

BUILDING A WALL BETWEEN FRIENDS: PASSPORTS TO AND FROM CANADA?

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

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BUILDING A WALL BETWEEN FRIENDS: PASSPORTS TO AND FROM CANADA?

THURSDAY, NOVEMBER 17, 2005

HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
Washington, DC

The Committee met, pursuant to call, at 9:00 a.m., in Room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo (Chairman) presiding.

Present: Representatives Manzullo, Velazquez, King, McCotter, Poe, Bordallo, and Higgins.

Chairman MANZULLO. Good morning and welcome to this hearing. There is a looming crisis at our borders and if the enhanced documentation requirement for travel to cross our land borders is not handled correctly, it could spell trouble for many of the manufacturing and tourism sectors of the economy. Obviously there are hundreds of thousands of small businesses in both those sectors.

This problem is especially acute for our neighbors to the north. The Intelligence Reform and Terrorism Prevention Act of 2004 requires that the Department of Homeland Security and the State develop and implement a plan for U.S. citizens and foreign nationals to present a passport or other appropriate security identity and citizen documentation when entering the U.S.

As of January 1, 2008, this enhanced documentation is supposed to apply to all land border crossings including Canada. For years, Americans and Canadians have been used to simply showing a driver's license to cross the border. Now this will change.

The impact of the enhanced documentation efforts on the economies of Canada and the U.S. is still unclear. What is clear is that the legislation also contains another mandate not frequently mentioned that it, "Seek to expedite the travelers or frequent travelers including those who reside in border communities."

I have worked with officials from Departments of State and Homeland Security in the past on visa issues and I am impressed with the quality and competence of the people involved in this discussion. They are all senior career officials.

Earlier this year we worked out a one-year multiple entry visa for Chinese business persons wishing to come to the United States to attend a trade show or inspect or be trained on a U.S. product. The same people are working on the Western Hemisphere Travel Initiative. They are taking this mandate very seriously.

This is evidenced by their effort to go through all the appropriate steps in the rule making process including issuing an Advanced Notice of Proposed Rule Making in which DHS and State seek com-

ments and assistance on how to best go about enhancing security at our border while not impeding legitimate commerce.

I commend DHS and State for going through this process. It may seem difficult and slow at the outset but the final regulation will be a better product if the Agencies seriously take into account the legitimate concerns of small businesses.

As part of that process I strongly encourage DHS and State to prepare an initial regulatory flexibility analysis to accompany the Advanced Notice of Proposed Rule Making. I am pleased that the Chief Counsel of the Office of Advocacy at the Small Business Administration, Tom Sullivan, agrees with my request in order to minimize the impact of this proposal on small entities.

There are no Government witnesses testifying at this hearing today because they know the intensity of the trade with North America and the difficulty of the task ahead of them in balancing economic and security interest. This hearing is part of an effort to help DHS and State collect information that will assist them in completing an accurate and comprehensive economic analysis.

The main purpose of this hearing is to demonstrate that the maximum amount of commerce within the Western Hemisphere, particularly between the U.S. and Canada, and the complexities of trade between the two countries, may make it next to impossible to fulfill the statutory mandate to require this enhanced documentation and not dampen the economies of the U.S. and Canada.

Few people know that Canada is our largest trading partner with \$1.2 billion in trade crossing the longest non-militarized border in the world every day. This 4,000-mile border stretches across 11 states and eight provinces encompassing an economic sphere affecting 51 million Americans and 30 million Canadians.

Directly or indirectly the U.S./Canadian border is integral to 5.2 million jobs. Travel and tourism alone create a \$10.3 billion economic benefit to the United States. I fear that this proposal would have the most negative consequences for the casual or infrequent tourist, particularly families with minor children who would rather vacation in their own country rather than pay \$95 for a passport or \$40 for security identity card to cross the border.

For example, my sons go to Grove City College in Grove City, Pennsylvania. They are both English majors. One weekend on a whim they decided to go to Niagara on the Lake in Canada for the George Bernard Shaw Festival. Five college students went there. Neil and Noel have passports. Their passports are at home and were not in their possession. I am sure those two could have gotten through with a passport. Are the other three college kids going to pay \$40 for a card that would take six to eight weeks to get? No.

That is the problem. This would severely hamper travel between Mrs. Slaughter's district and the Niagara on the Lake. This proposal affects not just tourism but also manufacturing. Few people realize our two nation's automobile industries are virtually integrated comprised of nearly 23 percent of total U.S. exports to Canada with parts and finished goods crossing the border multiple times.

We don't need another reason for American manufacturers to leave our shores or for direct foreign investment to dry up if it becomes more difficult to trade with Canada. I believe there is a way

to accomplish goals of enhanced security at our land borders and not disrupt commerce.

What I would like you to do is when testifying tell your story. You can touch upon proposed problems and proposed resolutions, and many are out there, but don't overload it on the latter. The purpose of this hearing is to give additional information to the wonderful people we have been working with at the Department of State and Department of Homeland Security to give them even more of a bird's eye view as to the intensity of the problem.

If you load up on problems, lighten up on possible solutions. That would help, but obviously use your own discretion. We use a five-minute clock. Our first witness after Ms. Velazquez' opening statement will be Congresswoman Slaughter.

Louise, you can testify and then you can leave anytime that you would like.

Ms. SLAUGHTER. Thank you, Mr. Chair.

Chairman MANZULLO. I now yield for an opening statement to the gentlelady from New York, Ms. Velazquez.

[Chairman Manzullo's opening statement may be found in the appendix.]

Ms. VELAZQUEZ. Thank you, Mr. Chairman. As time as told us, our nation's security should not be taken lightly. The terrorist attacks of September 11 taught us this important lesson and made it clear that America needs to step up its efforts to prevent terrorists from entering the confines of our borders.

Many strides have been taken to make this country safer following the attacks. A variety of measures at the local, state and federal level are now in place to secure our borders and fight terrorism both at home and abroad. In an effort to bolster security for our citizens, we must recognize that America's borders whether by air, land, or sea are an entrance for a host of people, goods and services that help fuel our national economy.

In our fervor to strengthen these protections, some of these security measures have had unintended consequences on many sectors of the population including small businesses. Today's hearing will give us a chance to look at the ongoing rule making as established in a portion of the Intelligence Reform and Terrorism Prevention Act. This initiative, the Western Hemisphere Travel Initiative, will require some additional forms of identification for cross-border travel from Canada and Mexico.

While we can all agree that there is a responsibility to regulate who crosses through these entry points, it needs to be done in a manner that protects our borders with out harming small businesses. There is no question that any regulatory change in documentation required for cross-border travel as suggested in the proposal will have a major impact on thousands of small businesses.

With a significant portion of their customer base located across the border, it is vital that any changes made to current cross-border travel regulations take into account the needs of these small businesses. Imposing steps such as passport requirements for potential customers may greatly impede the success these businesses, when less costly alternatives may be available.

However, I think it is difficult for us to truly assess the impact without the agencies responsible for implementation Department of

State and Department of Homeland Security even present at this hearing today. How are we supposed to get the full story, when the beautiful and wonderful people from these two agencies are not even here?

We can sit here and talk about possible effects on industries and the small business sector all day long but if these departments are not here to engage in these discussions, they still may go ahead with this proposal hurting small businesses.

We need these agencies to perform a full economic analysis taking the needs of entrepreneurs into account. This will allow for a true determination of the impact and economic costs of this cross-border identification proposal. Yes, we need to secure our borders but America's small businesses, which already face many challenges, deserve a less costly, less burdensome plan that does not pose a threat to their success.

As we work to secure America's borders and thwart terrorism, the need for increased security is certainly warranted. However, too many of our nation's most prosperous industries including travel, tourism, manufacturing, and local border towns have been put at an unfair disadvantage. This is especially true if these possible proposals are adopted and enacted without adequate review.

When these policies go as far as to threaten the role small businesses play in the economic recovery and future competitiveness of our nation, it becomes clear that we need a plan that offers a healthy balance between safety and commerce. We simply cannot afford to damage the livelihood of our economic security. Thank you, Mr. Chairman.

[Ranking Member Velazquez's opening statement may be found in the appendix.]

Chairman MANZULLO. Thank you for that statement. We are delighted and grateful to have the Honorable Louise Slaughter testify for us today. Ms. Slaughter represents the 28th District of New York including the Niagara Falls area and the city of Tonawanda, two of the most heavily trafficked border crossing areas in the north east. I Chair the U.S./Canadian interparliamentary exchange and Louise has been an active member of that exchange ever since the time she was elected.

We look forward to your testimony and we have the five-minute clock that applies to members also. When you see the yellow, that means you have one minute. When you see red, I start to get a little anxious.

Ms. SLAUGHTER. Yes, sir.

Chairman MANZULLO. We look forward to your testimony. Louise, if you could pull the mic a little bit closer to you.

Ms. SLAUGHTER. Is that better?

Chairman MANZULLO. That is fine. Thank you very much.

**STATEMENT BY THE HONORABLE LOUISE SLAUGHTER (NY-28),
U.S. HOUSE OF REPRESENTATIVES**

Ms. SLAUGHTER. Thank you, Mr. Chairman. I appreciate your hospitality and also to Ranking Member Velazquez. Thank you for holding for this hearing and I appreciate your staffs and all the work they have done to put this important hearing together. I will briefly summarize my written statement.

Mr. Chairman, the United States and Canada have always been bound by the sheer geography and share culture, history, and values. In many ways we are two truly intertwined communities moving as one. In the northern border regions we depend upon each other every day. The current Western Hemisphere trade initiative plan as it stands before us jeopardizes that close relationship. It will have an absolutely devastating affect on the economic futures of our border communities, specially the communities that I represent, as you mentioned, Buffalo, Niagara Falls, and Rochester.

U.S./Canada supports 5.2 million jobs and it contributes tens of billions of dollars to our respective economies. In my district alone \$160 million in trade and 20,000 vehicles cross Buffalo's Peace Bridge every day. The Niagara frontier is the gateway for millions of tourists each year.

Let me say that one of the things that we are most concerned about is the numbers of people who come into the area in northern New York who might suddenly decide that they would like to take a jaunt over into Canada only to find that they don't have a passport with them and they are not going to be able to get back home. We are already seeing a chilling effect because too many people believe that is already the case.

A report recently issued by the Canadian tourism agency concluded that this passport requirement would result in an annual loss of 3.5 million outbound trips by Canadians to the United States. The estimated loss to the U.S. tourism industry, just the tourism industry, \$667 million per year, but the vast majority of the people who cross that border on a daily basis do it for work or for recreation or to see their family or to go to mama's for supper, whatever it is that we do. The Canadian and the U.S. populations are that intertwined. One serious issue is that the British commissioners in my district believe that this WHTI will increase the border delays and decrease the crossings. One very important point already, the fact that there have been fewer crossings at one of our bridges has already cost \$16 million in bonding capacity because of the fewer people crossing on a daily basis. This money is necessary for capital improvements. This is one point I really want to bear down on that is very important on this bonding capacity. Now, we all know that choosing between national security and economic strength us a choice that we don't have to make and we can't afford to make it and it simply is not fair for us to ask the citizens of the border region to shoulder it on their own. I do have five concrete recommendations to improve WHTI. Because we are supposed to bear down on other things, I will be very brief with those. One, I would like to push the NEXUS card which I think is terribly important. It is already there. We passed an amendment to Homeland Security that would even allow us to use NEXUS on airplanes and on the water. That is an important card for people who cross frequently. One of the things that we are very concerned about is that there is no economic analysis on any of this. GAO has agreed to do one for us but, unfortunately, since State and DHS have not yet come up with a concrete proposal they can't. Although we think that from what we know already, particularly with the bonding capacity and the fewer people crossing, that the economic impact will be astonishing. We have not done anything to promote NEXUS. As

a matter of fact, in my part of the border you can't even get a NEXUS card on the United States side. We have made great strides, I think, in making some changes to make it easier for people to get across using that NEXUS card but now we have to push the card itself and ask the Government to help us to sell that card. Certainly that will relieve the congestion at the border as well as making it easier to cross.

Third recommendation is that if there is going to be a border card, which the State Department is talking about, it has to be inexpensive, it has to be easy to obtain and, as I pointed out, NEXUS is not, and it has to be marketed across the United States because we wanted to make sure that when people do come up north and they decide they do want to go over to Canada, as Chairman pointed out, up to this point all we ever had to say to anybody at the border is where we were born.

The complication of it really has to be simplified as much as possible. Further, we think DHS and State should consider alternative documents that will satisfy citizenship and meet requirements for crossing the border. Providing both options and convenience for spontaneous travelers is critical. The Department of State's current vision for the BCC, the card, falls very short here and we think will result in a steep decline in cross-border traffic. Now, if we are going to consider enhanced driver's license, which has been talked about, as an alternative —

Chairman MANZULLO. Time, Louise.

Ms. SLAUGHTER. — of passports. Okay. We would sure like to know if they are going to make it simple and good and please don't hurt the U.S./Canada relationship. The border problems in the United States are not on our border. Thank you so much and thanks to all the members of the Committee.

[Congresswoman Slaughter's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you. The written statements of all the witnesses will be made part of the permanent record without objection.

Chairman MANZULLO. Our next witness is Governor John Engler, President and CEO of National Association of Manufacturers. Governor Engler negotiated and brokered and U.S./Canadian Free Trade Agreement. He has a vast amount of knowledge not only on the part — that is not true, Governor? I thought that was the case.

Mr. ENGLER. That is a bit more than deserved, believe me.

Chairman MANZULLO. Well, whatever it is. It was there during your watch. Okay. We will take that out of the biography that wasn't in it. In any case, we appreciate your taking the time. NAM obviously represents small and large manufacturers across the country and we look forward to your testimony.

STATEMENT OF THE HONORABLE JOHN ENGLER, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. ENGLER. Thank you very much, Mr. Chairman. I am delighted to be here. And to Congresswoman Velazquez and to the members of the Committee I am delighted to have this opportunity. I appreciate the meeting concerning this Western Hemisphere trav-

el initiative and specifically this new requirement, or new since 2004, that U.S. travelers present a passport or other secure travel document to reenter the United States from Canada.

Having served as Governor of Michigan for 12 years I have seen first hand how important business, social, and cultural links with Canada. The Congresswoman hit it right on the head in her excellent testimony. This is a very close special relationship that we have. Our border policies need to recognize that special relationships. We certainly understand the challenges the Government faces in seeking to improve the security of the homeland after 9/11.

That is a priority and there has to be a clear and keen focus on improving management of our borders. At the same time trade with Canada and Mexico is vital for U.S. manufacturing and the U.S. economy as a whole. Consumers, workers, businesses derive immense benefits from these important and long-standing trade relationships.

The NAM has been reassured by repeated statements to the administration that it is seeking both to advance North American security and streamline efficient movement of legitimate low-risk traffic across shared borders. The proposed initiative raises several key concerns.

Flexibility is a question on appropriate secure travel documents. In addition to passports the proposed regulation indicate they are likely to be quite limited, the NEXUS identification cards that the Congresswoman would like to see expanded issued jointly by Canadian and U.S. issuers, the FAST driver's license, perhaps other special identification cards.

The problem is relatively few Americans, about 20 percent, have passports. Only a small percentage of them have other what would qualify as secure identification cards. There is the question of cost for business, additional cost not just to ensure that all relevant employees have passports, but also the coordination that would now be required. Congressman McCotter frequently would go to Windsor for lunch. If he were a business employee he wouldn't be able to visit in Windsor so readily on the spur of the moment. He would have to plan ahead.

As one NAM member and CEO pointed out, small business would have to provide passports, not just for the few who are directly involved but many other might be called to serve customers in a variety of capacities. Maybe emergency repair. Additional border cost may not seem like they are much compared to other business cost but manufacturers today, particularly the small manufacturers, are really challenged as never before to control their cost in order to stay competitive.

In 2003 the NAM documented U.S. manufacturers faced external overhead cost in the order of 22 percent higher than major foreign competitors. Border related cost related to Custom security compliance, border delays have increased significantly since 9/11.

The third concern relates to a relatively short deadline for requiring new travel documents. The WHTI would mandate use of passports or any other new secure travel documents by December 31, 2007. That actually while seemingly far away is a short time

to educate the millions of travelers who for years have been accustomed to crossing the border.

In fact, I have to confess that since 9/11 twice I have gone to Canada both times forgetting the passport and having to talk my way in and out with the driver's license and such other materials as I had with me. The NAM recommends much more flexibility on travel documents that can be used in place of a passport. We certainly would urge the departments involved to consider allowing other types of documents that are more readily available and less costly.

One option that has been discussed and discussed nicely in some of the documentation in the congressional research that is available for the committee and I think really deserves close examination the Greater Detroit Chamber of Commerce has an excellent paper on this is the REAL ID Act on how we can use driver's licenses and their issuance under stricter standards that could either stand alone or be used in combination with an original birth certificate.

The REAL ID Act sets high security standards for the state driver's license and other state identification cards starting in May of 2008. That is almost the same deadline as WHTI. We would support sort of harmonizing those if that were helpful.

We think that with the REAL ID Act, especially if there were a voluntary part, much is made of whether or not states have the authority to determine citizenship and I submit that the states wouldn't be determining the citizenship. They would be taking advantage of a predetermination made already through the passport or other federal mechanism as manufacturers work with you.

I am out of time so, Mr. Chairman, I will stop at that point. I have submitted more detailed testimony for the Committee. As always, we are ready to answer questions and work with you.

[Governor Engler's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you, Governor Engler.

Our next witness is Janice Kephart, former counsel to 9/11 Commission. She is former Immigration counsel on the Commission and will offer some good insight on border security recommendations from that report. We look forward to your testimony.

STATEMENT OF MS. JANICE KEPHART

Ms. KEPHART. Thank you, Mr. Chairman. Thank you, Mr. Ranking Member. Thank you for having me here today. I very much appreciate your interest in the Western Hemisphere travel initiative and why it is important for the security of the United States and for our economy.

Although it is my viewpoint I represent here today, I believe I am in step with my 9/11 Commission colleagues when I asked this Committee and its constituency to work together to help ensure that our Government implement the 9/11 Commission recommendations regarding requiring a passport or equivalent for entry from Canada, Mexico, and the Caribbean, a recommendation based squarely on my border team's findings about terrorist travel.

To achieve national security a responsible nation must effectively scrutinize those who seek to enter and stay. September 11 has taught us that securing U.S. borders are a matter of national secu-

rity. However, let me be clear we need not give up privacy, nor give up commerce to attain border security.

In fact, with efficient and streamline 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 do so when the acceptable forms of travel documents go from dozens to few and these few are not state or local documents but federally issued, biometrically based and vetted with a handful of acceptable documents working alongside registered traveler and commercial programs are ports of entry finally have the opportunity to become efficient, well run, and more secure.

With WHTI as envisioned today, unnecessary inspections and the inconveniences that go along with them are less likely to occur. That is a win for commerce, the commuter, the tourists and, frankly, most importantly from our view point, the American people. A win for the American people doesn't stop there.

Right now my understanding is that the State Department and DHS plan not only to accept the NEXUS, FAST, Century, and border crossing cards as acceptable forms of ID for frequent cross-border travel, but the State Department is also going to be offering a North American travel card or equivalent. This card will be about half the cost of a passport, fit into a wallet like a driver's license, protect privacy, can be vetted against national security information, and will be available at the 7,000 passport offices across the United States.

This will help those in the border communities who do not need a passport for international travel but, nonetheless, do have an interest in crossing the border. Where does the terrorist end up with WHTI? With a difficult choice. Under WHTI the terrorist can no longer present an unauthenticated document containing unverifiable information. Instead the terrorist has to choose risk getting caught by attempting an illegal entry or risk being detected by U.S. authorities at the border when presenting a passport or by Canadian authorities when applying for a passport.

So who are these terrorists? Let us start from what we know from the Canadian Intelligence Agency. Canadian Intelligence tells us that Canada has a significant terrorist community. About 50 terrorist organizations actively operating there and about 350 individuals being actively watched. Terrorist financing more than doubled in Canada last year to the tune of \$2 billion.

Canadian anti-terrorist legislation passed after 9/11 is not retroactive so that those trained in Afghan camps prior to 9/11 remain at large and Canadians have a significant concern with "second generation jihadists" who can easily attain passports and slip through the borders but right now don't even need a passport to cross the border.

We know that LAX Millennium bomber Ahmed Ressam probably would have gotten away with presenting a fake Canadian passport if his behavior hadn't caught the attention of the Customs officer on duty the evening he attempted entry. We know the FBI seeks out a number of naturalized Canadian citizens that have \$5 million bounties on them.

For example, Abderraouf Jdey was originally slated to participate in the 9/11 plot and he dropped out to be part of a second wave

of attacks. He is wanted to day. There is also Amer Al-Maati, a trained pilot and Canadian citizen who has vowed to crash a plane into a U.S. building. Then there is also a U.S. legal permanent resident by the name of Adnan El-Shukrijumah who is considered highly dangerous having been Jose Padilla's original partner in the dirty bomb plot and believed to have a false Canadian passport. He remains at large.

The point is we don't want these people to get into the country. We need to see them found. With a regime like the Western Hemisphere travel initiative they are less likely to get in and, if they do, we are more likely to catch them. Of course, there is never a guarantee. However, when border officers can focus on high-risk applicants for admission they will spend substantially less time on people that don't need to be checked each time they come over the border to work or buy or deliver something that enhances are economy. That means what the American people end up with is security and facilitation and the terrorists have a harder time traveling to carry out their mission.

Chairman MANZULLO. How are you doing on time?

Ms. KEPHART. I thank you for your support and I hope that is something we can all agree on at the conclusion of this hearing. Thank you, sir.

Chairman MANZULLO. I think you have testified at Congressional hearings before, haven't you?

Ms. KEPHART. A couple times.

Chairman MANZULLO. There you are. Thank you very much.

Ms. KEPHART. Thank you.

[Ms. Kephart's testimony may be found in the appendix.]

Chairman MANZULLO. We have guest member here, Mr. Higgins and your constituent is Howard Zemsky. Is that right? He is not here yet? Is he coming? Does anybody know? All right. So he will be coming in late.

Mr. Higgins, why don't you go ahead and introduce him even though he is not here because I have no idea when he is going to come.

Mr. HIGGINS. There is another gentleman here.

Chairman MANZULLO. You want to do that? Why don't you introduce both of them?

Mr. HIGGINS. Thank you, Mr. Chairman, for your leadership and Ranking Member Velazquez, for your leadership on this issue as well. We have several people from western New York including Ken Staub who is representing the American Trucking Association. He is Vice President of Riverside Service Corporation. He has traveled from Buffalo today to tell us of the impact of the proposed passport requirement on the trucking industry and the movement of goods and commerce between the United States and Canada, between western New York and southern Ontario.

Additionally, Howard Zemsky, who we were told had some travel difficulties today, is a western New York business leader and civil leader for and from Buffalo and western New York who has considerable investments in both the United States and Canada. As I said, he is a business leader who has first-hand knowledge of not only the adverse impact on commerce that the proposed passport requirement would have, but also just the rumor, the discussion of

the impending passport requirement has had an adverse impact on business relations between the United States and Canada at western New York and southern Ontario at the Peace Bridge so thank you very much, Mr. Chairman.

Chairman MANZULLO. Thank you. On that note let us go to Mr. Staub, Vice President of Riverside Service Corporation speaking on behalf of his business and the Truckers Association. He is also in business with his three sons who all work in the transportation industry.

Mr. Staub, have you ever testified before Congress before?

Mr. STAUB. No, I haven't sir.

Chairman MANZULLO. Why don't you take a sip of water and sit back. You look extremely nervous. We just want you to be very relaxed and just tell us your story.

Mr. STAUB. We will give it a try.

Chairman MANZULLO. How does that sound?

