry, and its mission is to promote and facilitate increased travel to and within the United States. It has more than 1,700 member organizations throughout the country. A strategic partner to TIA, the Travel Business Roundtable is a CEO-based organization also representing all sectors of the travel and tourism industry. The mission of TBR is to educate elected officials and policymakers about the importance of the travel and tourism industry to the nation's economy.

TIA and TBR have worked with Congress and the Departments of Homeland Security and State to support initiatives that enhance border security, while at the same time also seeking to preserve our nation's economic security. Facilitating increased travel into the United States from international markets is critical to our nation's current and future economic growth. The U.S. travel industry supports implementation of the Western Hemisphere Travel Initiative (WHTI), but in a way that does not disrupt travel into the United States from key markets in the Western Hemisphere.

Inbound travel from Mexico will be largely unaffected since the types of documents (passports, Border Crossing Cards, and SENTRI cards) currently utilized by Mexican nationals entering the United States will likely be included as acceptable alternative travel documents under Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).

We are, though, particularly concerned about the WHTI's impact on Canadian travel into the U.S. Canada is the largest international travel market for tourism into the United States (over 14 million visitors in 2003), and Canadians have limited options for travel documents that will meet the standards of this new law – either a Canadian passport or a NEXUS card. Since only 37 percent of Canadians currently possess a passport, the impact on travel from Canada to the U.S. could be dramatic. While billions of dollars in retail shopping are derived from Canadians shopping along the border in the U.S., the impact of overnight travel by Canadians is actually felt most dramatically far from the northern border. The top five states for overnight visits by Canadians to the U.S. are, in order: Florida; California; Nevada; New York; and Washington.

On its face Congress' decision to adopt the 9/11 Commission's recommendation to eliminate the Western Hemisphere Exception in the name of preventing terrorist travel is a wise one. Particularly in light of recent events in the U.S. and around the world, a system that has U.S. Customs and Border Protection officers inspecting fewer and more secure travel documents is sound and rational. However, it is imperative that the procedures for implementation properly balance security at our borders with the free flow of commerce. While we support this action on the part of the Congress, we also believe it is incumbent upon the federal government to conduct a full cost-benefit analysis to determine to what extent this new requirement will enhance border security and to also ascertain what possible negative economic and social implications it will have.

The following are our recommendations in response to the ANPRM and are intended to be positive suggestions that will aid in the implementation of WHTI, providing for additional border security without causing major disruption of legitimate travel into and out of the United States.

Recommendation #1 – Create a single, unified deadline for WHTI of December 31, 2007

While the Departments of State and Homeland Security are moving in the right direction by moving from three to two deadlines for WHTI, it makes little sense to maintain deadline requirements for air and sea travel at the end of 2006 and all land border travel at the end of 2007. Maintaining separate deadline requirements for different modes of travel will only serve to confuse travelers. A single, unified deadline (December 31, 2007) for all modes of travel will provide more time for Americans and Canadians to obtain passports, and will also facilitate the development of alternative travel documents. Creating a deadline at the end of 2007 will also allow more time for the development of an aggressive outreach and education campaign, where the federal government can partner with the U.S. travel industry and the broader business community to educate travelers about these new document requirements.

Recommendation #2 – Exercise broad discretion in determining which documents other than passports will be accepted

We urge the federal government to exercise broad discretion as it seeks to determine which travel documents other than passports will be deemed secure and acceptable for entry into the U.S. by Western Hemisphere travelers. While homeland security is paramount, the Departments of State and Homeland Security should think in the broadest terms possible concerning secure travel documents other than passports in order to facilitate travel and trade with our biggest trade

partners. Congress has provided both departments flexibility in this area, and they should think creatively and be attentive to all the public comments submitted as a result of the ANPRM.

Recommendation #3 – Develop low-cost alternative travel documents for both Americans and Canadians

We applaud the Departments of State and Homeland Security for already beginning to work on the development of a low-cost alternative travel document since very few Americans have passports and NEXUS and SENTRI cards are available at so few locations. We would strongly recommend, though, that the departments move beyond developing a card that is available only to Americans and only for use at land border ports-of-entry. By limiting the new travel card's use to land border crossings, American travelers will be forced to carry multiple travel documents, only serving to confuse travelers and discourage cross-border travel. Also, by excluding Canadians from eligibility to receive this new alternative travel card, Canadians are cut off from another possible means of travel to the United States. As we suggested in our previous recommendation, we urge the departments to think in the broadest terms when designing this new travel document.