Mr. STAUB. Sounds good to me.

Chairman MANZULLO. You are up.

STATEMENT OF MR. KEN STAUB, RIVERSIDE SERVICE CORPORATION

Mr. STAUB. Mr. Chairman and members of the Committee, thank you for inviting me to testify today on behalf of the American Trucking Association, Inc. on the subject of the Western Hemisphere travel initiative.

I am Ken Staub, of course, Vice President of Riverside Service Corporation. We are headquartered in Buffalo, New York. We are a truckload flatbed carrier with four tractors, six trailers. We have another company, our sister company, Black Rock Trucking, operates another 15 tractors and trailers.

We have 10 employees, 15 owner operators, and we service the states of New York, Pennsylvania, Ohio, and Ontario, Canada. ATA is a federation of motor carriers, state trucking associations, and national trucking conferences that represent over 34,000 companies and every type and class of motor carrier.

In 2004 U.S./Canada total trade was \$444 billion while U.S./Mexico trade was \$266 billion. Trucking plays a critical role both domestically and internationally with Canada and Mexico. Annually there are about 14 million truck crossings at our international land borders and trucks carrying about 80 percent of the freight value of North American surface transport or trade.

The trucking industry has been working with various Government agencies since 9/11 and a number of cross border security programs have been implemented to improve such operations. It is important to emphasize that security and trade facilitation go hand in hand. You can't eliminate one at the expense of the other.

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, or IRTPA as we refer to it, requires anyone traveling into the U.S. to carry a passport or other documents that identify and denote citizenship. Legislation provides some flexibility for travelers to use a combination of documents that establish this identity and citizenship.

Chairman MANZULLO. Mr. Staub, could I interrupt you? Could you tell us about your own experience in the crossings with regard to your own company?

Mr. STAUB. I can certainly do that.

Chairman MANZULLO. I didn't see that in the testimony and that is what I would like to have emphasized.

Mr. STAUB. Well, if I took my trucking hat off and gave you personal experience.

Chairman MANZULLO. That is what we want. Go ahead.

Mr. STAUB. What I do need to tell you about, though, is that some of our alternative credentials that have been developed in the trucking industry are really pretty important. We have had some programs that actually have been developed by Homeland Security.

You have the FAST card. The FAST card is designed for trucking and it really expedites the travel and eliminates the delays at the border. For us to take and have to have a passport in addition to the other credentials that have already been made available or mandated on us like the FAST card. NEXUS is not a commercial endeavor, however it is available to us.

The I-94 program, the U.S. Visit program. This is about \$500 worth of investment in a driver to get these credentials. If we had to take and get a passport in addition to them, it would just raise the cost. Typically a driver pays for the better part of these credentials.

Now, I might add this, too. The credentials I am talking about I feel Homeland Security will probably endorse these as alternative documents for the simple reason that they are of a higher category than a passport. They require digital photograph, fingerprints, and an interview. Passports don't do that so I am confident from our perspective, the trucking perspective, that these other documents that are either available or mandated to us we probably won't have to have a passport so we are probably safe in that respect.

In terms of taking the trucking hat off and putting on my personal hat living on the border for 63 or 64 odd years I am accustomed to going across and just saying, "Born in Buffalo." Typically the process going into Ontario is even easier than it is coming back. We are typically kind of almost waved through going in.

Coming back obviously today is a driver's license that we have to take and produce. There is no question, and I see that we are getting real close on time, so the NEXUS program should be emphasized because that would really speed up the flow. We are going to need an identity card in addition to our driver's license. The NEXUS card would probably fill that niche and that gap. Thank you very much for inviting me to testify.

[Mr. Staub's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you. Appreciate your testimony.

Mr. STAUB. I got a little off course.

Chairman MANZULLO. No, no, you didn't. The prepared remarks will be made part of the permanent record.

Mr. STAUB. Okay.

Chairman MANZULLO. It is your personal on-hat and off-hat that we are looking for. Otherwise, we could have just accepted your testimony by fax. Thank you for coming down. Appreciate it.

Mr. STAUB. Thank you very much.

Chairman MANZULLO. Our next witness is William Cook, Senior Manager of Worldwide Transport Design and Procurement at DiamlerChrysler.

Mr. Cook, your full statement will be included in the record. What I would like the record to indicate is that the second page at the bottom, the last paragraph, the first sentence there if we just add the words "per day" that would correct that.

Mr. COOK. That is correct.

Chairman MANZULLO. Go ahead. We look forward to your testimony.

STATEMENT OF MR. WILLIAM COOK, DIAMLERCHRYSLER

Mr. COOK. Chairman Manzullo, members of the Committee, thank you for the opportunity to address you on this important issue. The secure, safe, and efficient operations of the border are critical to the DiamlerChrysler business model.

I would like to take this opportunity to highlight our Just-In-Time shipment process. I think it is important in light of the proposed passport requirements and what is going to happen between the U.S. and Canada. I am submitting my written statement.

Our Just-In-Time manufacturing process is a philosophy. It is not a technique. It was originally referred to the production of goods to meet customer demand exactly in the desired quantity, desired time, and desired quality. It evolved into a strategy or a philosophy that minimizes waste. Waste can come in the form of wait time, transportation, inventory, and poor quality.

What Just-In-Time management allows us to do is minimize all of that. Wait time, particularly at the border crossings, is critical to the whole manufacturing process of minimizing the wait time. The whole process exposes bottlenecks and one of the bottlenecks that we have experienced in the past is the Customs process at the border both into Canada and out of Canada. It is a risk that we have in our manufacturing process.

The whole process requires very close coordination between our manufacturing and ourselves and our suppliers and our suppliers are small trucking companies like Mr. Staub. Many of our companies are family-owned businesses, \$50 to \$100 million in total revenue, and we are a big portion of their business. We support those companies actively.

Along with other OEMs and automotive suppliers have been applying JIT manufacturing processes since the late '70s in response to primarily the Japanese techniques that they developed in the '50s and '60s. It has been enhanced by the consolidation of production suppliers in general but also facilitated by trucking deregulation which allowed us to be a lot more flexible, train our carriers and have them operate in regions where we want them to operate. The cross-border region is critical to us.

DiamlerChrysler assembly plants typically are constrained in the size and the amount of money we can spend to facilitate them. We build 1,500 cars a day in the Chairman's district. We are about to launch an assembly plant that will build 1,600 to 1,700 cars a day, three different models so there is a lot of complexity. There is not a lot of room in that plant to store inventory so we get multiple deliveries per day. I have an example of an assembly plant in Jef-

ferson North which is inside Detroit. There is a supplier in Windsor that makes eight deliveries a day across the Ambassador Bridge to the Jefferson North assembly plant.

In the New Belvedere assembly plant in Illinois there will be a supplier in Windsor that when we reach full production by the end of next year will have eight shipments a day to Belvedere to supply critical stamping, metal stamping components to that assembly plant. Those shipments are timed out to exact shipment windows and shipment deliveries and there isn't room for a lot of extra material in the plant. It is critical that, in fact, we meet the timing. Part of the supply chain is the Customs process and the border.

The end result of our manufacturing process is a highly integrated supply chain which, as I said, includes the Customs processing. We have been a big supporter of the C-TPAT program, FAST. We, as well as the other OEMs, have been at the forefront of launching the FAST program supporting that. I can tell you that has been difficult to find drivers and to find carriers that can keep and retain drivers that have FAST cards.

The driver community as a whole comes from a socioeconomic area that sometimes it is difficult for them to, one, pass the application or fill out the paperwork as they are on the road. It is very difficult to get the cards to the extent that we want. We have been able to get our FAST shipments up to about 95 percent of the shipments on the northern border so we have been very successful in doing that but it has been a struggle all the way along to keep and retain drivers, I think, for our carriers that have that FAST application.

As far of the border we obviously build vehicles that will be—we are responsible on the northern border for about 700 truckloads across the Ambassador Bridge, 40 rail cars, and then 300 finished loads per day of about 2,700 cars and trucks. That accounts for about 10 to 15 percent of the volume on the Ambassador Bridge.

I would just like to end by saying the continued implementation of the ACE program for Customs, the Automated Commercial Environment, as well as improving the operations, the impact on infrastructure security and cost of the new program such as this Western Hemisphere travel initiative should be clearly understood. It is important that the Committee consider these factors and that we maintain flexibility to ensure cross-border business travel as well as cross-border trade. Thank you.

[Mr. Cook's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you.

Maybe we could have our staff prepare a place there for Mr. Zemsky. You want to put his name tag there and then when he comes in direct him to have a seat.

Our next witness is Tom Chestnut, President and CEO of AAA of Western and Central New York representing almost a million members over 25 counties. AAA is also, I think, the largest travel agency in the United States. Tom is also an avid basketball fan. He used to work for the Cleveland Cavaliers. Is that correct?

Mr. CHESTNUT. Yes.

Chairman MANZULLO. Okay. You are tall enough. Okay. You played basketball in Europe, didn't you?

Mr. CHESTNUT. Yes.

Chairman MANZULLO. Okay. Probably against the short Sicilians like me. We look forward to your testimony. Thank you.

**STATEMENT OF MR. THOMAS CHESTNUT, AAA OF WESTERN
AND CENTRAL NEW YORK**

Mr. CHESTNUT. Thank you very much. Good morning, Chairman Manzullo and members of the Committee. Thank you for the opportunity to appear before you today to discuss the potential impact of the Western Hemisphere travel initiative. Our company is the 12th largest AAA club headquartered in Buffalo representing nearly 900,000 member motorists in upstate New York providing automotive, travel, and financial services.

We are not only a member services organization but we are a medium-sized business in the travel and tourism industry located on the northern border. We are very interested and involved in the economic well being of the communities we serve.

The seamless border that has been driving commercial and tourism development and job growth on both sides of the Niagara River should not be threatened by the requirements of this initiative. Tourism and casual travel between Canada and the United States for entertainment, shopping, and cultural events are critical to the vitality of our region, an area whose economy is already challenged by a variety of forces.

How important is this cross-flow of people? Consider that travel and tourism is one of the largest employers in New York State accounting for nearly 400,000 jobs. Last year Canadians visited New York State over 2 million times and spent almost \$500 million. A disruption of this flow could be catastrophic.

A good example of the Canadian's desire to visit the United States is the fact that the Canadian Automobile Associations' Central Ontario Automobile Club does about 100,000 TripTiks annually with 70 percent of those travel routings being to the United States.

Canadians want to visit our country and we very much want the market to make that happen. Our border is unique since we actually try to stimulate cross-border traffic. We must ensure that any program balances security and economic issues appropriately.

An illustration of the casual travel that happens between Canada and the United States in our area is that approximately 15 percent of the attendance at home games of the NFL's Buffalo Bills and approximately 20 percent of the fans at NHL's Buffalo Sabres games are Canadians. Rumor has it that when the Toronto Maple Leafs play that gets up to 50 percent.

As important as travel and tourism is to both countries, it is also very fragile. Consider that cross-border trips have fallen 20 percent since the tragic events of 9/11 due to wait times, hassles, and perceptions. Confusion over further changing of regulations will cause an additional decline. We know that travelers want ease of mobility. We believe that border regulations should facilitate safe and efficient movement of travelers. The agencies must strike a balance to avoid procedures that discourage leisure travel.

Specifically, the requirement that people show a passport is problematic since it threatens this mobility. The concern is that a passport is a special travel document that most North Americans do not

possess. Only 20 percent of American and 40 percent of Canadians have a passport. Interestingly, only 30 percent of Congressmen have a passport. Cost and processing time are disincentives to obtaining a passport.

In conclusion, we believe the following should be considered. Programs currently in place to manage frequent cross-border travel such as NEXUS should be continued. The agencies need to work with existing forms of identification that have a broad application such as driver's licenses and birth certificates which are identified by the REAL ID Act of 2005. The Act may provide an opportunity to accommodate the initiative without requiring frequent cross-border travelers to obtain passports.

The establishment of an advisory task force representing experts from stakeholder groups including tourism should be considered to study the regulations and to recommend solutions to the executive branch in Congress. At this hearing today experts from manufacturing industries are talking about the importance of Just-In-Time delivery of goods. No matter what system you have designed to facilitate delivery, they are only as effective as the ability of trucks to actually cross the border.

If the proposals are implemented, trucks could be sitting in long lines of frustrated travelers trying to cross the border without passport. This proposal threatens both travel and trade industries. Mr. Chairman, thank you for your efforts to get a travel and tourism industry perspective, an industry critical to our nation's economy.

[Mr. Chestnut's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you. I guess my first question is for you, Mr. Chestnut, and that would be about the statement that is at the bottom of your first page. It says, "Consider that cross-border trips have already fallen 20 percent since the tragic events of 9/11 due to wait times, hassles, and certain imperceptions." Can you quantify that? Is there a study on that or is it raw numbers you are looking at? What is the source of that?

Mr. CHESTNUT. I will have to get back to you on the source of that particular number. However, we do have documentation for all the numbers.

Chairman MANZULLO. Okay. Just by raw counts you could do that. Okay. My next question is for Mr. Cook at Chrysler. All you have to do is tell me the models of those three cars being manufactured in Belvidere but that is a secret. At least at this point. Mr. Cook, you had mentioned on the last page of your testimony where it says "future trends." Do you see that?

Mr. COOK. Yes.

Chairman MANZULLO. It says, "Multiplicity requirements for OEMs, suppliers, carriers will add confusion and congestion to borders that do not have the infrastructure to support long delays in the customs and immigration processing." You also put in there at the beginning, "Even though it is difficult to predict the future, it is highly likely that the auto industry is going to be more competitive as new entrants from developing countries try to penetrate the North American market."

Well, China is making a new car. I am trying to think of the name of it. The Cherry. They have been sued by GM in China. They plan to send a million of those to the United States each year.

That would be about 1/17th of the automobile market. Is that what you have reference to is hurting the competition?

Mr. COOK. That is correct. What I reference here is it is easy for a foreign manufacturer to ship a full vehicle into Long Beach or into Baltimore. It is a finished vehicle that goes directly to market. It is not so easy to build cars and to have to move from suppliers resident in Canada or Mexico into an assembly plant or in the U.S. into a Canadian assembly plant. It is very easy to build a car overseas and ship a full finished vehicle into the U.S.

Chairman MANZULLO. Okay.

Mr. COOK. There is not many barriers to that.

Chairman MANZULLO. Okay. Then with regard to the Belvidere, Illinois facility could you do that supply chain again? Remember you said that something will be done in Canada and then shipped to Illinois?

Mr. COOK. Exactly. There is a metal stamping company in Windsor that will produce body stampings for the Belvidere assembly plant. Because of the volume of that assembly plant, nearly 1,700 vehicles per day, it is going to require that we make eight truckloads per day from that Windsor, Ontario area supplier to Belvidere. The exact route is timed with a window at 8:00 a.m. and 10:00 a.m. and 11:00 a.m. that he ships eight times per day over three shifts. Then there will be the receipt in Belvidere, Illinois for that.

Chairman MANZULLO. So those will be stamped components.

Mr. COOK. Will be a stamped component. Right. There is not enough capacity in the Belvidere stamping plant or in the region to build that kind of component so we—

Chairman MANZULLO. You might talk to me about that. I might be able to help you out. Appreciate that.

I am going to defer to Mr. Zemsky. You got in late. Are you ready to proceed with your testimony?

Mr. ZEMSKY. Yes, sir.

Chairman MANZULLO. Would you like a glass of water or a minute to sort of collect yourself?

Mr. ZEMSKY. No, no. I am good. I should apologize. We had a little unexpected lake effect snow in Buffalo and they couldn't find the plane.

Chairman MANZULLO. Okay. You are here and that is all that counts. The way it works is there is a clock in front of you, Mr. Zemsky, that says green which means go. When it gets to yellow it means you have one minute left. When it says red it stops for a total of five minutes. Are you sure you are ready to go?

Mr. ZEMSKY. I am sure.

Chairman MANZULLO. All right. Let us do it. Mr. Zemsky is—you have already been introduced by your Congressman, Mr. Higgins.

Mr. ZEMSKY. Great.

Chairman MANZULLO. Also from Buffalo. You represent Taurus Partners which does a significant amount of work in real estate development in the Buffalo area. Your entire written testimony will be made part of the record. Our concern here today is for you to tell us as much as possible your own personal story as to the impact of the border crossings and any impact on that as a result of increased security. Go ahead.

**STATEMENT OF MR. HOWARD ZEMSKY, TAURUS PARTNERS,
LLC.**

Mr. ZEMSKY. Good morning, Chairman Manzullo, Ranking Member Velazquez, members of the Committee. I am honored and pleased to have the opportunity to testify before the Small Business Committee. Buffalo is a patchwork quilt of small businesses, home of precisely zero Fortune 500 headquarters. Small businesses are our backbone.

I am personally engaged as the principal of several small businesses on both sides of the U.S./Canadian border and I bring that personal perspective to the discussion. I am also here today representing a number of organizations in western New York, the Director of the Greater Buffalo Partnership, our region's largest business association, representing literally thousands of small businesses.

I also represent Buffalo Place, a not-for-profit organization dedicated to enhancing the economic health and quality of life in downtown Buffalo. I serve on the board of Buffalo State College. I am Director of the Binational Tourism Alliance, a not-for-profit entity dedicated to reducing the barriers along the Niagara River border crossings.

I suppose if you are looking for a silver lining in the WHTI process to date, we have finally found the one issue that has seemingly managed to unite virtually all public and private organizations on both sides of our border in the Niagara region, no easy task.

It speaks to the enormity of the issue for all of us in the Niagara region. We are extremely concerned that the manner in which WHTI is implemented could have a depressing effect on our economies and our way of life. We are a binational region. The Niagara River lies at the center of our binational region, not at the perimeter. We see it as a river more than a boundary or a border. It is a river in the way the Potomac is a river. You cross it during the course of your day or week and some of you cross it often.

In order to paint the proper picture for you, imagine requiring a passport to cross the Potomac River. That is how integrated our binational region is. The health of our cultural organizations, many of our colleges and universities, our shopping centers, our professional sports teams including the Buffalo Bills and the Buffalo Sabres. At our Sabres games we stand and we sing the Canadian National Anthem and then we sing the American National Anthem. It is just integral to our region.

We literally live, work, and play on both sides of the river. Tourism is such a central part of our economy that when you diminish the flow of people across the border, you diminish our economy and a large portion of our small businesses.

There was a time in Buffalo's history when our geographic location along the east/west axis was strategic to us. In the modern era it is our geographic location along the north/south access that is so vital to our present and our future. About 4 million Canadians visit New York State on an annual basis, many hundreds of millions of dollars of impact. The majority comes from Ontario, our northern neighbor.

Our economies are inextricably linked and interdependent and that is particularly true of the trade and tourism relationship be-

tween Ontario and New York. For the past many years in western New York we have been building a tourism economy based on the foundation provided by the millions and millions of visitors to Niagara Falls. In our region on both sides of the border projects that are recently completed are under development related to tourism total \$2 billion.

We have invested or are in the process of investing \$100 million on bridge upgrades between the two most popular bridges in our region, the Peace Bridge and the Queenston/Lewiston. We are years down the road of designing potentially a new signature bridge connecting Buffalo with Ontario. It is ironic that we are both designing a new bridge and simultaneously contemplating putting up a metaphoric wall between the U.S. and Canada.

Buffalo is investing hundreds of millions of dollars in tourism. We have lost so much of our industrial base and we have really, really embraced tourism as the new economy for our area.

The greater Toronto area has over 6 million people. It is the 6th largest urban area in North America and it is right at our doorstep. Additionally, seven million Canadians, about 25 percent of the country's population, live within 100 miles of the greater Toronto area. The population is expected to grow by 100,000 annually. The growth of the GTA is the true bright spot in our binational region and stands in some contrast to our local western New York economy.

In our region we have to be thinking about how we can safely facilitate more trade and tourism with Canada and not putting up walls and restricting trade and tourism with Canada. The passport requirement obviously concerns us knowing that fewer than 40 percent of Canadians and 25 percent of Americans have passports.

We know from consumer research passport requirements would restrict trips across the border severely. We want to emphasize with equal or perhaps greater weight that we are no less concerned, and perhaps more concerned, that another new form of ID may be proposed. This ID would like be confusing and no less a barrier to tourism.

Much of the travel to our region is spontaneous motor trips. We have already experienced diminished tourism as a result of the ongoing confusion regarding WHTA. We urge you to continue to take the time to find a way to use modern technology to enhance current IDs such as driver's licenses.

This is obviously a binational relationship that is the most peaceful and economic in the world. It would serve us all well to be patient and to be collaborative so we don't turn the war on terrorism into the war on tourism. It is the many small businesses in our region that will bear the burden.

I want to thank Chairman Manzullo and Congresswoman Velazquez for holding this hearing and for giving me the opportunity to present this testimony.

[Mr. Zemsky's testimony may be found in the appendix.]

Chairman MANZULLO. I want to thank you.

Ms. Velazquez.

Ms. VELAZQUEZ. Mr. Chairman, I would like to yield my time to Congressman Higgins since his district is one of the most impacted by this proposed rule.

Mr. HIGGINS. Thank you very much Ranking Member Velazquez and Chairman for your leadership again on this issue. Thank you all of those who have travelled from their various areas including especially the people from Buffalo and western New York to provide this important testimony.

I think what you have heard here is something that is very clear and compelling, and that is that something that was advanced to address a general problem is having a specific and severe adverse impact on certain areas, particularly between the northern border communities of this country, in particular western New York.

My personal observation relative to western New York and southern Ontario at the Peace Bridge is that the two communities of western New York and southern Ontario have been friends for over 100 years. Our economies are interdependent. Our life qualities are interdependent.

It seems to me, particularly in this day and age of explosive and unlimited information technology, Governor Engler had made specific reference to dealing with a form of identification that we already have, that being the driver's license and being able to verify citizenship, being able to verify country of origin, being able to use that piece of information in an enhanced way to address what we are trying to address here with respect to this passport requirement.

We have already seen in Buffalo and western New York not only because of the physical barriers between commerce and life quality between the United States and Canada, but now a proposed administrative barrier, a drop off in business between our two countries at that border. It is something that we cannot sustain. It is something that I think the problem can be addressed in a much more efficient and effective way without imposing a very severe additional barrier between the United States and Canada.

One question I would like to ask of Governor Engler. You had made reference to an initiative in your state relative to the driver's license that perhaps would offer a prescription for what it is we are trying to address here.

Mr. ENGLER. Thank you, Congressman. I am happy to respond to that because there is great interest on the part of the Michigan Secretary of State, Secretary Terry Lynn Land. I know that she has talked, as I have, with officials in Ontario and there is great interest in Ontario in the Canadian part in trying to harmonize. What happens with Michigan and Ontario is we have five border crossing points in my own state of Michigan with Ontario and to even get it down to some of the same technologies there is this conversation.

Part of the frustration, I think, from the state level, what is the purpose of the REAL ID Act? Where are we going with that? We have so many different pieces of new identification we are creating, friends with the trucking world and the business world. We have TWIC cards eventually that are out there. We have all of these different ways. What you have just articulated is something that I am very supportive of.

How do we create a piece that we can kind of carry around with us that has multiple purposes? Maybe it is a voluntary thing if we want the minimalist driver's license or personal ID card. We have

seniors who just don't drive anymore like my mother who has a personal ID card. The state issues it sort of as a replacement ID card. She doesn't need all of this other stuff perhaps but I would like to have that card work at the airport as well as at the border. Why not have it work easier?

Then if you can take most of us whose identities can be established who are happy to provide biometric, we will do whatever you want. Just somebody in the federal government has to tell us what you would like to have and sort of make up their mind. I mean, we are four years after 9/11 and we still don't have a transportation worker card out there yet. Part of it is nobody in an agency wants to make the final call because they might be wrong at some point in the future so we don't do anything. That is clearly worse than trying to get it right.

Chairman MANZULLO. Thank you.

Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. I want to welcome all of you here today. I am from the opposite end of the United States down in Texas. I do have in-laws that live in Niagara. We have overcome the language barrier and are able to communicate without an interpreter any longer. Thank you for being here.

A couple of comments and then I have some questions. It seems to me that it is absurd to have multiple documents to cross into the United States from either border, baptismal certificates, driver's licenses, all of these different documents, but yet we accept those in spite of the 9/11 Commission.

Down on the Texas border when we talk about entry into the United States, Laredo is the No. 1 inland port in the United States. 7,000 to 10,000 trucks a day come into Texas from Mexico. About that many go the other direction. I am not unfamiliar with the issue of commerce. I am a big supporter of small business, especially the trucking industry. It seems to me there are three issues. One, the frequent commercial travel of trucks, for example, every day.

Then we have the frequent citizens from either country coming into the United States on a daily basis crossing several times a day. Then you have the infrequent travelers that come into the United States. All three of those are really issues that we have to find a solution to on lawful entry into each of those countries.

My question first, Mr. Zemsky, what is your solution to border crossing identification security? Very briefly what would you say would be the solution?

Mr. ZEMSKY. Well, from the standpoint of ease we would agree that it should be a piece of identification that people otherwise carry with them. If there was a way of enhancing a driver's license to the extent to which it would suit that purpose, we would be very much in favor of that. I think of Canada and the U.S. as having 4,000 miles of shared border.

It is hard for me to understand how gumming up 30 yards of our bridges is going to really do that much for our security. I think the same policy ought to be in effect for the northern border as the southern border. I am not familiar at all really of consequences with the issues of the southern border and the complexity of that.

I live a mile from Canada and I am very familiar with the issues related to the northern border. It is a culture that we have so much in common. We literally live on both sides of the border. We work on both sides of the border. We have businesses on both sides of the border. We cross that border like you cross the Potomac River. It is that integral to our region.

Mr. POE. Thank you. Another question for Ms. Kephart. Passports don't discriminate. They are not subject to the discretion of the border guard that looks into the vehicle and makes the determination based on somebody's affirmation that they are American, Canadian, or Mexican National which is all that is required at some of our border crossings.

Why would you suggest with the 9/11 Commission making the recommendation of passports that provision in the 9/11 Commission's report that has been ignored having passports, I guess for political reasons, why do you recommend passports over all these other types of multiple documents?

Ms. KEPHART. Okay. A couple of things. Just to make it clear to the others on the panel, it is my understanding that NEXUS, FAST, Century Border Crossing Card, and the new North American Travel Card will be considered an equivalent to the passport. The new North American Travel Card will be an equivalent to a passport you can carry with your driver's license which may solve some of your problems.

But the passport is a federally issued document. It can be backed up by diplomatic security when it looks for fraud. It can be checked against national security databases. It is, in a way, the hundreds of birth certificate issuing authorities, the state driver's licenses all have different requirements. They can't be authenticated. They can't be verified.

This puts the border officer at checking everybody instead of just having a passport to check. The passport just to check means that is all the border officer is looking for. That facilitates people through quicker. He knows what he's looking for. He knows forensically what to look for. That is a facilitation means and a security means all at the same time. You get your whole kit and caboodle at once.

Mr. POE. Plus in a passport it has a bar card and you can record who comes into the country.

Ms. KEPHART. Right.

Mr. POE. Now we don't record who comes into this country.

Ms. KEPHART. Right. You have a U.S. VISIT activity there when we get U.S. VISIT down at the land ports of entry. Thank you.

Mr. POE. Thank you.

Thank you, Mr. Chairman.

Chairman MANZULLO. Congresswoman Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I am sorry I was a little bit late so I didn't hear everyone's testimony. I think the gentleman, my colleague, from Texas mentioned he is far away. Well, I am even further. I represent Guam. It is a U.S. territory in the Pacific about 10,000 miles from the Canada/U.S. borders that we are discussing today. We, too, are very concerned in my particular about tight security around our shores.

I am curious is the current NEXUS system something that you approve or would you like to see changed and in what way? Guam's economy is tourism very much like New York. Another thing that I am very concerned about is about 80 percent of our goods come in from the United States so you are talking containers.

I probably would like to ask you first, Ms. Kephart, what assurances—do you agree with the NEXUS system? Could it be upgraded? Are there things that you think would be much better? We are concerned about terrorism on Guam. We are neighbors to the Philippines and the other areas where terrorism—you know, there are terrorist cells. I am just curious what should we be doing that we are not doing today?

Ms. KEPHART. Okay. In terms of NEXUS, my understanding in talking to the folks who have worked on the simulation models for facilitating commerce through the ports of entry and others is that NEXUS is working extremely well. There is never a guarantee on our borders. There is never a guarantee, you know. No terrorist has a T on their forehead. Anybody can get through if they want to try really hard to do.

What we have to do is manage the risk. NEXUS and FAST and Century and the Border Crossing Card and the State Department's new North American Travel Card which they say they will be offering, are ways in which we can facilitate those through who we don't consider to be high risk. Those are very good programs because then you are calling out the lower risk folks. You can focus on the newer travelers, the higher risk.

My understanding is the RFID technology, the radio frequency technology, is working extremely well. I don't know what the other gentlemen here think who have experience with it every day but that is my understanding from sort of the Government side and from the private industry who is producing those technologies.

Ms. BORDALLO. I would like to ask the Governor if you would comment on that. Are there ways that we could improve this system or is the system working?

Mr. ENGLER. I think there are ways to improve it. I have never actually seen a NEXUS card. I don't know if anyone in the room has one on their person.

Ms. KEPHART. I have one right here.

Mr. ENGLER. Is it yours?

Ms. KEPHART. I got it sent to me by the committee who produces them actually.

Mr. ENGLER. The vendors are having a field day but I am just not sure—

Ms. BORDALLO. Are there NEXUS lanes?

Ms. KEPHART. Yes. I talk about it in my testimony.

Ms. BORDALLO. Yes.

Mr. ENGLER. Where I think we need to go, let us try to level set this. The TWIC card, which is finally coming along, that is for transportation workers at large. That is sort of a—I don't know if that is FAST plus just to try to sort that out. There are three different cards and then there is a hazardous endorsement and the commercial driver's license is what we started with.

That is what states use to issue to truck drivers and bus drivers, etc. All I think we would like to see is just simplify this. Just some

straightforward systems. Tell us what information you want sort of like at the airport. What do you need from us so we know who the travelers are and let the frequent travelers move more rapidly through the system.

You are all frequent travelers. Let us cut out the lines where we can so that TSA can focus on the risk where it can be found and not try to—the way I look at this if we are trying to reduce risk, you want the frequent and the—we have 3,000 Canadian nurses that work in southeast Michigan pretty much every day.

They are coming back and forth. They are going to come every day. It is the same person. We are going to get to know them. The truck drivers driving that DaimlerChrysler truck is making four runs a day across the border and we are getting to know them.

Let us figure out how we can get those people over and then the person we have never seen before who shows up in a truck carrying something that we don't know what is in the back of the truck, maybe that is where we ought to spend 10 minutes with them and 10 seconds with the other. I think today it is just not as rational as any of us would design it because everybody is designing a piece of it and the pieces don't fit very well.

Mr. STAUB. Just to support the Governor's contention, I saw the statistics somewhere in the comments that 2 percent of the people crossing the border constitute 80 percent of the movements. I mean, that tells you right there what you have to concentrate on.

Mr. ENGLER. Thank you, Mr. Staub. The gentlelady's time has expired.

Ms. BORDALLO. Just one more question. Personally I really feel that in reading about this NEXUS program that it would be very helpful but I just wondered if there was something that you would like to impart to Congress that we could improve it even more.

Mr. ENGLER. Maybe we should ask the person from Homeland Security Commission. It seems to me we need to work with our state officials. Some of these programs actually could be—there could be a form of joint delegation. In other words, who has to check what? Is it a federal official? Is it an FBI agent? Can it be a state policeman? Who checks what? Once that is done, how can somebody issue? In other words, just sort that out and tell us who.

I mean, we can use local law enforcement for part of this working with federal agencies. It is supposed to be a seamless integrated law enforcement system today. If I took my passport in and showed it to a state official, could I put my passport on my driver's license? Would that be helpful? It really just needs somebody to make some decisions.

Ms. BORDALLO. Yes. Thank you, Governor. Does it take time to issue this NEXUS card? That is what I am curious about.

Mr. ZEMSKY. It does take time. I have a NEXUS card. I travel across the border all the time. First of all, the irony is you have to go across the border to get the card to get you across the border and you have to interview. It is really quite a long process. It is not easy or simple. It is not like going to the post office and getting another form of ID of any kind. It is used extremely infrequently.

Ms. BORDALLO. Time frame?

Mr. ZEMSKY. It took a while to schedule the interview and get a call back from the people, go over to Canada and get interviewed and then get it issued. I mean, it was months. The other thing—

Chairman MANZULLO. I am going to have to cut you off and go to Mr. King because he has to run to an Immigration subcommittee hearing.

Mr. KING. Thank you, Mr. Chairman. It is ironic that we simultaneous Immigration hearings going on here. I sit on the Judiciary Committee and the Subcommittee on Immigration which is going on now talking about the southern border so I am anxious to get over there. I very much appreciate everybody's testimony here. I can feel in a sense the impact on the economy.

Particularly, Governor Engler, I want to thank you for being here. In your testimony the one thing that you said is, "Make a decision and stick with it." It is true that there is a scattered approach to this. We thought when we eliminated American passport exception that we had made a decision. I think there was an administrative decision not to burden people with the difficulty of crossing the border with a passport. Therefore, we have some of these other alternatives that are here.

Just some thoughts that come to mind as I listen to the testimony, one is if you go to Ireland and a baby calf is born, when it hits the ground and a veterinarian shows up out there, tags its ear, and gives it a passport. It is not a swipable passport. It is a passport that requires the veterinarian to write in that in ink each time that calf moves from pasture to pasture or location to location. That is one measure of difficulty that they have and they are still raising calves and doing business.

Another thing that occurs to me is our perspective here is the economic impact. I would submit that if we were sitting here and this testimony today was testimony to the Knesset in Israel and our perspective was the United States being Israel and any of the surrounding countries being West Bank, Gaza, or any of their neighboring countries there, that there wouldn't be anyone sitting here at this panel advocating the things we are advocating here today.

I think of it in terms of how do we get to the point of getting the enforcement and the security we need at the border. Do that part first and then address how we then start to make accommodations for the very real economic needs that you have. That is our difficulty here in Congress. That is why we have other alternatives. That is why we had so much difficulty passing the REAL ID Act because we didn't start with security first and then open up our economics.

I would also submit, Governor Engler, I know this by experience. I lost my passport in Jamaica so I can quote the federal statutes that allowed you to come back into the United States twice from Canada and that is you have to make a credible allegation of United States citizenship. That was the standard that we are trying to improve upon.

Another thing that occurs to me is that if members of Congress only 30 percent have passports but American citizens 25 percent do, that seems to not quite fit with what I know. Where I get to is this. The standard for getting a driver's license first time in

Michigan, Governor, what do you have to produce in order to qualify for a Michigan driver's license, say, as a 14-year-old or whatever age it is for a learning permit?

Mr. ENGLER. I think it is pretty minimal. It probably is a birth certificate, completing a driver's license course, that kind of thing. If I might respond to the major point about—

Mr. KING. I thought you wanted to.

Mr. ENGLER. I would love to. First of all, on the Irish example the TSA has the cattle part down real good. They just don't have the ID part worked out yet. I think with Keneset we would be able to do the same thing here. In other words, I think most citizens are happy to reach any level of assurance or security that people want. Just tell us what it is and let us do it one time.

I mean, most of us can qualify on this. I think the lengthy interviews causes long delay but let us go in somewhere once and establish—part of the REAL ID Act has been a bit of hysteria about a national ID card. We kind of don't want to have a national ID card but we know we need one so we are trying to figure out how we can have one without call it such so we come up with multiple means of doing that.

For those of us who don't mind, let me have a damn card so I can do my travel. Let General Motors say to all their people and let Daimler say, "Look, this is the kind of card you are going to have to have as an employee here. We will do this on the front door on the way in." Set the security bar high. It is fine but then let us qualify and get it over with.

Mr. KING. Thank you, Governor. I am watching this clock tick here. I would just submit that a requirement of birth certificate and the other available ID that is required to get a passport the first time is pretty close in most states to the same standard to get a driver's license the first time. The difficulty of achieving qualifying for a passport is essentially the same.

Mr. Staub, in your testimony, and you are my kind of guy. I change the tires and dispatch loads and get behind the truck and come testify before Congress. I mean, that is the America I know. Is there any check on the loads that you have, your van trailers, reefers? What happens when you cross the border with those? Does anybody go back and check that load? You mentioned that you present a driver's license.

Mr. STAUB. Well, it would take a half hour or more to explain that program because you get into C-TPAT and things like that and whether they are FAST qualified. FAST by itself, the FAST card, is only part of a process. The importer has to go through a certification process and the carrier. The transiting carrier has to go through a process also. When you get all done with that, the FAST card is still not a travel document.

Unless Homeland Security changes their opinion of what the FAST card is right now, the driver is still going to have to have a supporting document to take and prove citizenship and identity. Now, what will that be? The good thing about the driver's license, the enhanced driver's license, REAL ID, would be that you have it in your back pocket.

If you have a passport and you drive a truck and you have two cars, where is that passport going to be? You are probably going

to leave the country, come back, and at some point in time that passport is not going to be with you but your driver's license would be. My credential of choice would be the REAL ID but I agree with the Governor, you know, we have to fish or cut bait.

We have to try and figure out which way we are going and go there. The important thing is disseminate that information to all border points because the confusion you can see right in this room. Can you imagine the confusion at the border points as to what credentials are or are not accepted.

Chairman MANZULLO. Thank you, Mr. King. Mr. McCotter.

Mr. MCCOTTER. Thank you, Mr. Chairman. I come from a district in the northwest suburbs of Detroit in Michigan. As Governor Engler pointed out, I would often go over to Windsor to shop but it is not just a local issue for my district. Everyone in Michigan has visited Canada at one time or another or has a business relationship with our Canadian neighbors. In fact, people have been known to drive from as far away as Beal City in their Oldsmobiles to catch a matinee at some of Windsor's more intimate venues.

My question is knowing that, I also listened to Representative Poe and it becomes evident we have two borders in this country, two long borders with two distinctly different neighbors. One is a highly industrialized democracy and the other is a developing democracy that is struggling in many ways.

I come from a state with a border. We have multiple crossings and very little difficulty with illegal immigration. Mr. Poe comes from a state that has a very difficult time with illegal immigration from his neighbor. The arguments that we hear for and against what we are trying to do seem to fall upon the crux and we never get any traction because we are trying to address two entirely dissimilar borders, two entirely dissimilar problems and we are trying to do it in one piece of legislation.

When you hear his concerns you have to understand those are legitimate concerns. He has a concern for a passport. Our War of 1812 ended. We are done with that I would think. But the war against illegal immigration continues and it strikes me that we have to be honest about that before we can proceed.

Then if we are honest about that we have to find a mechanism by which we can accommodate both borders' pressing problems effectively. It would seem to me as a working thesis, I suppose, working theory that one of the things we could look at is the potential for a bilateral treaty with Canada to rationalize our transborder crossings.

That seems to me that would avoid some of the constitutional problems we may have with the actual creation of a state generated document with national identification on it. It would seem that we could then harmonize through the constitutional way the treaty would provide with our Canadian neighbors because we wouldn't have to have reciprocity in terms of what comes across the border into their country vis-a-vis what comes out of ours and back in.

Yet, it would still leave us able to deal with the pressing problems of the southern border in an entirely different matter through statute or perhaps another bilateral treaty. I just throw that out

for food for thought because that is one of the things we keep running up against.

Secondly, one of the things that you learn from living in Detroit is that during the bootlegging era you could not secure that border. You could cross that border in a canoe. You could that border in a Speedo if you are as athletic as the Governor. It is impossible to totally close that border from people who want to break the law and come in. In the end we have to be ever mindful that whatever path we take the people who are going to feel probably the biggest brunt of what we do through statute, through law, are the people who are honorable enough to follow it.

I would like that to be a consideration. I would like to conclude with something the Governor has talked about and as a former state legislator who was honored to serve with the Governor when Michigan had an unemployment rate below the national average and was attracting business, the heyday.

There is a lot of wisdom in state government that gets lost when we get here. At least in my case. I think we should work very carefully with our state and local elected officials from the communities along the border to come up with this idea. This should not be a federal decision made in a vacuum. I thank the Chairman for having this hearing and for bringing this distinguished together.

Chairman MANZULLO. Thank you. I have some more questions. First of all, Mr. Cook, Rockford Toolcraft has a brand new 28-foot Minster 1,000 pound stamping press, the Heviblanker. It is the first one to have a cast iron bed that Minster has ever made. It is made in Dayton, Ohio, Mr. Turner's district. If you could give that to him.

We set up in Rockford calling it the Manufacturing Alliance of Rock River Valley and also the McHenry County Manufacturing Alliance of Fox River Valley. They are two manufacturing alliances that are trying to bring together over 2,000 factories, much on the order of the Lombardi Group in Milan, Italy where I learned that process.

We have hired a professional engineer in Rockford and we are going to hire another professional engineer in Fox River Valley for the purpose of furnishing completed components or portions thereof by piecing together these different people. If you have any needs, talk to me. I will be glad to try to fulfill Chrysler's stamping requirements.

Mr. COOK. Okay. Thank you for the information. I will make sure the appropriate—

Chairman MANZULLO. You bet. Then a question both to you and to the Governor and anybody else that wants to join in. This is the Small Business Committee. We are obviously concerned about what happens to the little guys. Ken Staub has been quite remarkable in his testimony as to the impact there. Also Mr. Chestnut because you have about 600 employees. Is that correct?

Mr. CHESTNUT. That is correct.

Chairman MANZULLO. That is a small business as far as I am concerned. Up and down the supply chain just in the automotive industry any ideas as to how many businesses are impacted, any business entities?

Mr. COOK. No, I don't have the facts at my fingertips but I know there is a multiplying effect for the manufacturing business. I can certainly get that. Something on the order of for every automotive job it is seven to 10 other jobs that are created. Maybe the Governor has those facts more readily available.

I know that we do support all sized businesses. Obviously we do business with big first-tier companies but in the transportation industry in particular we have continued to look for small to medium-sized companies that can meet our need and grow them into our network. We have grown some fairly small companies into pretty good size or medium size firms. We have done that over the years as they have accommodated and grown at the pace they have grown.

As I mentioned, several trucking companies that we have done business with over the years over the last decade have grown from small companies of just a few trucks, a lot of them minority or diversity supplier companies. We have very active programs that have done a great job in supporting that community and growing a \$10 million total revenue company into \$100 million company over a period of years as they are able to grow with us and we continue to do that.

Chairman MANZULLO. Governor, did you want to take a stab at that question?

Mr. ENGLER. Well, I am citing from a document that the Detroit Regional Chamber of Commerce put together. I am not sure I can get you the numbers. I can get dollars. One estimated \$1.2 billion in trade daily. It is the most important economic dollars anywhere in the world. Forty percent of that, \$480 million of trade just with the five Michigan/Ontario border crossings, and \$234 million automotive related.

That is a daily basis. That is the value of sort of what is being trucked back and forth. The number would run into the hundreds of businesses impacted. Ontario surpassed a year ago, or maybe it is two years now, Michigan as the number one state in terms of auto assembly in North America. It had been Michigan and the Canadian growth has been pretty impressive.

All of that is still supported by this incredible back and forth all day long trucking of parts and components. There have been some good things. I don't wish to be completely negative. I mean, on the FAST program at the border I have been up there when then Secretary Ridge was there with his Canadian counterpart. A lot of work was done—I mean, DaimlerChrysler has an interest in sealing a truck when it leaves a supplier in Canada and comes across in the Jefferson plant.

They don't want anybody tampering with that. Nor do most people so we can take a lot of the 7,000 trucks that weekly cross Ambassador Bridge, Mr. Chairman, that are part of that \$234 million sort of daily trade, I mean, most of those we can account for. The ones that we can't those are the ones we need to check. That part of it has been improved.

We just need to work on the people part. You are correct, that does hurt the small business guy more because he or she has fewer people back there at the office to kind of take care of all this stuff

and it surprises them more than it might the DiamlerChryslers of the world.

Chairman MANZULLO. Mr. Staub, you had mentioned that the present documents that your drivers need cost about \$500 a driver? Is that correct?

Mr. STAUB. Well, if you had all of the documents, that is what they would cost. A FAST card cost \$50 U.S. or \$70 Canadian. If you figure the driver's license in there and in New York State it is really high. I am adding up all the documents.

Chairman MANZULLO. Okay.

Mr. STAUB. If you added a passport in at \$97, you get to \$500 and that is significant for a driver if the driver bears the entire amount.

Chairman MANZULLO. One of the things that the State Department is trying to do is they are trying to take and simplify the present system even if there were no new law out. They have been working on this for a long period of time to try to get to the ultimate simplification on it. Obviously we will have another hearing and we will have several folks come in from the Government side of it but it is going to be at that point where they issue a regulatory flexibility analysis of the impact on the small businesses. That is our jurisdiction. We want to know how people like you would be hurt. Otherwise we have a tendency without that study to talk in a vacuum and to come up with policy in a vacuum so there will be subsequent hearings on that.

Mrs. VELAZQUEZ.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. KEPHART, I was interested in your testimony about the North American Travel Card. Do you know if the State Department and the Department of Homeland Security is going forward with such a plan?

Ms. KEPHART. My understanding from speaking with them is that they are but if they were here at the hearing today, you would be able to ask those questions so I can't really go forward with that.

Ms. VELAZQUEZ. That is why in my opening statement I made mention about the fact that they are not here. Let me ask you since you apparently have access to them and you know what is going on, wouldn't it have made more sense for State and the Department of Homeland Security to have outlined this plan in advance notice of proposed rule making so that commentators could look at it and make suggestions? And they have not even had time to review a portion of the comments yet, have they?

Ms. KEPHART. I don't know. I know that the comments ended on October 31. I believe this has been something in process for a while because they have been trying very hard to take into account the effect on the northern border communities. They know it is a problem. They know it is an issue. That is what they have told me. Therefore, they want to talk. I know they have been in to see the Chairman's folks in regards to this. Other than that you will have to ask them more questions.

Ms. VELAZQUEZ. Sure. But do you agree with me that given the testimonies of all these people here they have provided an incredible important information about the impact that this is going to

have in their businesses and in their communities? That it really calls for the Department of Homeland Security and the State Department to do regulatory flexibility analysis?

Ms. KEPHART. I can't speak to the regulatory flexibility analysis on this. My issue is security of the American people and assuring border security. That is where I come from on this. I believe that we can have the facilitation and security together but once you get into the regulatory process, that is not really where I am.

Ms. VELAZQUEZ. Sure. I understand.

Ms. KEPHART. I am going to stand back and not answer that question.

Ms. VELAZQUEZ. I submitted comments to both the State Department and Homeland Security on behalf of myself and the democratic members of this Committee. And I also requested for them to conduct a regulatory flexibility analysis.

Mr. Cook, how many of your suppliers are small businesses?

Mr. COOK. I don't really have an exact figure. What I would term as a small business would be probably fairly small revenue. I think for a company our size we tend to work with companies that because of the capital nature of the business can afford to make large expenditures. However, they do employ a lot of second and third tier companies that are smaller, are family owned, a cleaning service or any kind of service that are directly related to the business that we give them.