Recommendation #4 – Create price incentives for the distribution of U.S. passports

Regarding issuance of U.S. passports, it is imperative for the federal government to provide incentives that encourage Americans to obtain a first-time passport or renew their passport. While $97 for a new passport that is valid for ten years may seem like a relative bargain to some, the average traveler is not amortizing the cost of passport over ten years. What they see is a relatively high cost for themselves and their families that are now required in order to travel outbound for trips to Canada, Mexico and the Caribbean. By providing pricing incentives (discounts) to students, seniors and others, more Americans will be encouraged to apply for and receive a U.S. passport. And while an argument will be made against this recommendation in the name of congressionally mandated cost recovery, then the Administration and Congress need to determine which is more important – 100 percent cost recovery or having millions more Americans in possession of the most secure form of travel documentation – a U.S. passport.

Recommendation #5 – Work with state governments on possible use of driver's licenses to verify U.S. citizenship

Many individuals and organizations in the travel and business community point with hope to the state driver's license provision in the REAL ID Act passed by Congress earlier this year. It is our understanding after discussions with sources in Congress and the Administration that the REAL ID Act still does not mandate upgrades and changes to state driver's licenses that would allow them to be used by American travelers as proof of citizenship. Having said that, we also believe that based on conversations with experts in this field it is entirely possible that in the future state departments of motor vehicles (DMVs) could work to establish secure data links with the federal government that would permit states to query an applicant's citizenship status, receive a satisfactory answer from the Departments of State and/or Homeland Security, and then securely encrypt that information on a readable portion of the license. We urge the federal government to begin communications with the state DMVs to design and establish such a

process in order to at some future point help create a secure state driver's license that can serve as a secure means of identification and proof of U.S. citizenship.

Recommendation #6 – Work with the private sector on an aggressive outreach campaign

Our last recommendation is for the Departments of State and Homeland Security to partner with the private sector to launch an aggressive outreach campaign to educate prospective travelers within the Western Hemisphere about the eventual final rules that govern required travel documents for entry into the United States. As stated earlier, the opportunity to educate the traveling public is greatly enhanced by beginning this outreach and public relations effort far in advance of the final deadline requirement. This, in turn, argues strongly for a clear and timely definition of what travel documents will be acceptable at ports-of-entry and a single unified deadline aligned with Congress' statutory mandate of January 1, 2008. It is also critical that the federal government not attempt to launch and execute this outreach campaign on its own, but rather leverage the communications capabilities of the private sector. The U.S. travel industry and the broader business community has deep reach to tens of millions of customers and clients, and can quickly communicate the final rule and ensure the correct information is received by the traveling public in the Western Hemisphere.

CONCLUSION

In the same way that TIA, TBR and the unified U.S. travel industry have supported the US-VISIT Program and enhanced documentation requirements for Visa Waiver Program travelers entering the United States, we stand ready to support the Western Hemisphere Travel Initiative. What we ask of the federal government is that it takes the mandate from Congress on this matter and endeavor to work with the private sector to create a sensible plan that truthfully enhances U.S. border security while at the same time actually improving the flow of travelers into and out of the United States.

Nothing less than billions of dollars of international visitor spending and hundreds of thousands of U.S. jobs in places from Florida to California are at stake in this process. Not only are visitors and other governments in the Western Hemisphere watching this matter closely – the eyes of the rest of the world are also upon us and wondering if the U.S. "welcome mat" will become even more frayed than it already is, or if the U.S. government will demonstrate that it understands the importance of truly "secure borders" with "open doors" that welcome the world to come here to visit, work and study.

Please contact us if you have additional questions concerning these comments from TIA and TBR. We can be reached at rwebster@tia.org (202-408-2163) or Melissa_Gong@was.bm.com (202-530-4831).

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