Ms. VELAZQUEZ. Okay.

Mr. COOK. A cascading effect. I did find some facts on how many jobs we believe a direct job in the industry generates something on the order of seven to 10 indirect jobs and that is all through the supply chain.

Ms. VELAZQUEZ. Thank you. Governor, you mentioned the FAST program and the NEXUS program. Why do you think that we don't see more drivers using these programs?

Mr. ENGLER. Well, there is a difference. The FAST program is full process. The plants have to be certified. The carrier, the way the product is being—I mean, literally, as I understand it, you seal it at one place and open it—

Mr. COOK. May I?

Ms. VELAZQUEZ. Sure.

Mr. COOK. The FAST program is a commercial program.

Ms. VELAZQUEZ. And the NEXUS is for the frequent travelers.

Mr. COOK. Is for frequent travelers and nonbusiness people primarily. The FAST program has stringent requirements. There is advance notice that goes to Customs so that the inspector at the border exactly knows what is in the load. He has the information about the driver as the driver pulls up. The company that is involved has to assure that and give that advanced information to Customs so there is a lot of up front work that needs to be done.

The whole process that the driver goes through has been a lengthy process of interviews and applications. The drivers have to qualify. Their whole background is checked. There are criminal records on both sides. You essentially have all four agencies or four agencies, Customs in Canada and Immigration in the U.S. and Canada that have to vet each driver. At any point those drivers can

fall out of the process and not be certified and not get a FAST card. It is a rigorous process for them to go through.

Ms. VELAZQUEZ. Mr. Chairman, if I may, just one more question.

Mr. STAUB. Just to comment on that, this morning in going through some material, older material, looking it over, our industry trade publication Transport Topics there is an article in there from about a year ago that said that over 50,000 FAST card applicants never showed up for their interviews.

It is a scheduling problem, okay? You have to have this driver at an interview at a particular point in time and if that driver is not based right at the border, which few of them probably would be, you have to arrange for this guy to get up there to take his interview but 50,000 drivers didn't show up for their interviews. They have a 90-day window to do that. They can reschedule the interview.

Mr. COOK. One of the reasons for that is that he is picking up a load in Ontario. He is on a Just-In-Time schedule to deliver to an assembly plant. He doesn't have an hour or two in his schedule so he may be based in Kentucky or Tennessee. He now has to get back to the border potentially to do this interview which also is an intimidating process for someone to go through.

Ms. VELAZQUEZ. Thank you. Mr. Chairman, I would like to ask one last question to Mr. Staub.

You talk about the different driver's license, the FAST card, the NEXUS clearance, transportation workers identification. Most of those IDs require a \$24 FBI check and a host of other fees and this is why you mentioned that it could cost close to \$500. My question to you is has ATA ever approached the Government about consolidating all those overlapping requirements?

Mr. STAUB. I am not aware that they have at this point. They may have approached it. In a lot of cases, though, these cards don't exactly overlap each other. For example, a FAST card is a program for expedited processing through the border. It is designed to get you through fast. That's why they call it FAST.

Whereas the border crossing card that I am not real familiar with is unique to the southern border and it has its own special set of circumstances. It is not unique to the southern border. It can be used on the northern border. One of the expenses in the total cost of the application for these cards is the time that the driver loses in going for his interview. That is a day's pay so that has to be factored into the cost. For a small business it could be significant.

Chairman MANZULLO. We want to thank you for coming to the hearing. Mr. Zemsky, you could have come all this way and missed the hearing. Have you ever testified before a Congressional hearing?

Mr. ZEMSKY. No.

Chairman MANZULLO. Okay. Well, I am glad you made it.

Mr. ZEMSKY. Thank you.

Chairman MANZULLO. I am glad you all made it. I want to thank all of you for coming obviously, especially those of you that traveled great distances to come here. This is extremely important. We will be have more hearings on this. It is a very difficult problem. Let me just say this.

I have been a member of Congress for 13 years and I have never seen agencies involved in an issue, taking as much time and patience trying to do the right thing, as I have seen in this case. It is absolutely exemplary the quality of the people that we are working with in the Government, the time they take, the briefings. Every time something changes, they are in my office to keep us up to date on it. As I said, we will have more hearings on this and obviously they will be testifying. The hearing is adjourned.

Ms. VELAZQUEZ. Mr. Chairman, I would like to ask unanimous consent to submit for the record the opening statement on behalf of Mr. Ray Hobbin.

Chairman MANZULLO. Without objection.

[Whereupon, at 10:51 a.m. the Committee was adjourned.]

Congress of the United States
House of Representatives
109th Congress
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-0515

OPENING STATEMENT
SMALL BUSINESS COMMITTEE CHAIRMAN DONALD A. MANZULLO

**“BUILDING A WALL BETWEEN FRIENDS: PASSPORTS TO AND FROM
CANADA?”**

November 17, 2005 9:00AM in Room 2360 Rayburn House Office Building

Good morning and welcome to this hearing. There’s a looming crisis at our borders and if the enhanced documentation requirement for travel to cross our land borders is not handled correctly, it could spell trouble for many in the manufacturing and tourism sectors of our economy.

This problem is especially acute for our neighbors to the north. The *Intelligence Reform and Terrorism Prevention Act of 2004* requires that the Departments of Homeland Security and State develop and implement a plan for U.S. citizens and foreign nationals to present a passport or other appropriate security identity and citizen documentation when entering the United States. By January 1, 2008, this enhanced documentation is supposed to apply to all land border crossings, including Canada. For years, Americans and Canadians have been used to simply showing a driver’s license to cross the border. Now, this will change. The impact of the enhanced documentation effort on the economies of Canada and the United States is still unclear.

But what is clear is that the legislation also contains another mandate, not frequently mentioned, that it “seek to expedite the travel of frequent travelers, including those who reside in border communities.” I have worked with officials from the Departments of State and Homeland Security in the past on visa issues and I am impressed with the quality and the competency of the people involved in this discussion. Earlier this year, we worked out a one-year multiple entry visa for Chinese businesspersons wishing to come to the United States to attend a trade show or inspect or be trained on a U.S. product.

The same people are working on the Western Hemisphere Travel Initiative. They are taking this mandate very seriously. This is evidenced by their effort to go through all appropriate steps in the rulemaking process, including issuing an Advanced Notice of Proposed Rule Making in which DHS and State seek comments and assistance on how to best go about enhancing security at our border while not impeding legitimate commerce. I commend DHS and State for going through this process. It may seem difficult and slow at the

outset but the final regulation will be a better product if the agencies seriously take into account the legitimate concerns of small businesses. As part of that process, I strongly encourage DHS and State to prepare an initial regulatory flexibility analysis to accompany the notice of proposed rulemaking. I am pleased that the Chief Counsel of the Office of Advocacy at the Small Business Administration agrees with my request in order to minimize the impact of this proposal on small entities. There are no government witnesses testifying at this hearing today because they know of the intensity of trade within North America and the difficulty of the task ahead of them in balancing economic and security interests. This hearing is part of an effort to help DHS and State collect information that will assist them in completing an accurate and comprehensive economic analysis.

The main purpose of this hearing is to demonstrate that the massive amount of commerce within the Western Hemisphere, particularly between the U.S. and Canada, and the complexities of trade between the two countries may make it next to impossible to fulfill the statutory mandate to require this enhanced documentation and not dampen the economies of the U.S. and Canada. Few people know that Canada is our largest trading partner and almost \$1.2 billion in trade crosses the longest non-militarized border in the world every day. This 4,000-mile border stretches across 11 states and 8 provinces, encompassing an economic sphere affecting 51 million Americans and 30 million Canadians. Directly or indirectly, the U.S.-Canadian border is integral to 5.2 million jobs. Travel and tourism alone create a \$10.3 billion economic benefit to the United States. I fear that this proposal would have the most negative consequences for the casual or infrequent tourist, particularly families with minor children, who would rather vacation in their own country rather than pay \$95 for a passport or \$40 for a secure identity card to cross the border.

This proposal affects not just tourism but also manufacturing. Few people realize that our two nation's automobile industries are virtually integrated, comprising nearly 23 percent of total U.S. exports to Canada, with parts and finished goods crossing the border multiple times. We don't need another reason for American manufacturers to leave our shores or for foreigners to invest somewhere else if it is more difficult to trade with Canada.

I believe there is a way to accomplish both goals of enhanced security at our land borders and not disrupt commerce. Nobody wants terrorists like the Millennium bomber to cross our border. This hearing today is to make sure that there are no unintended consequences that would impede our economic growth. We need make quicker progress on improving security for state driver's license and personal identification cards. Earlier this year, Congress passed this forward-looking initiative of House Judiciary Committee Chairman Jim Sensenbrenner and the President signed it into law last May. It's time to put some teeth into this effort to coincide with the January 1, 2008 target date or some later date if the implementation of the REAL ID Act cannot be accomplished by then.

I thank all the witnesses who are here before us today, particularly those that have traveled a great distance to inform the committee of the potentially devastating consequences this proposal could have especially upon our border communities if this rule is not done right. I now yield for an opening statement from the gentlelady from New York, Ms. Velázquez.

STATEMENT
of the
Honorable Nydia M. Velázquez, Ranking Member
House Committee on Small Business
The Hearing on “Building a Wall Between Friends – Passports To and From Canada”
November 17, 2005

Thank you, Mr. Chairman.

As time has told us, our nation’s security should not be taken lightly. The terrorist attacks of September 11 taught us this important lesson – and made it clear that America needs to step up its efforts to prevent terrorists from entering the confines of our borders.

Many strides have been taken to make this country safer following the attacks. A variety of measures at the local, state and federal level are now in place to secure our borders and fight terrorism both at home and abroad.

In an effort to bolster security for our citizens, we must recognize that America’s borders – whether by air, land, or sea – are an entrance for a host of people, goods and services that help fuel our national economy. In our fervor to strengthen these protections, some of these security measures have had unintended consequences on many sectors of the population – including small businesses.

Today’s hearing will give us a chance to look at the ongoing rulemaking as established in a portion of the Intelligence Reform and Terrorism Prevention Act (IRTPA). This initiative – the Western Hemisphere Travel Initiative (WHTI) – will require some additional forms of identification for cross-border travel from Canada and Mexico. While we can all agree that there is a responsibility to regulate who crosses through these entry points, it needs to be done in a manner that protects our borders with out harming small businesses.

There is no question that any regulatory change in documentation required for cross-border travel – as suggested in the proposal – will have a major impact on thousands of small businesses. With a significant portion of their customer base located across the border, it is vital that any changes made to current cross-border travel regulations take into account the needs of these small businesses. Imposing steps such as passport requirements for potential customers may greatly impede the success these businesses, when less costly alternatives may be available.

However, I think it is difficult for us to truly assess the impact without the agencies responsible for implementation – Department of State (DOS) and Department of Homeland Security (DHS) – even present at this hearing today. How are we supposed to get the full story, when these agencies are not even being consulted for the purposes of this hearing?

We can sit here and talk about possible effects on industries and the small business sector all day long. But if DOS and DHS go are not here to engage in these discussions, they still may go ahead with this proposal – hurting small businesses.

We need these agencies to perform a full economic analysis – taking the needs of entrepreneurs into account. This will allow for a true determination of the impact and economic costs of this cross-border identification proposal. Yes, we need to secure our borders. But America's small businesses, which already face many challenges, deserve a less costly, less burdensome plan that does not pose a threat to their success.

As we work to secure America's borders and thwart terrorism, the need for increased security is certainly warranted. However, too many of our nation's most prosperous industries – including travel, tourism, manufacturing, and local border towns – have been put at an unfair disadvantage. This is especially true if these possible proposals are adopted and enacted without adequate review.

When these policies go as far as to threaten the role small businesses play in the economic recovery and future competitiveness of our nation, it becomes clear that we need a plan that offers a healthy balance between safety and commerce. We simply cannot afford to damage the livelihood of our economic security.

Thank you.

Thank you, Mr. Chairman and thank you, Ranking Member Velazquez.

While I am disheartened, I cannot say that I am shocked that this hearing intends to focus solely on the impacts that the Western Hemisphere Travel Initiative will make to small business on our Northern border. We are simply continuing an unfortunate trend in our nation's approach to border policy, which is characterized by a lack of parity. This is sad, considering the enormous value to American small business, and our economy as a whole, that our relationship with Mexico holds.

If you look at the numbers, you will see that the vast majority of our nation's "Top 50 Busiest Land Ports of Entry" are on the US-Mexico border...33 to the Canadian border's 17, in fact. Reports show that the value of the trade relationship between Arizona and Mexico ALONE has averaged \$7.8 billion since 1998. As well, economists estimate that 50,000 Arizonan jobs are tied to trade with Mexico and that the tourism industry in the Mexico-Arizona region is worth over \$1.8 billion.

Immigration...homeland security...societal and economical concerns...the list of reasons as to why any discussion of border policy should weigh the US-Mexico border as equivalent to the Canadian is long, complex and urgent. Small businesses in

Arizona, just as those on the Canadian border, are inextricably linked to any and all policies that affect cross border commerce.

Mr. Chairman, I understand that Arizona's issues do not trump those of its neighbors to the North. I understand that the Canadian border exceeds the Mexican border in physical size, and that Canada is indeed the United States' largest trading partner. Discussion of the Western Hemisphere Travel Initiative is truly critical to the health of our Northern border's small businesses and I whole heartedly support our Committee's general involvement in border policy.

That being said, the Western Hemisphere Travel Initiative is no less important to the residents, the small businesses and the overall impact made to the American economy by the US-Mexico border. I simply ask that as we proceed with our involvement in this issue, that the Majority will consider addressing the issue in full. My office would be happy to help supply data or identify resources that would be useful in analyzing the economic and even the social impact that the Western Hemisphere Travel Initiative will have on the US-Mexico border.

Raul M. Goyalo
AZ-7

**Testimony by Congresswoman Louise Slaughter
House Committee on Small Business
November 17, 2005
9:00 AM**

“Building a Wall Between Friends: Passports to and from Canada”

Thank you Mr. Chairman and Ranking Member Velazquez for holding this important hearing. I appreciate your interest in the Western Hemisphere Travel Initiative (WHTI), and the time you and your staff have put into preparing for this morning’s hearing.

I am also pleased to welcome our witnesses from Buffalo and Western New York: Ken Staub, Vice President of Riverside Service Corporation; Thomas Chestnut, CEO of AAA of Western and Central New York; and Howard Zemsky, Managing Partner of Taurus Capitol Partners.

Mr. Chairman, the United States and Canada are bound by shared values, culture, history, and geography. My constituents do not think of Canada as another country, but as one community closely intertwined. A constituent of mine likened it to crossing the Potomac River from D.C. into Northern Virginia. Moreover, Canada is our largest trading partner; a relationship that supports 5.2 million jobs.

Accordingly, new documentation requirements, if not done right, have the potential to inflict major harm on the U.S. and Canadian economies, especially in the shared-border communities.

I believe the WHTI, as currently envisioned by the Departments of State (State) and Homeland Security (DHS), will fail to expedite the travel of frequent visitors or mitigate the economic impact on border communities. I agree with the intention of WHTI, but DHS and State must implement it in a way that does not result in the wheels of commerce grinding to a halt. This includes expanding the number of acceptable alternatives, merging the 2007 deadline for sea and air with the 2008 deadline for land crossings, and investing in public outreach to educate people across the country on the new requirements.

There is much at stake for the district I represent if the WHTI is implemented poorly. My district stretches from Rochester, New York along Lake Ontario, through Niagara Falls, and down into Buffalo. In Rochester we have the Fast Ferry operation to and from Toronto, and the Buffalo-Niagara region includes four bi-national bridges across the Niagara River. This includes the Peace Bridge in Buffalo, which is the nation’s second busiest border crossing. \$160 million in trade and 20,000 vehicles cross the Peace Bridge each day.

In addition to its importance to international trade, the Niagara Frontier is a gateway for millions of tourists each year. Tourism is the fastest growing industry in Buffalo-Niagara. Our economy is heavily dependent on Canadian visits to our sporting events, cultural institutions, and local wineries. According to a report by the Canadian Tourism

Agency, a passport requirement would result in an annual loss of 3.5 million outbound trips by Canadians to the U.S. The estimated loss to the U.S. tourism industry would be \$667 million per year.

I fully recognize that Congress directed DHS and State to implement a plan to require additional documentation at the border.

Section 7209 (b)(1) of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 requires, “[t]he Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived This plan shall be implemented not later than January 1, 2008, and shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program.”

I also believe that Section 7209 grants DHS and State the ability to enhance border security without disrupting commerce. However, in order to do so, I strongly recommend that DHS and State take the following recommendations into account.

1. DHS and State must conduct a complete economic analysis of the WHTI.

First, DHS and State must conduct a complete economic analysis of the WHTI to accompany their future Notice of Proposed Rulemaking (NPR).

I have called on DHS to begin an economic analysis of the WHTI ever since the idea was first discussed in April. This analysis should include potential impacts on border economies, on travelers and the travel industry, the impact on cross-border trade with Canada and Mexico, and the impact on small businesses. Additionally, I strongly support the Chairman and Ranking Member’s request for DHS to conduct a regulatory-flexibility analysis in order to minimize the affect on small business.

DHS asserts that their Advanced Notice of Proposed Rulemaking (ANPRM) is preliminary and, as such, it would be premature to include an economic analysis before finalizing the NPR. Instead, DHS has asked border communities – through the 60 day comment period on the ANPRM – to tell them how their proposed rule will affect local economies. I appreciate that DHS is now actively reaching out to border communities, but this consultation should have begun back in April. DHS could have avoided a lot of anxiety we on the northern border feel about the WHTI if they had begun reaching out six months ago.

Secondly, DHS cannot expect border communities to conduct their own analysis in sixty days, nor should DHS ignore their responsibilities by relying solely on border communities’ comments as a basis for their own economic analysis. DHS must invest

the time and resources into getting this right. An economic analysis should look broadly at how this rule will impact the entire U.S. economy, not simply the economy of local border communities.

For example, the bridge commissioners in my district believe that the WHTI will actually increase border delays, as travelers will reach the border unaware of the new documentation requirements. The logic is that Customs and Border (CBP) agents would need to spend more time explaining the new rules to a large number of individuals, and then making referrals to secondary inspection. DHS must take these factors into account in developing their economic impact study.

Also, what will be the long-term cost to the taxpayer? For example, the Niagara Falls Bridge Commission estimates that they will lose \$1.6 million a year in tolls under the proposed rule. This translates into a loss of \$16 million in bonding capacity that the Commission relies on to make capital improvements. Such a dramatic loss in bonding capacity will mean that Bridge Commission's are forced to turn to the federal government for help or forgo needed maintenance and repairs.

Clearly DHS has a lot of work to do in developing an economic impact statement. Fortunately, the Government Accountability Office (GAO) has agreed to my request to study the economic implications of the WHTI and suggest possible alternatives to a passport. This study will be critical to reviewing DHS' own baseline economic assumptions, and will offer an objective analysis of alternative documentation.

2. DHS must expand existing pre-enrollment programs like NEXUS, FAST and SENTRI.

My second recommendation is that DHS expand pre-enrollment programs like NEXUS, FAST and SENTRI.

According to the ANPRM, DHS and State will likely accept the NEXUS, FAST, and SENTRI cards as alternative documents to passports. NEXUS is a joint venture between the U.S. and Canadian governments, and is designed to simplify border crossings for pre-approved, low-risk travelers and businesses. Carefully screened applicants get access to expedited border crossing lanes, and do not have to stop to be inspected. Not only is the NEXUS card less expensive than a passport, it also allows our border inspectors to use their limited resources to better inspect high-risk travelers.

CBP continues to insist that NEXUS is a priority, but a number of problems have kept the program from working efficiently.

First, DHS has been reluctant to market NEXUS in the U.S., and efforts by the private sector to market NEXUS have been met with resistance. For instance, the Buffalo and Fort Erie Public Bridge Authority installed signs advising drivers to ask for a NEXUS application at the inspection booth, but the CBP agents would not hand them out.

On top of a lack of marketing, there is no enrollment center on the U.S. side of the border in Western New York. The Niagara Falls Bridge Commission has offered space for a center, but CBP continues to resist opening more facilities.

A third factor in low enrollment is the limited functionality of the NEXUS cards. They are not accepted in non-NEXUS lanes, even for identification purposes. The cards are also port specific; NEXUS cards obtained in Fort Erie do not work along the Blaine, Washington NEXUS crossings.

Finally, the timeframe that NEXUS lanes are open needs to be extended. The NEXUS lane entering Canada at the Peace Arch crossing does not open until 11 AM, making the NEXUS card all but useless for daily commuters.

According to the State Department, 48 percent of the annual northern border crossings are made by just 400,000 people. These are the frequent travelers that DHS and State need to get enrolled in trusted-traveler programs. Yet NEXUS enrollment currently stands at just 75,000. Even worse, CBP expects to only enroll 50,000 more individuals in the NEXUS program through 2011. If DHS is going to cite NEXUS as a viable alternative to passports, then they must invest the resources in order to make the program work.

I offered an amendment that was approved as part of the Homeland Security Authorization bill that will create more NEXUS enrollment centers and merge the security features for border and air crossing. If DHS is unwilling to expand NEXUS, then Congress must act and do it for them.

3. The Border Crossing Card must be inexpensive, easy to obtain, and marketed across the United States. DHS and State should also consider additional alternative documents.

DHS' track record with NEXUS does not speak well for the Administration's plan to design a Border Crossing Card (BCC).

The State Department, recognizing that passports are too expensive for many Americans and an impractical requirement for travelers crossing our land border, has proposed the concept of a Border Crossing Card. However, I remain unconvinced that State's vision for the BCC will limit a steep decline in cross-border traffic should the WHTI be implemented.

Many questions remain on how the BCC will address spontaneous travel. We need to know how much a BCC will cost, how long it will take to process an application, and the locations where individuals can apply for a card.

We know that families decide to visit Niagara Falls, on average, 14 days before a trip. If individuals are unable to acquire a BCC within that window, or if the card is prohibitively expensive, then infrequent travel to Canada will dry-up.

In addition to cost and availability, DOS and DHS must conduct a public relations campaign blitz to make travelers aware of the BCC and the new border requirements. There is already a lot of misinformation out there about what is needed to cross the border, and the bridges in my district have experienced a notable decline in traffic since the WHTI was first unveiled in April.

Finally, Michigan's Secretary of State, the Canadian Government, and the U.S. Chamber, among others, have suggested that we evaluate enhanced drivers licenses as an alternative to passports. There are serious legal and federal issues, as well as funding requirements, that would need to be addressed before driver's licenses could serve as a secure border crossing document. But given the fact that enhanced driver's licenses will likely pose the least burden on cross-border travelers, it is an option that DHS and State should not prematurely exclude from consideration. I asked the Congressional Research Service to put together a memorandum on the legal issues with linking REAL ID and the WHTI. I am pleased to submit this memorandum for the record.

4. Merge the two provisions for implementing sea/air and land crossings.

My fourth recommendation is that DHS and State merge the implementation dates for sea and air travel and land crossings.

Under the ANPRM, DHS and State will require passports or alternative documentation for all sea and air travelers by January 1, 2007. The new documentation requirements for land crossings will be January 1, 2008.

Two implementation dates will confuse travelers and unnecessarily deter cross-border travel. The statute does not require two implementation dates, so DHS and State have the discretion to push back the sea and air deadline to January 1, 2008. One implementation date also gives more time to State and DHS to get this rule right.

State has defended the two implementation dates by suggesting they do not have the resources to process the expected surge in passport applications. It is difficult to assess the validity of this claim since the Department has not conducted an economic analysis of their ANPRM. Additionally, I suspect that State is overestimating the number of passport applications they expect to receive. If it is really DHS and State's intention to create multiple and cheaper crossing documents, the number of passport applications may not spike as dramatically as State assumes it will.

5. Form a Northern and Southern border strategy teams to advise DHS and State on implementation.

Finally, I strongly recommend that DHS and State form partnerships with border communities to advise them as they move forward in the rulemaking. The U.S. Chamber of Commerce has recommended that DHS form a group similar to the Data Management Improvement Act Task Force, a public/private partnership that advised the Attorney

General on ways to improve the flow of traffic at ports-of-entry while facilitating commerce. A similar task force would be a step in the right direction.

In closing, I want to reiterate that I support the intent of Section 7209 of the IRTPA. Security is paramount and should be our nation's top concern. But I believe that DHS and DOS must implement the WHTI in such a way that increases security without causing undue economic harm.

I want to thank Chairman Manzullo and Congresswoman Velazquez, again, for holding this hearing. I look forward to working with the Small Business Committee on the WHTI as DHS and DOS move forward in the rulemaking process.



Memorandum

November 17, 2005

SUBJECT: Legal Issues Involving the REAL ID Act and the Western Hemisphere Travel Initiative

FROM: Todd B. Tatelman
Legislative Attorney
American Law Division

This memorandum provides an analysis of potential legal issues that may arise should state-issued drivers' licenses and personal identification cards be considered sufficient documentation to enter the United States pursuant to the Western Hemisphere Travel Initiative. Currently, it appears that the proposal as put forth by the Secretaries of Homeland Security and State does not include state-issued documents among those that would be accepted. With the passage of the REAL ID Act of 2005, however, there appears to be some interest, specifically from several northern Chambers of Commerce, in having state-issued drivers' licenses and personal identification cards included among the accepted documents.

Based on our review of the relevant statutes and case law, it appears that the ultimate decision on this issue has been delegated to the Secretaries of Homeland Security and State. That being said, the current statutory language would appear to prohibit the use of state-issued drivers' licenses and personal identification cards, as those documents denote only identity and do not indicate citizenship status as required by the Western Hemisphere Travel Initiative. Moreover, it is currently unclear whether the states possess the legal authority to denote citizenship status on their drivers' licenses and personal identification cards because the Constitution clearly assigns issues related to naturalization and citizenship exclusively to the Congress. Even assuming that states do possess such authority, or are granted it via valid congressional legislation delegating such authority, the inclusion of citizenship status would arguably fundamentally change the nature of a drivers' license or personal identification card and, therefore, would likely involve many of the legal issues commonly associated with the implementation of national identification card proposals.

Background

The Intelligence Reform and Terrorism Prevention Act of 2004. As enacted, section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement, as expeditiously as possible, a plan necessitating that a passport, other document,

or combination of documents, “deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship,” be shown by all travelers entering the United States.¹ This provision also expressly states that citizens and other categories of individuals for whom such a documentation requirement has previously been waived will also be required to comply.² In addition, the section requires a plan to expedite the travel of frequent travelers (especially residents of border communities) and mandates inclusion of these travelers in the registered traveler program added by the Act to the automated biometric entry and exit data system (*i.e.*, U.S.-VISIT).³ The statutorily imposed deadline for fully implementing this section is January 1, 2008.⁴

The REAL ID Act. As you are aware, the REAL ID Act contains a number of provisions relating to the improved security of state-issued drivers’ licenses and personal identification cards.⁵ Specifically, REAL ID requires states to adopt certain practices and procedures regarding the verification of documents used to obtain drivers’ licenses and personal identification cards, and establishes minimum issuance standards for such cards, if they are to be accepted for official federal purposes. In addition, states must also verify an applicant’s legal status in the United States before issuing a driver’s license or personal identification card, and may only issue aliens temporary drivers’ licenses or personal identification cards which expire on the date when the aliens’ legal presence in the United States is due to end. If a state opts not to conform with these guidelines, the Act nevertheless requires the state’s drivers’ licenses and personal identification cards to contain distinct identifying features designed to alert federal officials that such documents are not to be accepted for any official federal purposes. Further, all states are required to maintain an

¹ See Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 § 7209(b)(1), 118 Stat. 3638, 3823 (2004) [hereinafter Intelligence Reform Act]. The Intel Reform Act also states that after complete implementation of this plan:

the President may not exercise discretion under Section 215(b) of such Act (8 U.S.C. 1185(b)) to waive documentary requirements for U.S. citizens departing from or entering, or attempting to depart from or enter, the United States except — (A) where the Secretary of Homeland Security determines that the alternative documentation that is the basis for the waiver of the documentary requirement is sufficient to denote identity and citizenship; (B) in the case of an unforeseen emergency in individual cases; or (C) in the case of humanitarian or national interest reasons in individual cases.

Id. at 7209(c)(2).

² Currently, the Immigration and Nationality Act (INA) requires all U.S. citizens to bear a valid passport when entering and departing the United States, but gives the President the authority to waive this requirement. See 8 U.S.C. § 1185 (2005). This waiver authority has been exercised in the following situations: when the U.S. citizen is traveling between the United States and any country, territory or island adjacent thereto, in North, South or Central America, excluding Cuba; for U.S. seamen and air crew carrying valid merchant mariner or air crew ID; for members of the U.S. armed forces on active duty; for certain minor members of the household of foreign or United Nations official employees; for children under 12 years old who are included in a parent’s foreign passport if they are able to otherwise prove U.S. citizenship; for U.S. citizens carrying a card of citizenship and identity issued by a U.S. consul abroad; and, for individuals specifically authorized by the Secretary of State through appropriate official channels. See 22 C.F.R. §§ 22.1, 53.2 (2005).

³ See Intelligence Reform Act, *supra* note 1 at § 7209(b)(1); see also *id.* at § 7208(k).

⁴ See *id.* at § 7209(b)(1).

⁵ See Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, §§ 201-207, 119 Stat. 231, 312-16 (2005).

electronic database that contains specified information regarding persons issued drivers' licenses and personal identification cards, and this database must be made accessible to all other states. Finally, the Act imposes a deadline for state compliance, requiring that all applicable provisions of the REAL ID Act be implemented within three years of its date of enactment (May 11, 2008). The Secretary of Homeland Security, however, is authorized to extend this deadline for any state that presents an adequate justification for its noncompliance.⁶

Implementation of Western Hemisphere Travel Initiative. On September 1, 2005, the Department of Homeland Security (DHS) and the Department of State (State) formally submitted an Advance Notice of Proposed Rulemaking (ANPR) to implement section 7209, now known as the Western Hemisphere Travel Initiative.⁷ The proposed plan requires all U.S. citizens, Canadians, citizens of the British Overseas Territory of Bermuda, and citizens of Mexico to have a passport or other accepted secure document to enter or re-enter the United States by January 1, 2008.⁸ The plan will become effective in two phases:

- December 31, 2006, applied to all air and sea travel to or from Canada, Mexico, Central and South America, the Caribbean, and Bermuda; and
- December 31, 2007, extended to all land border crossings as well as air and sea travel.⁹

The main issue that remains is what documents will be designated as "sufficient to denote identity and citizenship" to meet the requirements of section 7209. As part of the ANPR, DHS and State offered the following explanation:

...the passport will be the document of choice for travel within the Western Hemisphere or re-entry. However, another document that we anticipate will be acceptable under the travel initiative is the Border Crossing Card, (BCC – or "laser visa"). Currently, the BCC serves in lieu of a passport and a visa for citizens of Mexico traveling to the U.S. from contiguous territory. Other documents that we are considering for acceptance under this initiative are the Customs and Border Protection Secure Electronic Network for Travelers Rapid Inspection (SENTRI), NEXUS and Free and Secure Trade (FAST) program cards. No currently existing documents other than the BCC, SENTRI, NEXUS or FAST cards are under active consideration as substitutes for the passport. However, DHS and State are reviewing new technological developments regarding options for secure travel documents.¹⁰

⁶ For a more complete description of the REAL ID Act's requirements with respect to drivers' licenses and personal identification cards, see CRS Report RL32754: *Immigration: Analysis of the Major Provisions of the REAL ID Act of 2005*, by Michael John Garcia, Margaret Mikyung Lee, and Todd Tatelman at 38-43.

⁷ See 70 Fed. Reg. 52,037 (Sept. 1, 2005).

⁸ See *id.* at 52,038-39.

⁹ *Id.*

¹⁰ U.S. Department of Homeland Security, Office of the Press Secretary, "Western Hemisphere Travel Initiative Formally Submitted for Public Comment," Sept. 1, 2005, available at <http://www.dhs.gov/dhspublic/display?content=4776> (last visited Nov. 14, 2005).

Potential Legal Issues Associated with Using State-Issued Drivers' Licenses or Personal Identification Cards to Comply with the Western Hemisphere Travel Initiative

Based on documents provided to CRS, it appears that several northern Chambers of Commerce¹¹ are advocating the inclusion of state-issued drivers' licenses and personal identification cards as acceptable documents for entry pursuant the Western Hemisphere Travel Initiative. According to a presentation given by the interested chambers, the "states could provide [the] option of indicating citizenship on drivers' licenses at renewal and application" and, therefore, "[t]hose with no objection of showing citizenship would have a document for crossing the border." Currently, it is unclear whether the states have the legal authority to take such action without legislation by Congress delegating them the authority to do so. Moreover, it appears that even if the authority issue were to be resolved, there would remain other legal issues relating to the fact that the inclusion of citizenship status displayed on a state-issued document would fundamentally change the nature and purpose of drivers' licenses and personal identification cards. Such issues typically include both privacy rights, as well as the right to travel, which are commonly raised when discussing the implementation of a national identification card.

Constitutional Concerns. Congress's arguably exclusive power with respect to citizenship and naturalization stems from Article I, section 8 clause 4 of the Constitution, which states that "The Congress shall have power to ... establish a uniform Rule of Naturalization."¹² The term "naturalization" has been defined by the Supreme Court as "the act of adopting a foreigner, and clothing him with the privileges of a native citizen."¹³ Congress's power over naturalization is an exclusive power; as no State has the power to constitute a foreign subject a citizen of the United States.¹⁴ Despite its exclusivity, however, the power to naturalize aliens may be, and was early on, devolved by Congress to state courts of record.¹⁵ In addition, it appears that the states may confer the right of suffrage upon resident aliens who have declared their intention to become citizens and many did so until recently.¹⁶ While the usual form of naturalization is through individual application and official response on the basis of general congressional rules, citizenship is not so limited.¹⁷

¹¹ The group includes: the Bellingham/Whatcom Chamber of Commerce & Industry; Detroit Regional Chamber; Buffalo Niagara Partnership; and the Ontario Chamber of Commerce.

¹² U.S. CONST. Art. I, § 8, cl. 4.

¹³ *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 162 (1892).

¹⁴ *See Chirac v. Chirac*, 15 U.S. (2 Wheat.) 259, 269 (1817); *see also United States v. Wong Kim Ark*, 169 U.S. 649, 701 (1898).

¹⁵ The first naturalization act, 1 Stat. 103 (1790), for example provided authority for state courts of record. *See* 8 U.S.C. § 1421 (2000). Moreover, in *Holmgren v. United States*, 217 U.S. 509 (1910), it was held that Congress may provide for the punishment of false swearing in the proceedings in state courts.

¹⁶ *See Spragins v. Houghton*, 3 Ill. 377 (1840); *Stewart v. Foster*, 2 Binn. (Pa.) 110 (1809); *see also* K. PORTER, A HISTORY OF THE UNITED STATES, ch. 5 (1918).

¹⁷ For example, the Alien and Sedition Act of 1798, 1 Stat. 570, empowered the President to deport any alien he found dangerous to the peace and safety of the Nation. In 1903, Congress provided for denial of naturalization and for deportation for mere belief in certain doctrines, i.e., anarchy. *See* (continued...)

Citizenship can be conferred not only by a special act of Congress,¹⁸ but also collectively, either through congressional action, such as the naturalization of all residents of an annexed territory, or of a territory made a State,¹⁹ or through a treaty provision.²⁰ Based on this historical record, although the states appear to have some limited powers with respect to citizenship and naturalization, it appears that any power they may possess must be delegated to them by Congress.

Given the apparent exclusivity of Congress's control with respect to naturalization and citizenship, it would appear that an argument could be made that the states do not possess any independent legal authority to issue documents, such as drivers' licenses or personal identification cards, denoting citizenship unless first authorized by the federal government to do so. The REAL ID Act appears to recognize such a limitation as it stops short of requiring that only citizens be issued drivers' licenses or personal identification cards. In fact, the REAL ID Act specifically permits states to issue documents to non-citizens. While it is true that birth certificates, which arguably denote citizenship, are among the documents required to be presented when applying for a drivers' license or personal identification card, they serve merely an identification function and are not in any way intended to place a citizenship requirement on the documents' issuance. On the other hand, it appears possible to argue that there is no federal law or other principle preventing a state from denoting citizenship status on a state-issued document provided it does so on a voluntary basis. It is a generally accepted principle that the states are entitled to enact restrictions that are more stringent than those enacted by the federal government, provided, of course, that they do not conflict with the federal rules. That said, if states want to collect citizenship information from persons applying for state-issued documents as long as it is done on a voluntary basis and not made part of the formal legal requirement of obtaining such a document, there appears to be no direct statutory or case law that would prevent them from doing so.

Statutory Issues. As previously discussed, section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 requires that the Secretary of Homeland Security, in consultation with the Secretary of State, expeditiously develop and implement a plan requiring that all travelers, including citizens of the United States, produce a passport, other document, or combination of documents, "deemed by the Secretary of Homeland Security to be sufficient to *denote identity and citizenship*," when entering the United States.²¹ The use of the conjunctive "and" generally indicates that both elements – identity and citizenship – must be denoted by the documents presented.²²

¹⁷ (...continued)

Act of March 3, 1903, 32 Stat. 1214; *see also United States ex rel. Turner v. Williams*, 194 U.S. 279 (1904). The range of forbidden views was broadened in 1918. *See* Act of October 15, 1918, § 1, 40 Stat. 1012. Present law with respect to deportation can be found at 8 U.S.C. § 1424 (2000).

¹⁸ For example, *see e.g.*, 77 Stat. 5 (1963) (making Sir Winston Churchill an "honorary citizen of the United States").

¹⁹ *See Boyd*, at 143 U.S. 135 (1892); *see also Contzen v. United States*, 179 U.S. 191 (1900).

²⁰ *See Boyd*, 143 U.S. at 164, 168-69 (1892).

²¹ *See* Intelligence Reform Act, *supra* note 1 at §7209(c)(2) (emphasis added).

²² *See, e.g., Pueblo of Santa Ana v. Kelly*, 932 F. Supp. 1284, 1292 (D. N. Mex. 1996).

Although the REAL ID Act contains increased security requirements for state-issued drivers' licenses and personal identification cards, these requirements appear to be focused on ensuring that the documents accurately reflect identity. The REAL ID Act does not appear to require that the licenses or identification cards in any way "denote citizenship" in the United States. In fact, the REAL ID Act contains specific provisions that permit the issuance of licenses and identification cards to non-citizen residents of the United States who, by producing the required documentation and having it verified as authentic by the issuing agency, can demonstrate lawful presence in the country.²³ Given the absence of requirements relating to citizenship, it does not appear that standing alone a drivers' license or personal identification card would satisfy the statutory standard established by section 7209 for acceptable documents to be shown upon entrance to the United States. At this time, however, it remains unclear whether or not a state-issued drivers' license or personal identification card, in conjunction with other presented documents may be considered sufficient to "denote identity and citizenship" as required by the statute. Though, as previously discussed, the use of state-issued drivers' licenses or personal identification cards was not included in the ANPR issued by State and DHS on September 1, 2005.

Legal Issues Related to National Identification Cards. In addition to the constitutional and statutory arguments outlined above, it would appear that including citizenship status on a state-issued drivers' license or personal identification card potentially could lead some to argue that what the state is issuing ceases to be merely a drivers' license or personal identification card, and in fact becomes a national identification card.

While in this instance we are talking about a state-issued document and not a federally issued national identification card, many of the potential legal concerns remain the same. Notably when discussing the power of the state to issue such a document, however, we do not have the apparent certainty of constitutional authority.²⁴ Thus, as previously discussed, it remains uncertain whether a state government could issue such a document. Assuming, for the sake of argument, that a state government could issue a document denoting citizenship there would still exist the potential arguments with respect to privacy, and the right to travel.

While it is true that the Constitution does not expressly provide for a right to privacy, the Supreme Court has found a limited right to informational privacy.²⁵ So-called privacy rights, however, appear to be limited by judicial deference to the government's need to acquire the information, as well as by the fact that a constitutional challenge would be limited to state action. As a practical matter, this would mean that the government's collection of information may receive some constitutional and or statutory protection, but the collection and use of information by private organizations would not be covered. For

²³ See 2005 Emergency Supplemental, *supra* note 10 at §202(C)(2)(c).

²⁴ There appears to be some consensus with respect to the fact that Congress has the constitutional authority to issue a national identification card. Several clauses of the Constitution appear to support such an assertion, including the Commerce Clause, the Naturalization and Bankruptcy Clause, as well as the Spending Clause. See CRS Report RS21137, *National Identification Cards: Legal Issues* by Alison M. Smith.

²⁵ See e.g. *Whalen v. Roe*, 429 U.S. 589 (1977).

example, at the federal level the Privacy Act of 1974²⁶ prohibits the disclosure of records maintained on individuals by federal government agencies except under certain conditions. In addition, the Freedom of Information Act (FOIA)²⁷ establishes a right of access to records maintained by agencies within the executive branch of the federal government. FOIA, however, contains several exemptions, including one for “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Therefore, it appears that both the Privacy Act and FOIA provide some privacy protections for such information, however, they are limited in their scope and would likely not encompass information held by a private entity. Given that most states have similar statutory schemes in place for actions at the state level, similar concerns may arise.

With respect to the right to travel, the Supreme Court has held that “freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.”²⁸ Laws implicate the right to travel when they either actually deter such travel, or when impeding travel is their primary objective.²⁹ Generally, a law that infringes the right to travel is subject to strict scrutiny,³⁰ which requires not only that a compelling state interest be shown, but also that the government’s purpose “cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”³¹ Thus, the question whether a state-issued identification system that required demonstration of citizenship would impermissibly infringe upon the right to travel, would appear to ultimately depend upon the nature and effect of the regulatory scheme adopted. Where the scheme as implemented actually deters the ability to travel, a reviewing court would likely inquire into the objective underlying the system to determine whether it is sufficiently “compelling” to justify the restriction on travel. Additionally, it appears that a reviewing court may examine the availability of means less restrictive on travel that could be utilized to accomplish the government’s objectives. Since we have been unable to locate any cases directly dealing with a state-issued document that requires the denotation of citizenship, it is unclear how a court would rule if faced with such a scheme. It should be noted, however, that one potential way of avoiding strict scrutiny review would be to make the system voluntary on the applicant/traveler as opposed to mandatory. While making the scheme voluntary may avoid the heightened standard of review, it does not guarantee a finding of constitutionality.

²⁶ 5 U.S.C. § 552a (2000).

²⁷ 5 U.S.C. §§ 552 *et seq.* (2000).

²⁸ *Saenz v. Roe*, 526 U.S. 489 (1999) (emphasizing that the right to travel is a “virtually unconditional personal right” under our Constitution); *see also Shapiro v. Thompson*, 394 U.S. 618, 631 (1969) (noting that the Constitution does not explicitly mention the right to travel because such “a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.”); *United States v. Guest*, 383 U.S. 745, 758 (1966); *Kent v. Dulles*, 357 U.S. 116, 125 (1958) (stating that “the right to travel is part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment.”); *Cramer v. Skinner*, 931 F.2d 1020, 1029 (5th Cir. 1991) (stating that “[a]lthough no clause in the Constitution specifically provides a right to interstate travel, the Supreme Court has inferred this right from various constitutional provisions and from the structure of the federal system itself.”).

²⁹ *See Attorney Gen. Of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986).

³⁰ *See id.*

³¹ *See Shelton v. Tucker*, 364 U.S. 479, 488 (1960).



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Statement of Congresswoman Louise Slaughter Before the Committee on Small Business November 17, 2005

Mr. Chairman:

An area of particular concern for me regarding passports to and from Canada, and should be of concern to the Small Business Committee, is the difficulty that many American nonprofit arts organizations have in processing the visas of Canadian performers. Currently the two options available to these groups is to either have a visa processed through traditional means, which is completely unreliable and time-consuming, or pay a \$1000 fee for Premium Processing Service, which is too expensive to be utilized. Neither of these options are feasible for small, nonprofit arts groups. These groups enhance a community's cultural makeup, provide entertainment and education for millions of Americans every year while also providing jobs and generating revenue in cities and towns all across America. I want to stress that this has been an ongoing problem since June of 2001 and wanted to take this opportunity to bring it to the Small Business Committee's attention.

**Testimony of John Engler
President and CEO
National Association of Manufacturers**

On behalf of the National Association of Manufacturers

Before the House Committee on Small Business

**Hearing on “Building a Wall Between Friends:
Passports to and from Canada?”**

November 17, 2005

Chairman Manzullo, Ranking Member Velazquez and members of the committee,

I appreciate the opportunity to testify at your hearing today on the Western Hemisphere Travel Initiative. I am John Engler, the President and CEO of the National Association of Manufacturers (NAM). The NAM is the nation’s largest industrial trade association with members in every industrial sector and in all 50 states. While our large member companies are well-known manufacturers, the overwhelming majority of our members are small and mid-size companies. These members deeply appreciate the efforts that you and your committee are making to help keep America’s small manufacturers strong and continue their important role in stimulating innovation and job growth in our economy.

Partnership in Advancing Security and Trade Goals

The U.S. Government needs to give very careful consideration to how it implements new travel document changes that would make it more difficult and costly for goods and legitimate travelers to cross the northern border with Canada. The NAM has concerns about the Western Hemisphere Travel Initiative (WHTI) that I would like to discuss with you, in particular the relatively short time frame for implementation of the proposed requirement for use of passports or other types of secure travel documents. Many of these concerns also apply to the transit of goods and legitimate travelers across the southern border, but I understand that this is not the focus of the hearing today.

In March 2005, President Bush, Canadian Prime Minister Martin and Mexican President Fox launched an important new initiative, the *Security and Prosperity Partnership*, to advance North American security, economic growth, competitiveness and quality of life. They pledged to:

Establish a common approach to security to protect North America from external threats...and further streamline the secure and efficient movement of legitimate, low-risk traffic across our shared borders.

We strongly support both those goals. In our assessment, however, the Western Hemisphere Travel Initiative, as currently proposed, falls short in advancing that second important goal of further streamlining the movement of legitimate, low-risk traffic of goods and people across the northern and southern borders.

I say this with great respect for the difficult challenges that the U.S. Government faces in seeking to make our country more secure while also ensuring the United States continues to reap the benefits of international trade, tourism and contacts with peoples from around the world. There is no question that, after 9/11, protecting the homeland has taken on a heightened importance. And improving border security is clearly an essential element of that effort. The Department of Homeland Security and its Customs and Border Protection Bureau have made a point of consulting with business on the implementation of new security-related programs, such as the Customs-Trade Partnership Against Terrorism (C-TPAT), the advance cargo notification requirements and the Free and Secure Trade (FAST) program. NAM members appreciate this outreach and believe that business input into the formulation of these programs has made them more effective in meeting both security and trade objectives.

It is in that same spirit of partnership that the NAM comments today on the Western Hemisphere Travel Initiative (WHTI) outlined in the Department of Homeland Security's Advanced Notice of Proposed Rulemaking of Sept. 1, 2005 (Regulatory Information Number 1651-AA66). We want the WHTI to achieve its security objectives while also ensuring that U.S. industry and the United States as a whole continue to benefit from commerce with Canada and Mexico.

Importance of U.S. Trade with Canada and Mexico

Prior to coming to the NAM, I served for twelve years as the governor of Michigan. So I have a good appreciation of the day-to-day impact that border management has on the lives and livelihoods of millions of American who reside in border states or are employed by companies that trade with Canada. In Michigan the business and personal ties with our Canadian neighbors are very close. For example, approximately 3,000 Canadian nurses commute every day to staff hospitals in Southeast Michigan. There is extensive business travel in both directions by sales representatives, technical staff and business executives.

Every day approximately 200,000 vehicles cross between the United States and Canada carrying manufactured goods, farm products, business men and women, and tourists. One bridge alone, the Ambassador Bridge, carries approximately 25 percent of U.S.-Canada trade, more than \$100 billion in 2004.

Overall trade with Canada and Mexico is even more impressive. In 2004, two-way trade with our NAFTA partners totaled \$710 billion or 31 percent of all U.S. foreign trade. This trade is of a vital concern to NAM members because 83 percent of it is in manufactured goods. The automotive trade with Canada alone was \$116 billion in 2004. Total automotive trade with Canada and Mexico amounted to \$173 billion.

The volume of trade by itself, however, does not adequately convey its importance for U.S. industry. Many U.S. manufacturers are part of an integrated manufacturing network with manufacturers in Canada and Mexico. For example, in the auto industry, it is estimated components and subsystems of U.S. and Canadian-produced vehicles will have crossed the border seven times during the production process. This integration has helped to strengthen the competitiveness of North American industry and keep more jobs in the United States than might otherwise be possible in the face of global competition.

The success of this integrated manufacturing network depends on the reliable and timely movement of goods and people across the northern and southern borders. Most manufacturers today rely on just-in-time inventory and production systems to reduce costs and remain competitive. Even relatively short delays, say of several hours, in shipping parts and subsystems from one plant to another can cause costly disruptions in production schedules.

Cost Pressures Facing Manufacturers

Reducing costs is very much on the minds of manufacturers these days, particularly small and mid-size companies that have little or no pricing power in the marketplace. External overhead costs from taxes, health and pension benefits, tort litigation, regulation and rising energy prices add 22 percent to the cost of manufacturing in the United States relative to our major foreign competitors, according to the 2003 NAM/MAPI Cost Study. A more recent NAM report (*The Profit Squeeze for U.S. Manufacturers: A Close look at Five Major Industries*, October 2005) focusing on five key manufacturing sectors (motor vehicles, fabricated metals, machinery, electrical equipment and chemicals) revealed that higher costs for energy, materials and benefits reduced profits by 36 percent from 2000 to 2003. Manufacturers have limited ability to pass on cost increases to customers because of intense import competition, particularly from low-wage countries like China.

The level of manufacturing output is now at an all-time high, but recovery is uneven and much slower than in previous recessions. Production in 12 of 20 major manufacturing sectors is still below pre-recession levels. And the manufacturing sector employs 3 million fewer workers than it did in 2000. Manufacturers' concern about increasing costs from whatever the source, therefore, is understandable.

For companies that manufacture in North America, direct and indirect border-related costs are becoming a significant operating expense. Customs and security compliance costs and border transit delays fall disproportionately on companies engaged in business with Canada and Mexico. A recent report of the Coalition for Secure and Trade-Efficient Borders (*Rethinking Our Borders: A New North American Partnership*, July 2005) provided the following example of the impact on the auto industry. A shipment of 4,000 cars produced overseas is required to give U.S. Customs and Border Protection 24-hour advance notice and undergo one security check at the port. In contrast, the report notes, the production of 4,000 vehicles in North America may undergo 28,200 customs

transactions. The total additional cost of reporting, compliance and border delays is estimated at \$800 a vehicle produced in the United States and Canada.

But this isn't a problem just for the auto industry. A 2003 report prepared for the U.S. Department of Transportation by John Taylor of Grand Valley State University estimated that U.S.-Canada cross-border freight rates were 10-20 percent higher than U.S. freight rates because of transit delays, program compliance costs, document requirements and other border-related expenses. The report estimated the annual costs associated with transit delays and uncertainty to be \$2.5-5.3 billion just for U.S.-Canada trade.

Cross-border shipments encounter other problems as well. While companies participating in the Customs-Trade Partnership Against Terrorism (C-TPAT) benefit from having their pre-cleared goods transit the northern and southern borders in special FAST lanes without stopping, access to these special lanes is often clogged during peak crossing periods or is not always available because of staffing shortages. Inadequate infrastructure also limits access. A further problem is that companies continue to report a shortage of drivers who either don't qualify for a FAST driver's license or are unwilling to subject themselves to background checks. Over the short to medium term, the cost of border transit delays will almost certainly increase as the physical volume of trade with our NAFTA partners grows even higher.

Impact of Western Hemisphere Travel Initiative

It is against this backdrop of the increasing integration of North American manufacturing and the intense cost pressures that manufacturers face in the global market place that we raise concerns about how the new travel document requirement in the Western Hemisphere Travel Initiative will be implemented.

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) establishes a new travel document provision that will require citizens of the United States, Canada and Mexico to show a passport or other accepted secure document to enter or re-enter the United States. The "secure" document would need to establish a person's identity and nationality. In the rulemaking announcement, the Department of Homeland Security (DHS) indicates that several frequent traveler documents now in use (i.e., NEXUS, FAST and SENTRI/the Secure Electronic Network for Travelers Rapid Inspection) would be acceptable in lieu of a passport. But DHS also leaves open the possibility that other documents might also be acceptable. The IRTPA sets a January 1, 2008, deadline for implementing this requirement. The proposed Western Hemisphere Travel Initiative calls for applying the requirement for all air and sea travel by December 31, 2006, and for land travel across the northern and southern borders by December 31, 2007.

Given the need to improve security at the borders, it is entirely reasonable to expect that individuals wishing to enter or re-enter the United States should be able to establish their identity and nationality. And we understand that the current practice of allowing Americans and Canadians to use only a driver's license and birth certificate to cross the

northern and southern borders presents some security risks. (Mexicans use a passport or Border Crossing Card to enter the United States.) We are concerned, however, that the more restrictive travel document requirements of the proposed WHTI and relatively short time for implementation will not be sufficient to accommodate the unique demands for transportation and travel in North America.

U.S. business, cultural and social links with Canada and Mexico are of breadth and intensity unlike those we have with any other countries in the world. Business, tourist and personal travel across the northern and southern land borders is extraordinarily heavy. In 2004, there were 255 million passenger crossings and 122 million personal vehicle crossings into the United States. Truck crossings into the United States totaled 11.4 million in 2004. Moreover, there is a heavy concentration of traffic at a relatively small number of crossing points. On the northern border, vehicles entering the United States in 2004 totaled: 10.7 million at the Detroit and Port Huron, Michigan crossing points; 7.3 million at the Buffalo, New York, crossing point; and 4.2 million at the three crossings near Bellingham, Washington, north of Seattle. (All data from the U.S. Department of Transportation.)

The requirement to present a passport is expected to affect millions of potential American and Canadian travelers. According to a report of the Detroit Regional Chamber of Commerce, 80 percent of Americans and 60 percent of Canadians do not have passports. So when the passport requirement goes into effect, many businesses will have to pay the cost of their staff acquiring passports. For small and large companies, the cost could be significant because they would have to ensure that all employees who might have Western Hemisphere travel assignments have passports so they can provide timely service to customers.

For small companies where employees are often less specialized in their work than in big companies, the requirement could be particularly onerous. The CEO of a small member company in Tennessee recently wrote us to express concern about how the passport requirement would affect his business:

I have a passport, but my quality guy and my customer service guy used driver's licenses and birth certificates. This trip was arranged on short notice. I would not have been able to take them with me if passports were required. Sometimes I take shop floor workers to visit customers.... It is very helpful to have them see the customer's operations and problems. But I can't afford to get every employee a passport just in case they need to take a quick trip.

Moreover, this would not be a one-time cost because periodic staff turnover would mean that companies would need to ensure that new employees who might have foreign travel assignments also have a passport. In addition to the cost of the passports, which is likely to rise with the use of imbedded biometric identifiers in the document, the 6-8 week wait to process passport applications further complicates travel planning.

I have focused my testimony on the direct impact of the travel document requirements on manufacturers engaged in exporting and importing. However, the indirect trade impact resulting from sales of U.S. manufactured goods to North American tourists, business travelers and other visitors is also substantial. In 2004 Canadian visitors alone spent \$10.3 billion in the United States, according to the Detroit Regional Chamber of Commerce. As a group, these visitors would rank among our top 20 foreign sales markets. Border states, of course, benefit significantly from tourism and weekend shopping travel. But the economic impact on other states is also significant. The Detroit Regional Chamber reports that 1.8 million Canadian visitors to Florida spent \$1.4 billion in 2004. Manufacturers benefit from part of those expenditures.

Consideration of Alternative Documents

The proposed WHTI would make a passport the one commonly accepted identity document for individuals traveling within North America. The proposal, however, indicates the likelihood that some other travel documents may be acceptable in lieu of a passport. They include documents issued under the joint U.S.-Canadian NEXUS and FAST programs and the U.S.-Mexico Border Crossing Card ("laser visa") and SENTRI programs

The recognition of travel documents under these programs will be helpful for certain categories of business travelers, such as truck drivers and other business representatives who travel frequently to Mexico and Canada. Even these programs, however, have their limitations. The FAST license, for example, is only available for truck drivers whose companies participate in the C-TPAT program. And even companies that participate in the program report a shortage of qualified FAST drivers. Applications for NEXUS IDs can only be made at five U.S. border cities and can be used only at certain border crossings, some open just Monday through Friday. After five years in operation, only about 80,000 NEXUS travel documents have been issued. Another drawback for all these programs is that the processing time needed for obtaining these documents is about the same as for a passport.

Limiting the acceptable travel documents to these options is likely to result in a considerable disruption in business and tourist travel and significant additional costs, particularly since there will be a relatively short time to educate the business community and general public of the new requirements. The NAM recommends that the Department of Homeland Security and Department of State consider alternative documents that are more readily available to business travelers and tourists and less costly to obtain.

One option that deserves further examination is whether federally approved identification cards issued under the Real ID Act could be adopted to meet the requirements of the IRTPA. The Real ID Act takes effect in May 2008, only months after the deadline for implementing the WHTI. While the new federally approved identification card by itself may not be deemed adequate for proof of identity and citizenship, that card in combination with an original birth certificate or other commonly available identity documents may meet the requirements for higher standards of security. If IDs that meet

the Real ID Act standards were determined to be acceptable as a travel document, the NAM would consider supporting an amendment to the IRTPA to align its implementation deadline with that in the Real ID Act.

Identification cards issued under Real ID Act standards would have significant advantages for business travelers and tourists. Since driver's licenses will be issued under these standards, most potential travelers are likely to have a federally approved identification card in their possession. A special application and lengthy waiting period to receive the document will not be required. These cards also bring increased security. Individuals applying for Real ID Act cards will have to show a "photo identity document," document their birth date and address, and show that their Social Security number is what it is claimed. The card will also store a digital picture, and its contents will be machine readable. Under Real ID Act standards, the card must be designed to prevent tampering, counterfeiting and duplication as well.

We recognize that use of federally approved identification cards issued under Real ID Act guidelines as travel documents raises difficult issues of state and federal jurisdiction and coordination. But we believe this approach merits serious consideration as an additional option in light of the adverse economic consequences that are likely to result from limiting travel documents to those proposed in the WHTI and the special relationship with Canada.

Need for Additional Time to Analyze Economic Impact and Options

The NAM appreciates the Committee's initiative in calling this hearing on the proposed new travel document requirement. Given the magnitude of goods and legitimate travelers crossing the northern and southern borders every day and the mutual dependence of three economies, it is only prudent that we examine with great care how changes in travel documents will affect our economic interests as well as our security interests. The fact that such a small percentage of U.S. citizens currently have passports and even much smaller number have other secure travel documents (e.g., NEXUS and FAST cards) suggests that the proposed new document requirement would have a large impact on both business and personal travel decisions.

In our view, the sixty-day comment period is not sufficient for a thorough examination of the options or analysis of the economic impact of the new document requirements. We strongly recommend that the Department of Homeland Security allow more time for an analysis of the effects of the requirement for new travel documents and the options for meeting the goals of IRTPA. In particular, we would like to see a further assessment of whether federally approved identification cards under the Real ID Act, either alone or in combination with other documents such a birth certificate, might be acceptable as a travel document. The NAM would support an amendment of the IRTPA to align implementation of the legislation with that of the Real ID Act if this would help. We recognize that the northern and southern borders present different kinds of law enforcement, immigration and counter-terrorism challenges for the United States. The

U.S. Government should be open, then, to somewhat different approaches that best address the challenges on each border.

Thank you for the opportunity to testify today. Be assured that the NAM is committed to working with Congress and the Administration in advancing the dual goals of security and efficiency at our northern and southern borders.

House Committee on Small Business
**“Building a Wall Between Friends: Passports to and from
Canada?”**

November 17, 2005

Testimony of Janice L. Kephart

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”

House Committee on Small Business
“The Western Hemisphere Travel Initiative”

November 17, 2005

Testimony of Janice L. Kephart

Introduction

Good afternoon and thank you for the opportunity to discuss *terrorist travel* and the *Western Hemisphere Travel Initiative* with you today. 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 Manzullo and Ranking Member Velazquez for holding this hearing on the Western Hemisphere Travel Initiative. 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.

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.

Today I plan to discuss with you: (1) new laws addressing terrorist travel; (2) why the 9/11 Commission made the recommendation for a passport requirement for all entrants; (3) why Canada still poses a terrorist threat; 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.

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

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.

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 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 between the U.S. and Canada—the Importance of the Western Hemisphere Travel Initiative

Today, terrorists with Canadian citizenship can move in and out of the United States right virtually unconcerned about detection. 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 North 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 of American society and culture.³

The Western Hemisphere Travel Initiative thus becomes an important first step in at least chilling terrorist travel between the U.S. and Canada, and more specifically, Canadian terrorists into the United States. 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 estimated 10 million lost or stolen passports or national identification cards worldwide

³ 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.

afford terrorists easier access to world travel.⁴ 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 side, having a standard Canadian passport that border officers can be trained in its forensic qualities gives our border officers a better chance of snuffing out Canadian 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 Canadian terrorist, here are the options that exist for a terrorist today: (1) use a legitimate Canadian 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.

Analysis from the Canadian Security Intelligence Services

Reports in the news media alongside statements and reporting by Canada's intelligence service, the Canadian Security Intelligence Services (CSIS), indicate the threat of terrorist infiltration from Canada is real and dangerous. In July 2005, it was reported that CSIS stated that at least 50 terror groups have a presence in Canada. All types of terrorist activities go on in Canada, including terror financing, weapon and equipment procurement, "manipulating immigrant communities and *facilitating travel to and from the United States* and other countries."⁵

In May 2005, UPI reported that Jim Judd, director of CSIS, told the Canadian Senate in a hearing that well-known terrorists were freely organizing in Canada and although many were recent graduates of terrorist training camps, many are "battle-hardened veterans of campaigns in Afghanistan, Bosnia, Chechnya and elsewhere". He went on to say: "Often these individuals remain in contact with one another... or with colleagues outside the country, and continue to show signs of ongoing clandestine-type activities, including

⁴ Levine, Samantha. "Terror's Best Friend." US News & World Report. December 6, 2004.

⁵ Beth Duff-Brown. "Intelligence officials believe 50 terror groups have presence in Canada". The Associated Press. July 5, 2005.

the use of counter-surveillance techniques, secretive meetings and encrypted communications.”⁶

Two declassified CSIS reports from May 2004, stated as still accurate a year later by CSIS, reiterate the point. The first report, “Sons of the Father: The Next Generation of Islamic Extremists in Canada,” states that there is a second generation of “young jihadists” who are brought up by parental figures to “see the justification of using violence to gain political goals.” They are further trained in terror and represent a “clear and present danger to Canada and its allies.” The report continues:

The presence of young, committed jihadists in Canada is a significant threat to national security for a number of reasons. These individuals are very familiar with Canadian customs and mores and have no difficulty fitting in to Western society. They have excellent English-language skills and can pass as average Canadians, thus evading more rigid scrutiny by security officials. Their knowledge of Canadian- and by extension Western – society renders them a valuable resource for international Islamic extremists who need individuals to infiltrate our countries to carry out terrorist acts.

Young Canadian extremists also have bona fide Canadian travel documentation. The possession of a valid Canadian passport facilitates international travel. While organizations such as Al Qaeda have sophisticated document forgery capabilities, the use of real papers provides another tool in their campaign.⁷

The other April 2004 CSIS report, “Al Qaeda Attack Planning Against North American Targets,” says the current trend of radical converts poses a particularly difficult threat “due to their ability to evade scrutiny by security forces. Islamic extremists value these individuals because their appearance, documentation and ability to blend into Western countries increases their chances of successfully carrying out terrorist acts.” The report concludes that the outlook is for “these groups to expand their operational and support networks in Canada” and that “Islamic extremists will continue to exploit Canadian documentation for terrorist operations.”⁸

In an interview in May 2005 with UPI, CSIS said that the service was monitoring about 350 individuals and organizations in Canada and abroad who pose threats. And since Canada’s Anti-Terrorist Act, passed in December 2001, is not retroactive, those jihadists who trained in terror camps or whose known terrorist activity is prior to that date, are still at large.⁹ These second generation jihadists today, under the current framework, can pass into the United States without a passport.

⁶ Shaun Waterman. “Canada fears new generation of terrorists”. UPI. May 12, 2005.

⁷ “Sons of the Father: The Next Generation of Islamic Extremists in Canada.” CSIS IB 2004-5/07.

⁸ “Al Qaeda Attack Planning Against North American Targets.” Integrated National Security Assessment Centre 2004 05 21.

⁹ Shaun Waterman. “Canada fears new generation of terrorists.” UPI. May 12, 2005.

And a poll conducted in Canada in August 2005 suggests that Canadians agree they have a problem with terrorists residing or operating in their country: "A majority (62 per cent) believe a terror attack will occur in the country within the next few years, and only 25 per cent believe Canada is very well or well prepared."¹⁰

Terrorists with Canadian Residency

Canadian Intelligence is concerned about these 350 jihadists in Canada. But these numbers do not necessarily include recent reporting that over 50 terrorist organizations are active in Canada nor that last year saw a sharp rise in terror financing coming from Canada-about 32 cases- through March 2005 worth about \$2 billion, two and a half times the \$70 million of the previous year. Much of this money came from one large business in Canada owned by a Mid East individual with terrorist ties.¹¹ Below, I review a sampling of terrorists with Canadian citizenship or affiliation and the threat they did (or may continue to) pose to the United States.

Ahmed Ressam of the LAX Millenium Plot.¹² Ahmed Ressam was born in Algeria in 1967 and, in 1992, when civil war broke out, traveled to France where he lived, illegally, until 1994. Using a false French passport, he then made his way to Montreal where he lived for the next four years. In Canada he "became interested in going to bin Laden's camps for training" after "friends returned to Montreal with stories about Osama bin Laden's 'Jihad University' in Afghanistan."¹³

In April 1998, after meeting with Abu Zubaydah in Pakistan, Ressam was sent to the Khaldan camp in Afghanistan where he spent the next five to six months. Khaldan had earned a reputation for its instruction in how to acquire, forge, and manufacture travel documents and credit cards, and Ressam learned well.¹⁴ At Khaldan Ressam also learned the other tradecrafts of a terrorist, the use of weapons, bombmaking, and urban warfare. Zubaydah himself was sufficiently impressed with Ressam's passport manipulation abilities to have apparently asked him to acquire additional Canadian passports for

¹⁰ Campbell Clark with a report from Daniel Leblanc. "Canadians want strict security, poll finds". The Globe and Mail (Canada). August 11, 2005

¹¹ The Financial Transactions and Reports Analysis Centre (FINTRAC) 2005 Annual Report.

¹² Most of this section was attained while I was counsel on the 9/11 Commission, with supplemental research provided by Vinay Tripathi while I was a 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" (March 2005).

¹³ "Trail of a Terrorist: Introduction." PBS FRONTLINE. Oct. 25, 2001
<http://www.pbs.org/wgbh/pages/frontline/shows/trail/inside/cron.html>

¹⁴ USA v. Ressam, et al. WDA 99-CR-666. "Indictment." April 3, 2001. See also Zill, Oriana. "Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity." Documents." Frontline. October 2001. <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>; and USA v. MOKHTAR HAOUARI, et al. SDNY S4 00 Cr. 15. Cross-examination of Ahmed Ressam, July 3, 2001 (transcript p. 549-551).

distribution to al Qaeda fighters.¹⁵ And it was Ressam's deft handling of fake travel documents that brought him to the attention of Khalid Sheikh Mohammed during his final visit to Pakistan. He would soon return to Canada (in January 1999) to pursue the plot to blow up Los Angeles International Airport.

On December 14, 1999, a sweaty, nervous Ahmed Ressam was given a secondary inspection when he became reluctant to answer a basic question about his destination. He had just pulled off from a late-arriving ferry at Port Angeles, Washington. In answer to questions, Ressam pulled out fake documents—including a Canadian passport- in the name of Beni Antoine Noris. This was not the first time Ressam was asked questions. Ressam had already undergone a cursory examination by a U.S. immigration officer in Vancouver, who had been suspicious of Ressam as he was the last to board an already late ferry. The examination included a cursory look in the trunk (but not the tire well where the explosives materials were hidden) as well as a run of the name on the passport (Noris) against the INS terrorist database without getting a hit. Although a subject by the name of Ressam was wanted in Canada, neither that name nor the alias Noris was in the INS database. Ressam was admitted for boarding.

Ressam's trial testimony provides valuable insight into one terrorist's ability to circumvent border security around the world. He described how al Qaeda supplemented its global terrorist network with operatives trained in Afghanistan and thereafter embedded in satellite locations. In France, Canada and elsewhere, Ressam operated in conjunction with fellow terrorists stationed in Europe. He traveled extensively using doctored travel documents that allowed him to take on a variety of identities, including the one he used in Canada—that of a refugee seeking asylum and a new home. In actuality, Ressam was a member of the Armed Islamic Group¹⁶ (GIA, or Groupes Islamiques Armés).

Ressam testified that manufacturing and trafficking fraudulent travel documents served several functions, providing entrée to the target country, a means to make money, and a way to stay embedded in a given location. From 1994 to 1998, Ressam lived in Montreal, actively robbing tourists—some thirty to forty times, by his count—of money and travel documents. Ressam described his livelihood: "I used to take the money, keep the money, and if there [were] passports, I would sell them, and if there [were] Visa credit cards, I would use them up, and if there were any traveler's checks, I would use them or sell them."¹⁷ Though Ressam was arrested four times for his thievery, he was convicted just once; and he was punished with a fine, not jail time.¹⁸

¹⁵ Zill, Oriana. "Trail of a Terrorist: Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity Documents." *PBS FRONTLINE*, Oct. 25, 2001

<http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>

¹⁶ Zill, Oriana. "Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity Documents." *Frontline*. October, 2001. <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>.

¹⁷ *USA v. Ressam*, et al. WDA 99-CR-666. "Indictment." April 3, 2001.

¹⁸ *Ibid.*

Abderraouf Jdey, aka Faruq Al-Tunisi, is a Tunisian that studied biology at the University of Montreal.¹⁹ In 1995, he became a Canadian citizen.²⁰ In 1999, he received a Canadian passport and traveled to Afghanistan.

The *9/11 Final Report* states that Jdey “may have trained in Afghanistan with [9/11 hijackers] Khalid al Mihdhar and Nawaf al Hazmi and received instruction from KSM with [Mohamed] Atta and [Ramzi] Binalshibh.” There is also evidence from materials seized at a Pakistani safehouse that Jdey was an initial member of the 9/11 plot. In another safehouse of al Qaeda operations chief Mohammed Atef in Kabul in November 2001, coalition forces found martyrdom videotapes made by Jdey and Binalshibh. 9/11 mastermind Khalid Sheikh Mohammed has admitted Jdey to be a top operative, but has said that Jdey was to participate in a planned second wave of attacks, and had already dropped out of that plot as well by the summer of 2001.

However, young Canadian Al Qaeda operative Mohammed Mansour Jabarah states otherwise. Jabarah has told Canadian intelligence that Jdey downed American Airlines Flight 587 with a shoe bomb on November 12, 2001. A May 2002 Canadian government memo characterized this information as coming from a “source of unknown reliability.” Jabarah said he received this information second hand by Abu Abdelrahman, a high

Comment [AuQ1]: Not “Abdel Rahman”?

ranking Saudi al Qaeda member associated with KSM.²¹ While the FBI issued a high alert for Jdey in 2002, there has been no further public information regarding Jabarah’s claims. Attorney General Ashcroft conducted a press conference in May 2002 stating that Jdey was one of seven al Qaeda associates “sought in connection with the possible terrorist threats in the United States.” Jdey’s whereabouts are unknown.

Another wanted naturalized Canadian with a \$5 million bounty on him by the FBI is **Amer Al-Maati**. His name was found on documents in Afghanistan.²² He is a licensed pilot who had vowed to hijack a plane and crash it into a U.S. building.²³ In August 2004 there was an unsubstantiated report that he was seen at the Nantucket Airport.²⁴ Also listed is Canadian citizen **Faker Ben Abdelazziz Boussora** who is known to have a

¹⁹ www.scienciapress.com/findings/mailler.htm. This site also weaves a theory that Jdey may have been the anthrax mailer to Senators Leahy and Daschle in September 2001. However, this theory remains unsubstantiated.

²⁰ Research used in this section was provided by Josh Lefkowitz at the Investigative Project on Terrorism. Sources for this section are the 9/11 Final Report (p. 527); and <http://www.fbi.gov/terrorinfo/jdey.htm>. (accessed November 8, 2005); “Wanted – Again Canadians on an FBI Terror List.” [CBC News Online](http://www.cbc.com/news/Canada/2004/05/27/040527canada.html), May 27, 2004; Bell, Stewart. “Montreal Man Downed U.S. Plane, CSIS Told.” [The National Post](http://www.nationalpost.com), Aug. 27, 2004.

²¹ Bell, Stewart. “Montreal Man Downed U.S. Plane, CSIS Told.” [The National Post](http://www.nationalpost.com), Aug. 27, 2004. Ted Lopatkiewicz, spokesman for the National Transportation Safety Board, said: “We have seen no evidence of anything other than an accident here. There has been no evidence found, from what I can tell—at least that’s been relayed to us—that there was any criminality involved here. It appears, at least the evidence we have, is that a vertical fin came off, not that there was any kind of event in the cabin.”

²² “FBI seeks man tied to al Qaeda.” [CNN.com](http://www.cnn.com), Nov. 13, 2002.

²³ <http://archives.cnn.com/2002/US/11/13/alqaeda.suspect>

²⁴ Adrian Humphreys. “Gaps found in border database, Dangerous Individuals not Red-Flagged.” [The National Post](http://www.nationalpost.com), August 16, 2005.

²⁵ Sean Murphy. “Possible terrorist sighting roils isle.” [Boston.com](http://www.boston.com), August 21, 2004.

suicide note and concern exists he may try to reenter Canada to plan a terrorist attack. He is believed to have possibly entered the United States. Boussara also faces a \$5 million bounty.²⁵

The Jabarah brothers. On July 3, 2003, Abdulrahman Mansour Jabarah, then 24, was killed in a firefight between Saudi authorities and an Al Qaeda cell close to the Jordanian border. Jabarah, like his younger brother, Mohammed "Sammy" Jabarah, was a second-generation Canadian citizen with close ties to senior Al Qaeda leadership. The boys grew up in Canada and attended conservative mosques in a town about 200 miles north of Detroit. Their father is an Iraqi, their mother a Kuwaiti. The couple had emigrated to Canada in 1994. Both boys had traveled to Pakistan and met up with Al Qaeda there. Until his death, the FBI considered Abdulrahman Jabarah quite dangerous.²⁶

"Sammy" Jabarah, in U.S. custody since April 2002, was found after his Jemaah Islamiyah contacts in Singapore were arrested and identified Jabarah as their Al Qaeda contact after a September 2001 meeting. "Sammy" was to supply cash for explosives for their attacks on Western embassies and a U.S. warship docked in the Singapore harbor. He was traveling on a Canadian passport. After interrogation by the Canadians, Jabarah was turned over to U.S. custody, where he resides today. He was originally recruited in Canada and sent to Afghanistan for training in the summer of 2001. Authorities all say that Jabarah was sent to Southeast Asia by Osama bin Laden, having met with him four times and sworn his allegiance to him. His planned attack "could have killed thousands."²⁷

The Khadr family. Ahmad Said Al-Khadr was a high-ranking ranking Al Qaeda operative who had emigrated to Canada from Egypt in 1975 and married a local Palestinian woman. He met Osama bin Laden in 1985 and became his closest ally in Canada. He worked for the militant Islamic charity, Human Concern International. Pakistan arrested Khadr in 1995 for misappropriating HCI funds for an attack on the Egyptian Embassy in Pakistan. However, Canada intervened and soon Khadr was back in Canada. His entire family became Al Qaeda. Osama bin Laden married one daughter to an Al Qaeda member in 1999. Another son, 23, is a fugitive who once ran an Al Qaeda training camp.²⁸ Another son, 19, was wounded in battle after throwing a hand grenade at U.S. soldiers that left one soldier dead and three others wounded.²⁹ He is now detained at Guantanamo. And another son, 14 at the time, was wounded severely in a gun-battle in Pakistan with Pakistani authorities. That same battle left his father dead. One son, 22, returned to Canada in October 2003 and denounced his family's extremism, labeling his family an "Al Qaeda" family.³⁰

²⁵ Ibid.

²⁶ 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.

²⁷ "INDEPTH: PASSPORT TO TERROR." CBC News Online. October 2004.

<http://www.cbc.ca/printablestory.jsp>.

²⁸ Daniel Pipes. "The Khadr: Canada's First Family of Terrorism." New York Sun. March 16, 2004.

²⁹ "U.S. military charges Omar Khadr with murder." CTV.ca News Staff. Nov. 8, 2005.

³⁰ Daniel Pipes. "The Khadr: Canada's First Family of Terrorism." New York Sun. March 16, 2004.

Canadian Terrorist with U.S. Residency

Mohammed Warsame was born in Somalia and sought refugee status in Canada in 1989.³¹ He became a naturalized Canadian citizen and moved to Minneapolis in 2002. He was arrested in December 2003 as a material witness in the Zacarias Moussaoui case. At the time of his arrest, he was a student at Minneapolis Community and Technical College. In January 2004, Warsame was indicted and charged with conspiracy to provide material support to al Qaeda. Warsame has admitted attending an al Qaeda training camp in 2000 and 2001 and receiving military training (weapons, martial arts). He attended lectures given by Osama bin Ladin and even sat next to him at a meal. Moreover, he fought with the Taliban and provided financial assistance to al Qaeda members in Pakistan once he had returned to the United States.

Wanted Al Qaeda operative with U.S. legal residency possibly holding a Canadian passport³²

Born in Saudi Arabia, **Adnan El-Shukrijumah**, aka "Jafar the Pilot," has spent 15 years in the United States (mostly in South Florida), speaks fluent English, and has been employed as a teacher. El-Shukrijumah trained with Jose Padilla to partner in the dirty bomb plot, helicopter plots, and the New York and New Jersey financial infrastructure plots discovered in the summer of 2004. A Department of Homeland Security document quoted in Newsweek states that "KSM has identified Adnan el Shukrijumah, a Saudi born permanent U.S. resident alien, as an operative with standing permission to attack targets in the United States that had been previously approved by Osama Bin Ladin."

FBI Director Robert Mueller called him "a trained operative who poses an operational threat to the United States" who the FBI considers to be armed and dangerous. In late 2000 or early 2001, El-Shukrijumah was under investigation for his relationship to Imran Mandhai, convicted in Florida of conspiring to bomb a National Guard armory, power stations, Jewish businesses, and Mount Rushmore prior to 9/11. Mandhai was associated with Hakki Cemal Aksoy, convicted in 2002 for firearms violations and asylum fraud and in whose apartment bomb making manuals and notes were found.

El-Shukrijumah had previously applied for naturalization, but the INS interior enforcement office in Miami noticed that the application was fraudulent. The INS agents working the case met with the U.S. Attorney's Office in Miami, and even discussed seeking a search warrant for El-Shukrijumah's residence. Without further information linking El-Shukrijumah to terrorist activity, the matter was dropped.

As an LPR, El-Shukrijumah easily traveled to and from attended training camps in Afghanistan, where he was most likely schooled by Ramzi Binalshibh, famous for his

³¹ This paragraph is found in my report, "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel," Center for Immigration Studies (September 2005).

³² This section on El-Shukrijumah is found in my report, "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel," Center for Immigration Studies (September 2005).

role as emissary between KSM and 9/11 ring leader Mohamad Atta. El-Shukrijumah is a skilled bomb maker and a Florida trained pilot, and authorities have found a document that ties him (via one of his aliases) to the Oklahoma flight school where Zacarias Moussaoui trained. He may have been friendly with Atta as well, as I describe an immigration officer's witnessing of receiving a request for help with travel documents in May 2001 from El-Shukrijumah on behalf of Atta and likely another 9/11 pilot in *9/11 and Terrorist Travel*. According to Attorney General John Ashcroft, El-Shukrijumah "scouted sites across America that might be vulnerable to terrorist attack." In addition to surveilling high-profile targets in New York's financial district, El-Shukrijumah surveilled the Panama Canal.

Back in the United States, he was also involved in an aborted plot with Jose Padilla to blow up apartment buildings in the United States. He was also likely Padilla's first partner in the dirty bomb plot, but differences between them ended the joint venture. There are also reports that El-Shukrijumah attempted to procure radioactive material from McMaster University in Hamilton, Ontario. In March 2004, El-Shukrijumah attended a terrorist summit in Pakistan and met with a number of key al Qaeda members, including Abu Issa Al-Hindi, Mohammed Naeem Noor Khan, and Mohammed Babar. IN past months he has been spotted in Mexico. He reportedly met with members of the Mara Salvatrucha gang (known as MS-13) in Honduras, although Interpol denies the existence of evidence of such a meeting. In September 2004, the Aviation and Security Association reported, "An alert airline crewmember saw and then confronted a suspicious acting person at Kansai International Airport in Japan. El Shukrijumah was this suspicious person." However, law enforcement was not notified.

Reporting indicates that since El-Shukrijumah fled the United States after 9/11, he has tried to get back into the United States using various passports. He has a Guyanese passport, but may also hold passports from Saudi Arabia, Canada, and Trinidad. However, unless authorities made a decision to permit Shukrijumah his freedom for law enforcement or intelligence reasons, or know that he did manage to enter the United States on one of these passports undetected and law enforcement knows about it, I do not place much credence in these reports.

U.S. – Canada Cross Border Traffic

Hizballah cigarette smuggling scam.³³ Throughout the 1990s, Hizballah agents reporting to the military leadership in Lebanon smuggled millions of dollars worth of illegal cigarette sales back to the organization. The Charlotte, North Carolina smuggling ring was an extremely advanced enterprise with a clear and elaborate structure and a well-defined chain of command. Cigarettes were bought in North Carolina and sold in Michigan. A single truckload of cigarettes could yield a \$2 million profit. Operatives were stationed in Canada and as well as Lebanon. Each operative was assigned specific

³³ Most of this section was researched by Vinay Tripathi and Daveed Garenstien-Ross while I was a 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" (March 2005).

tasks, including maintaining communications with cell members in Canada, selling cigarettes at convenience stores, driving trucks filled with crates of smuggled cigarettes interstate, and procuring high-tech tools for Hizballah members in Lebanon.

In June 2002, a federal jury in Charlotte convicted the brothers Mohamad Hammoud and Chawki Youssef Hammoud of funneling profits from their multimillion-dollar cigarette smuggling ring to Hizballah. According to the indictment, the members of the cell planned to acquire for Hizballah such items as night vision devices, global positioning systems, mine and metal detection equipment, stun guns, nitrogen cutters (designed for cutting metal under water), laser range finders, camera equipment, advanced aircraft analysis and design software, military-style lensatic compasses, and mining, drilling, and blasting equipment.

Said Mohamad Harb, also based in Charlotte, provided the link between the cigarette-smuggling operation and a Hizballah equipment procurement cell in Canada, where he met and coordinated with a Hizballah “purchasing agent.” Harb was a key figure in transferring goods to Hizballah in part because of his expertise with fake credit cards. In particular, Harb would set up credit card and banking scams to purchase dual-use equipment (night vision devices, mine detection equipment, etc.) for Hizballah.

Mohammed Hassan Dbouk and his brother-in-law, Ali Adham Amhaz ran the Canadian section. Dbouk and Amhaz reported directly to Haj Hassan Haj Hilu Laqis, Hizballah’s chief military procurement officer in Lebanon. Their activities were funded in part with money that Laqis sent from Lebanon and in part by their own criminal activities in Canada, such as credit card and banking scams. In his role as a high-ranking Hizballah member and a reconnaissance and intelligence specialist employed by the Hizballah-run al Manar television station, Dbouk oversaw military equipment acquisitions such as night vision goggles and global positioning systems. According to the CSIS, at one point, a Charlotte cell member flew to Seattle to deliver a series of forged checks to Dbouk who then used them to purchase equipment for Hizballah.

An Al Qaeda operative attempts entry over the northern border. Nabil Al-Marabh stayed at a terrorist guesthouse in Pakistan known as the House of Martyrs, engaged in weapons training in Afghanistan, and worked for the Muslim World League—then an important source of al Qaeda’s funds³⁴—in the early 1990s.³⁵ He then worked at the same Boston cab company as individuals convicted in Jordan for the Millennium plot to blow up religious and western tourist locations in Jordan.³⁶ These individuals identified

³⁴ USA v. Arnaout. “Government’s Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements.” NDIL 02-CR- 892. Jan. 31, 2003 at p. 25.

³⁵ Steve Fainaru. “Sept. 11 Detainee is Ordered Deported.” *The Washington Post*, Sept. 4, 2002.

³⁶ Farmer, Tom. “Bin Ladin Operative May Have Lived In Dorchester For More Than 10 Years.” *The Boston Herald*, Sept. 19, 2001 and USA. v. Elzahabi. DMN 04-MJ 26. “Criminal Complaint and Affidavit of Kiann Vandener, FBI Special Agent.” June 25, 2004.

Al-Marabh as an al Qaeda operative.³⁷ Al-Marabh maintained a Boston address from 1989 to 2000.³⁸ He also lived in Toronto, Detroit, Tampa, and Chicago.³⁹

On June 27, 2001, Al-Marabh tried to illegally enter the United States near Niagara Falls by hiding in the back of a tractor-trailer. He had a forged Canadian passport and fake social insurance card.⁴⁰ He later told authorities he had regularly traveled illegally between Canada and the United States.⁴¹ Moreover, Michigan state records showed Al-Marabh receiving five driver's licenses there in thirteen months; he had licenses for Massachusetts, Illinois, Ontario, and Florida,⁴² and a commercial driver's license and a permit to haul hazardous materials,⁴³ including explosives and caustic chemicals.⁴⁴

In September 2001, authorities raided a Detroit residence that had Al-Marabh's name on the mailbox. They found three men with fake immigration documents, airport identification badges, and a notebook containing handwritten notes about security at a U.S. military base in Turkey and an airport in Jordan.⁴⁵ These men, who may also have been involved in a plot to kill former defense secretary William Cohen during a visit to Turkey,⁴⁶ were later charged with being part of an al Qaeda sleeper cell.⁴⁷ They were convicted, but the verdict was thrown out in September 2004.⁴⁸

Al-Marabh was arrested in Chicago in September 2001 on a parole violation related to his stabbing of a man who had lived in his apartment.⁴⁹ In 2002, he pled guilty to conspiracy to smuggle an alien into the United States⁵⁰ and was ordered deported.⁵¹ Prosecutors said the government had no evidence linking him to terrorism.⁵² The judge questioned the government's previous documentation of Al-Marabh's ties to terror and also noted he

³⁷ Golden, Tim with Judith Miller. "Bin Ladin Operative Is Linked To Suspects." The New York Times, Sept. 18, 2001.

³⁸ Farmer, Tom. "Bin Ladin Operative May Have Lived In Dorchester For More Than 10 Years." The Boston Herald, Sept. 19, 2001

³⁹ Schiller, Bill. "Terrorism Suspect had Florida Link." Toronto Star, Oct. 26, 2001.

⁴⁰ Dimmock, Gary and Aaron Sands. "Toronto Shop Clerk Tied to World Terror." The Ottawa Citizen, Oct. 29, 2001.

⁴¹ *Ibid.*

⁴² Schiller, Bill. "Terrorism Suspect had Florida Link." Toronto Star, Oct. 26, 2001.

⁴³ Philip Shenon and Don Van Natta Jr., "U.S. Says 3 Detainees May Be Tied to Hijackings," The New York Times, November 1, 2001.

⁴⁴ Wilgoren, Jody and Judith Miller. "Trail of Man Sought in 2 Plots Leads to Chicago and Arrest." New York Times, Sept. 21, 2001.

⁴⁵ USA v. Hannan, et al. EDM1 01-C-R80778. "Criminal Complaint of Robert Pertuso, FBI Special Agent." Sept. 18, 2001.

⁴⁶ "Terror Supporters among Us." Associated Press, Nov. 17, 2001.

⁴⁷ <http://www.cbsnews.com/stories/2001/11/17/archive/main318417.shtml> (accessed Oct. 28, 2004).

⁴⁸ USA v. Koubriti, et al. EDM1 01-C-R80778. Indictment. Sept. 27, 2001.

⁴⁹ Karush, Sarah. "Judge Drops Charges in Mich. Terror Case." The Associated Press, Sept. 3, 2004.

⁵⁰ "Boston Fugitive Arrested." Federal Bureau of Investigation Press Release. Sept. 20, 2001. and

⁵¹ Wilgoren, Jody and Judith Miller. "Trail of Man Sought in 2 Plots Leads to Chicago and Arrest." The New York Times, Sept. 21, 2001.

⁵² USA v. Al-Marabh. WDNY 01-CR-244-A. Plea Agreement. July 8, 2002.

⁵³ Fainaru, Steve. "Sept. 11 Detainee is Ordered Deported." The Washington Post, Sept. 4, 2002.

⁵⁴ *Ibid.*

was found with \$22,000 in cash and \$25,000 worth of amber jewels in his possession when he was arrested.⁵³ He was deported to Syria in January 2004. Months later, a press release from Immigration and Customs Enforcement called Al-Marabh a "suspected terrorist."⁵⁴

An Algerian terror cell dismantled. On November 3, 2005, it was reported that CSIS uncovered a Toronto-based cell of four Algerian refugee applicants who were members of the largest Algerian Islamic group, the Salafist Group for Call and Combat, financed by Osama bin Laden. According to the report, "the central figure of the Toronto-area cell was a former Al Qaeda training camp instructor who studied bomb-making at Osama bin Laden's Al Farooq and Shladun training camps in eastern Afghanistan." Apparently this individual left Canada in March 2004 after being approached by authorities. Three others were deported from Canada this past summer.⁵⁵

On November 5, 2005, Brahim Bouchaib, an Algerian formerly of Toronto, who may also be tied to this cell, admitted in a New York courtroom of making false statements to the Western New York Joint Terrorism Task Force. He had originally told immigration authorities that he had not entered the United States under an alias in 1999. He had actually entered the United States in 1997 on a false French passport. In early 2004, he married an American and moved back to Toronto, while his wife remained in Minnesota.⁵⁶

A Canadian Voice on Border Security

Canada has already spent \$6.5 billion to enhance its border security.⁵⁷ Despite this sum, the Canadian Senate Standing Committee on National Security and Defence released a report in June 2005 regarding the urgent need for coupling security and facilitation together at land ports of entry between the United States and Canada. The report describes the value and need for "chokepoints" between our two countries as necessary and protective of each nation. With CSIS estimating 50 terrorist organizations operating in its country and the U.S. State Department estimating about 40 terrorist organizations with support of some form here in the United States, the Canadian Senate Committee makes a valid point. It states:

We need the border, partially for security reasons. The land border and its crossings provide us with natural chokepoints that work to protect both Canada and the United States. The border itself is a necessary separation of two discrete societies; and border crossings are valuable for monitoring the movement of

⁵³ Owens, Anne Marie. "Judge Gets No Answers on Syrian: Former Toronto Suspect Jailed in U.S. for Border Breach." *The National Post*. Sept. 4, 2002.

⁵⁴ "Selected Terrorism Investigations That Involved ICE and ICE Authorities," Immigration & Customs Enforcement Press Release, July 27, 2004.

http://www.ice.gov/graphics/news/factsheets/072704terrorist_fs.htm (accessed Oct. 5, 2004).

⁵⁵ Stewart Bell. "CSIS: terror cell busted." *The National Post*. November 3, 2005.

⁵⁶ Dan Herbeck. "Reports quizzing on ties to Algerians in Toronto." November 5, 2005.

⁵⁷ Beth Duff-Brown. "Intelligence officials believe 50 terror groups have presence in Canada". *The Associated Press*. July 5, 2005.

people and goods between those societies to ensure that only legitimate people and goods pass back and forth.⁵⁸

The report's Executive Summary describes the mutual Canadian-U.S. lack of action to couple security with facilitation since 9/11, asserting (as I do) that the two missions can and should work in tandem and in support of the other:

Despite what should have been the wakeup call of September 11, 2001, there has been an unsettling lack of progress on both sides of the border to improve efficiency and strengthen security at land border crossings. These crossings represent each country's last, best chance to scrutinize persons and cargo that should not be entering each other's territory.

What do we need to do to make these border crossings effective chokepoints for cutting off wrongful entry, while still enabling minimal passage times for cars and trucks on innocent voyages?

Beyond the obvious need for upgrades to infrastructures and systems, the Committee believes that the only way to twin good security with good commerce is to change the entire culture at border crossings.⁵⁹

The report then goes to address serious concerns, the first of which is to "EMPHASISE SECURITY, NOT MINOR ECONOMICS". Twenty-six recommendations are made, one of which is a virtual the mirror image of the 9/11 Commission recommendation as interpreted by the Western Hemisphere Travel Initiative:

By 2007, the government require documentation of all people entering Canada (including Canadians) that is: a) Tamper-proof; b) machine-readable; c) Biometrically enhanced; and, d) Known to have been issued on the basis of reliable documentation.⁶⁰

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

⁵⁸ "Canada's Land Border Crossings are Key to Canada's Security and Prosperity. Why the Lack of Urgency to Fix Them? What will happen if We Don't? An Interim Report of the Senate Committee on National Security and Defence." Senate of Canada Standing Committee on National Security and Defence, p. 15 (June 2005) <http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/defe-e/rep-e/repintjun05-e.pdf>

⁵⁹ "Executive Summary: Borderline Insecure. Canada's Land Border Crossings are Key to Canada's Security and Prosperity. Why the Lack of Urgency to Fix Them? What will happen if We Don't? An Interim Report of the Senate Committee on National Security and Defence." Senate of Canada Standing Committee on National Security and Defence. June 2005.

<http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/defe-e/rep-e/repintjun05-e.pdf>

⁶⁰ Ibid.

does not mean that sleeper cell style terrorists could not exploit, for example, NEXUS and FAST, on the northern 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 NEXUS and FAST drivers and passengers into dedicated lanes and allowing wait times for remaining travelers to be reduced as well. Right now, 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. Canadians who have looked hard at the national security implications agree. 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

**KENNETH W. STAUB, JR., VICE PRESIDENT
RIVERSIDE SERVICE CORPORATION
BUFFALO, NY**

Representing

THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Before the

HOUSE COMMITTEE ON SMALL BUSINESS

On

The Western Hemisphere Travel Initiative

November 17, 2005

**2200 Mill Road
Alexandria, VA 22314
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Mr. Chairman and members of the Committee, thank you for inviting me to testify today on behalf of American Trucking Associations, Inc. on the subject of the Western Hemisphere Travel Initiative. My name is Ken Staub. I am the Vice President of Riverside Service Corporation, headquartered in Buffalo, NY, a truckload flatbed carrier with 4 tractors and 6 trailers. Our sister company, Black Rock Trucking, Inc., in Buffalo, NY, operates 15 tractors and trailers. We have 10 employees and 15 owner-operators and service the states of New York, Pennsylvania, and Ohio, and Ontario, Canada. I am here on behalf of ATA, a federation of motor carriers, state trucking associations, and national trucking conferences. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

According to the U.S. Bureau of Customs and Border Protection's figures, there were 11.5 million truck crossings at our borders in 2003. Trucks carry about 80% by value of goods across our borders, with \$444 billion in trade yearly crossing our northern border, and \$266 billion crossing our southern border. The trucking industry is important to the economy of the United States and its closest neighbors and top trading partners, Canada and Mexico.

The trucking industry has worked with various government agencies since the terrorist attacks in 2001, and a variety of security programs for cross-border trade have been implemented. It is important to recognize that security and trade facilitation go hand in hand. We cannot afford to emphasize one aspect at the expense of the other.

The American Trucking Associations, Inc. (ATA) has submitted comments in response to the Department of State's (DOS) and Department of Homeland Security's (DHS) Bureau of Customs and Border Protection's (CBP) Advanced Notice of Proposed Rulemaking (ANPRM) on documents required for travel within the Western Hemisphere, published in the September 1, 2005, Federal Register. The ANPRM seeks comments on the means of implementation and information on other documents that could be accepted under Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).

Background: Requirements of the IRTPA's Section 7209 (Travel Documents)

Section 7209 (b) (1) of the IRTPA requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to "require a passport or other document, or combination of documents . . . sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived . . ."

In addition, (b) (2) requires that the Secretary develop and make readily available a registered traveler program in order to "expedite the travel of frequent travelers, including those who reside in border communities."

The section explicitly denies the Secretary of State, the Secretary of Homeland Security, and the President the exercise of discretion in waiving these requirements except:

1. if alternative documentation used as the basis for a waiver is sufficient to "denote identity and citizenship;

2. for “unforeseen emergenc[ies] in individual cases”; and
3. for “humanitarian or national interest reasons in individual cases.”

The trucking industry’s concerns are centered on the potential requirement that all commercial truck drivers entering the United States, whether U.S. citizens or not, carry a passport issued by their country of citizenship. ATA is requesting DHS to adopt a less strict interpretation, contained in section 7209(b), which indicates that a “passport or other document, or combination of documents” may satisfy the requirements of the IRTPA to “denote identity and citizenship.” ATA and the trucking industry will continue to work with Congress, DHS, DOS, and other government and private sector parties to develop alternatives that avoid potential disruptions to the flow of international commerce with our two largest trading partners while effectively addressing our nation’s national security objectives.

Introduction

The September 1, 2005, *Federal Register* notice requests comments on alternative documents that individuals can present for admittance into the U.S. in lieu of a passport to adequately establish identity and citizenship. We note that DHS and DOS anticipate the machine-readable biometric Border Crossing Card (BCC), commonly known as a Laser Visa Card, and the Free and Secure Trade (FAST) card as acceptable alternative documents meeting the requirements of Section 7209 of IRTPA. Both programs establish identity verification through comparison of biometric identifiers (fingerprints and digital photographs) and require applicant background checks through terrorist, criminal and immigration databases at the national level. Accepting the BCC and the FAST card credentials as alternatives to a passport is consistent with DHS’ risk-based assessment approach, shortens the customs process for low-risk individuals, does not impose additional documentation and cost requirements on commercial vehicle drivers and allows customs agents to concentrate their attention on higher risk individuals. In addition, acceptance of these documents would eliminate possibly duplicative requirements among various border agencies with an interest in border security, and help facilitate trade. ATA supports the concept of the BCC and the FAST card for compliance with the IRTPA requirements.

In addition, ATA supports the use of the NEXUS frequent traveler programs as commensurate with a passport. The bi-national programs for crossing at the U.S.-Canada border, include establishment of identity and citizenship by utilizing background checks, fingerprints, and digital photos. The criteria for identity and citizenship are commensurate with WHTI requirements.

It is important to note that truck drivers are also subject to a variety of other credentialing and security programs. For example, the Transportation Security Administration (TSA), in implementing Section 1012 of the PATRIOT Act, has issued regulations that have required commercial drivers with a Hazardous Materials Endorsement (HME) to undergo a comprehensive, fingerprint-based background check. TSA has for the past two years performed name-based background checks on commercial truck drivers already in possession of an HME. In addition, a proposed air cargo rule envisions drivers with unescorted access to secure air facilities or transporting cargo on an airway bill to undergo a name-based background check. Yet another program, the Transportation Worker Identification Credential (TWIC), also under

development by TSA, is being designed as a secure identity document that will allow transportation workers, including commercial truck drivers, to be in compliance with statutorily mandated and regulatory screening requirements. Also, the US-VISIT program requires drivers crossing the Canadian or Mexican border on a form I-94 to be processed and fingerprinted at secondary inspection upon I-94 renewal. ATA believes that these programs fulfill the requirements of the WHTI. That is, they establish identity and citizenship.

While each of these stand-alone programs requires varying DHS agencies to screen drivers through criminal and other intelligence databases, as yet no coordination exists to harmonize the programs for compliance purposes. We have urged both DHS and DOS to consider security screening and credentialing programs as potential solutions for compliance established with IRTPA. Appendix 1 outlines the programs that should be considered as acceptable alternatives.

Automated Commercial Environment (ACE)

It is also essential that DHS and DOS recognize how information and data for commercial operations are being captured and processed for compliance with customs and immigration requirements. Statutory and regulatory requirements mandate that information on commercial entries for importation into the U.S. be submitted to CBP in advance prior to arrival at ports of entry at the border. The trucking industry has been working for many years on the development of ACE. Specifically, the ACE truck e-manifest consists of a set of data elements about cargo, equipment and driver, which is sent by the motor carrier to CBP either one hour or one-half hour prior to the truck's arrival at the border. Within the e-manifest, the driver's information is sent ahead of time, and checked each time against immigration, criminal and terrorist databases. This advance notice requirement is part of Section 343(a) of the Trade Act. All of the information on the ACE truck e-manifest is run through CBP's Automated Targeting System (ATS), in addition to being vetted by other government agencies. ACE is currently being implemented at the U.S. northern and southern borders, and is expected to be fully operational and mandatory by the end of 2006. Therefore, CBP/DHS will have driver information one hour (or one-half hour for Free and Secure Trade [FAST] participants) prior to arrival at the port of entry.

Conclusion/Recommendations

ATA is concerned about the propagation of government programs with duplicative and costly security documents for cross-border truck drivers. Trucking companies believe that a number of requirements already in effect for their drivers are compliant with IRTPA requirements in lieu of a passport. Therefore, ATA urges DHS and DOS to consider the following programs and credentials as acceptable substitutes for a passport:

- FAST cards
- Laser Visas/Border Crossing Cards
- Commercial drivers required to register with the US-VISIT program and preparing electronic I-94
- When available, the Transportation Worker Identification Credential
- When fully operational, the Hazardous Materials Endorsement
- NEXUS card

- Birth certificate with Commercial Drivers' License (as is done for the current process, but especially after implementation of the Real Id Act)

ATA looks forward to working with Congress, CBP, DHS and DOS as partners in developing secure systems that allow the flow of legal commercial trade to move across our common borders securely and efficiently. Thank you for the opportunity to present ATA's views and concerns on this important cross-border issue.

Appendix 1 – Trucking Security Programs

Free and Secure Trade (FAST)/Customs-Trade Partnership Against Terrorism (C-TPAT)

CBP's C-TPAT/FAST initiative is a voluntary international supply chain security program, operating on the premise that, through meeting strict security guidelines established by CBP, each component throughout the supply chain is a known entity, resulting in a low-risk category. Benefits to participating trucking companies and their FAST-certified drivers include dedicated crossing lanes and fewer inspections at the border. The objectives of FAST are to establish faster border crossing times, reduce transaction and operational costs in the supply chain, and ease pressure on CBP capital and human resources, thus allowing CBP to concentrate on higher risk cargo and people.

Companies that become C-TPAT certified are, in turn, requiring C-TPAT certification of their supply chain partners. This provides an incentive for additional companies to join the program, further strengthening the overall supply chain. DHS could further enhance the C-TPAT program by offering additional, tangible benefits commensurate with the cost of becoming certified to encourage even more participants and further broaden the C-TPAT network. A large percentage of companies that make up the cargo supply chain are small businesses. With the majority of trucking companies (nearly 96 percent) operating 20 or fewer trucks, it is often these smaller companies that find the requirements and associated costs of C-TPAT certification prohibitive. Meaningful incentives for companies that comply with security requirements, such as tax credits for security expenditures and penalty mitigation could prove to be a catalyst for increasing participation and compliance in the program.

FAST cards for drivers can be obtained on both the U.S. and Canadian side – i.e., it is a binational program. In order to qualify for a FAST card a driver must submit original documents establishing identity and citizenship; be fingerprinted; have a picture taken; have a background check (Canada and U.S) done. These drivers will be checked each time they cross the border. Currently, at the northern border about 59,000 drivers are carrying FAST cards, 86% of which are Canadian drivers, according to the Canada Border Services Agency's September figures. We expect that about 70,000 drivers at the northern border qualify for a FAST card, with a commensurate number at the southern border also. We believe the requirements and qualifications for a FAST card meet the criteria outlined in the ANPRM and should serve as an equivalent document to a passport.

US-VISIT

US-VISIT is a Department of Homeland Security biometric entry program designed to authenticate a foreign traveler's identity and travel documents at U.S. ports of entry. The twin missions of US-VISIT are to identify foreign travelers who pose potential threats to the security of the United States by checking their biographic and biometric information against terrorist, criminal and immigration databases and to simultaneously facilitate legitimate travel and trade.

Currently, US-VISIT's land border program is operational at the 50 busiest land border ports of entry with expansion to all land ports of entry in which permanent facilities are maintained by December of 2005. Mexican and Canadian commercial truck drivers who carry a

multiple entry Form I-94 are subject to US-VISIT requirements at secondary inspection upon renewal of their Form I-94. Procedures include the collection of a digital photograph and two index finger scans to verify identity. DHS will begin 10 finger scans in the foreseeable future.

Under the current US-VISIT rule, DHS has determined that the BCC requirements fulfill US-VISIT's security and identity requirements. DHS has exempted Mexican nationals who present a Border Crossing Card, travel within the allotted mileage and do not stay beyond 30 days, from US-VISIT procedures. If the BCC requirements fulfill the US-VISIT requirements, so too should US-VISIT enrollment satisfy the identity and security requirements of IRTPA.

Hazardous Materials Endorsement (HME)

Earlier this year, the Transportation Security Administration (TSA) fully implemented Section 1012 of the USA PATRIOT Act by requiring commercial truck drivers holding a hazardous materials endorsement (HME) on their commercial driver's license (CDL) to undergo an extensive, fingerprint-based security threat assessment. This high level of scrutiny for hazmat drivers ensures they do not pose a security risk and verifies their identity through a comprehensive background check of biographical and biometric data against federal intelligence, criminal history, and immigration databases. TSA requires proof of U.S. citizenship or lawful permanent resident status as part of the application process.

In 2004, TSA implemented the first phase of the HME program by conducting name-based immigration and intelligence-related checks on all 2.7 million hazmat drivers. The second phase of the program which began this year broadened the security threat assessment standard by requiring any commercial driver applying for a new, renewal, or transfer HME to comply with the higher standard, fingerprint-based security threat assessment. To ensure that each holder of an HME routinely and uniformly receives a security threat assessment, TSA requires that states must adopt, at minimum, a five year HME renewal cycle.

Clearly, requirements to obtain an HME are more stringent than requirements to apply for a U.S. passport. TSA adequately verifies identity and citizenship and conducts comprehensive, fingerprint-based background checks on individuals every five years; therefore, any commercial driver in possession of valid HME should be exempt from also carrying a passport.

Transportation Worker Identification Credential (TWIC)

While still under development, the TSA's Transportation Worker Identification Credential is a security program that seeks to establish a uniform identity credential for all transportation workers across all modes. TSA expects the new credential to improve commerce by increasing the efficiency of identity authentication at secure transportation facilities. The TWIC card is also intended to replace the multiple security and identity cards that motor carriers now carry with a single card, thereby reducing a carrier's credentialing costs and eliminating the need for redundant background investigations.

To qualify for a TWIC card a commercial truck driver must successfully complete an extensive, finger-print based security background check. As with the programs listed above, an applicant's biographic and biometric information is vetted against various federal terrorist, criminal, and immigration databases to verify identity and ensure the driver does not pose a

security risk to the supply chain. TSA will then issue to qualified applicants a TWIC card containing their biographic and biometric data which can consistently be used to claim identity.

TSA recently concluded a seven month prototype testing phase and is awaiting a final report from the contractor. Results of the report will determine when TSA begins the transition to the implementation phase of the TWIC program; however, implementation is not expected until some time in 2006. Once the program is implemented nationally, a TWIC card will effectively offer proof of identity and citizenship and should serve as an acceptable credential offered in lieu of a passport for drivers at the border.

Real ID Act

In May, Congress passed the Real ID Act of 2005 which set minimum national standards for issuance of a state driver's license. The law gives states three years to implement the new standards, which incorporates features into the driver's licenses such as a digital photo, anti-counterfeiting characteristics and machine readable technology. The act also mandates that states both verify an individual's legal presence status as well as the documents presented with the issuing agency -- documents such as birth certificates, social security cards, or utility bills. Additionally, states must link their license database information to a common network to provide electronic access to all state motor vehicle records by all states.. Once fully implemented, issuance requirements for a state driver's license under the Real ID act should sufficiently meet the IRTPA requirement to satisfactorily establish identity and citizenship.

Air Cargo Security Rule

In November of 2004, TSA issued a proposed rule for air cargo security requirements, which made broad changes to regulations and procedures, with the goal of improving air cargo security. Under the proposed rule, any person who has unescorted access to air cargo, including drivers transporting air cargo, will be subject to a new security threat assessment. To authenticate identity, TSA will require drivers transporting air cargo to provide two forms of identification, one of which must be a government issued photo ID and submit to a name-based background check. Names will be run through various federal immigration, terrorist, and criminal databases. ATA is awaiting the final rule, with an expected effective date in early 2006.

Secret Level Security Clearance

The Department of Defense, Defense Industry Security Clearance Office (DISCO), manages secret clearances for numerous trucking industry personnel. All commercial drivers transporting DoD security-sensitive freight must possess a secret clearance. This clearance is issued to individuals only after they have undergone a thorough vetting process, including a fingerprint-based background check and personal history investigation that exceeds the HME background check requirements.

NEXUS

NEXUS is a joint U.S.-Canada customs and immigration program for frequent travelers. The NEXUS programs simplify border crossings for pre-approved, low-risk travelers. The NEXUS programs include highway, marine and air travelers.

After applying and approval by both governments as low-risk travelers, NEXUS participants use a simplified entry process at the U.S.-Canada border. The NEXUS programs allow both Canadian and U.S. customs and immigration officials to concentrate their efforts on potentially high-risk travelers and goods, while keeping the border secure. All NEXUS members remain subject to examination at any time when entering either Canada or the United States. NEXUS Travelers are able to:

- use dedicated NEXUS lanes in Canada and the U.S.;
- cross the border without being subject to regular customs and immigration questioning;
and
- simplify their entry into Canada and the United States.

In order to receive NEXUS privileges, each applicant must prove citizenship status, in addition to being fingerprinted and having a digital picture taken. Each NEXUS participant receives a photo-identification card for entry into Canada and a proximity card for entry into the United States. Clearly, these procedures establish citizenship and identity, as required under WHTI.

Appendix 2 - The Trucking Industry's Economic Role

The trucking industry is a critical link in the economic interdependency among the United States, Canada and Mexico, moving approximately 74 percent of the value of freight between the United States and Canada¹. The increasing trade volumes that have been generated among the three North American Free Trade Agreement (NAFTA) partners have not only been good for the economic well being of our countries, but also have allowed businesses throughout North America to diversify, expand, improve their asset utilization, and access new markets for their products. According to U.S. Customs, during 2003, 11.5 million trucks entered the U.S. from Canada, resulting in more than 23 million truck crossings a year on the northern border. At the southern border, for 2003 CBP recorded 4.2 million trucks entering the U.S., for a total of 8.4 million truck crossings. NAFTA has generated a large increase in the trade amongst the NAFTA partners, with U.S.-Canada trade growing from \$212 billion in 1993, the year just prior to enactment of the agreement, to \$444 billion in 2004. At the same time, trade with Mexico has increased from \$81.4 billion in 1993 to \$267 billion in 2004.

The trucking industry provides a crucial link in our nation's supply chain and plays a vital role in our nation's economic prosperity. To fully appreciate the importance of the trucking industry as a supply chain partner and significant contributor to our economy consider the following facts (figures for 2003)²:

- Trucks transported 9.1 billion tons of freight representing 68.9% of total domestic tonnage shipped
- Trucking produced \$610.1 billion in gross freight revenues representing 86.9% of the nation's freight bill
- Trucks transported 66.5% of the value of trade between the U.S. and Canada and 81.4% of the value of trade between the U.S. and Mexico
- Trucking related jobs employed more than 8.6 million individuals in the United States, including over 3 million commercial drivers

¹U.S. Department of Transportation, Bureau of Transportation Statistics, Transborder Surface Freight Data.

² 1 Freight Transportation Forecast..2015, produced by Global Insight (USA), Inc. for ATA.

U.S. Top Trading Partners

U.S. – Canada Trade (In \$Millions)

Year	Exports	Imports	TOTAL
1991	85,150	91,064	176,214
1992	90,594	98,630	189,244
1993	100,444	111,216	211,660
1994	114,439	128,406	242,875
1995	127,226	144,370	271,596
1996	134,210	155,893	290,103
1997	151,767	168,201	319,968
1998	156,603	173,256	329,859
1999	166,229	198,324	364,553
2000	178,579	230,840	409,419
2001	163,703	216,968	380,671
2002	160,229	219,591	379,828
2003	169,769	224,165	393,934
2004	255,028	189,101	444,129

U.S. – Mexico Trade (In \$Millions)

Year	Exports	Imports	TOTAL
1991	33,277	31,130	64,407
1992	40,592	35,211	75,803
1993	41,581	39,917	81,498
1994	50,844	49,494	100,338
1995	46,292	62,101	108,398
1996	56,792	74,297	131,089
1997	71,388	85,938	157,326
1998	78,773	94,629	173,402
1999	86,866	109,707	196,573
2000	113,214	135,927	249,141
2001	101,510	131,433	232,943
2002	97,532	134,663	232,195
2003	97,457	138,075	235,532
2004	155,843	110,775	266,618

Source: U.S. Department of Commerce
International Trade Administration

Appendix 3 – Cost to the Industry

Cost to the Industry

The trucking industry is an industry of small businesses. Using the Small Business Administration's standard, about 98% of motor carriers qualify as small businesses. Using the industry's measure of number of power units, 81.3% of carriers own 6 or fewer trucks, and 92.9% own 20 or fewer trucks. Whichever way the industry is viewed, we are predominantly small businesses. These small businesses are moving freight across our borders

Cost estimates for the trucking industry are based on an accumulation of the costs of the myriad of identification cards either already required or in the process of implementation:

Program	Total Fee	Details
HME through TSA Agent	\$94	Includes \$22 FBI database search fee, \$34 TSA threat assessment fee, and \$38 information collection fee.
HME through States	\$70 - \$133 (depending on the state)	Includes \$24 FBI database search fee, \$34 TSA threat assessment fee, and \$12 - \$75 (depending on state) information collection fee.
Secure Identification Display Area (SIDA)	\$29 or \$31 (depending on collection method)	Includes \$22 FBI database search fee, \$2 clearinghouse facilitation fee, and \$5 electronic collection fee or \$7 manual collection fee.
Air Cargo Security Threat Assessment for workers with unescorted access to air cargo. (proposed)	\$39	Proposed fee to include collection, clearinghouse facilitation costs, OPM and FBI fees.
Free and Secure Trade (FAST)	\$50	Includes check against criminal, terrorist and immigrant databases in U.S. and Canada, and issuance of RFID tag.
Florida Uniform Port Access Credential (FUPAC)	\$85	Includes \$24 FBI database search fee, \$33 information collection fee, and \$28 for the State Department of Highway Safety to support access related system expenditures.

The cost for a new state driver's license under Real ID is unknown, but we know that it will vary from state to state. The State of Washington's cost analysis set the REAL ID's increased cost for a driver's license at \$33 (in addition to the regular cost of a driver's license) to

comply with the new requirements. The Congressional Budget Office has estimated that national implementation of REAL ID over the next 5 years will cost the states \$100 million in total; however, several states dispute this estimate and claim \$100 million per state. TSA has not yet provided a cost structure for the TWIC card, but it is expected to be commensurate with the HME, or somewhere around \$100.

In addition, the cost of a U.S. passport for drivers would be a total of \$97, including a passport fee of \$55; a security surcharge of \$12; and an execution fee of \$30. For “expedited service” a citizen would pay an extra \$60 fee, in addition to the mailing costs. The documents used to provide identity and citizenship for a passport are the same documents used for the truck driver security identification requirements outlined above.

Lastly, we ask the question, “how many identification cards will be needed for truck drivers crossing the border?” These figures show the potential for unreasonable expenses and duplicative requirements for these drivers:

U.S. Passport	\$97.00
FAST card	\$50.00
HME	\$133.00
TWIC	\$100.00
SIDA	\$31.00
Air Cargo card	\$39.00
FUPAC	\$85.00
NEXUS card	\$50.00

The total cost per driver is a staggering \$535.00, with an estimated 100,000 drivers at the northern border alone. This final figure does not include the cost of a NEXUS card, yet brings the cost to an industry of small businesses to a minimum of about \$53.5 million for the northern border – and that estimate, which includes only the northern border, is on the low side. ATA believes this is an unreasonable burden for drivers and the companies that employ them, because the procedures and requirements are basically the same for all of these security cards and passports.

In addition to the cost of the plethora of identification credentials required for truck drivers, ATA is concerned about the effect of adding yet another driver identification check on the flow of traffic at the border. While we recognize that security is a major factor in border risk management, trade facilitation remains part of that picture also. Any security measures implemented at our borders should not impede the flow of trade. We believe that requiring customs officers to check a variety of driver credentials will seriously impede trade.

Effect of Requirements on the Industry’s Driver Shortage

ATA recently released a study, done by Global Insights, documenting the driver shortage in the United States. This year, the motor carrier long-haul industry is short 20,000 drivers. In many cases, motor carriers must park trucks for lack of qualified drivers. The situation is not likely to abate; in fact, it will exacerbate until 2014, when the shortage will reach 110,000 drivers.

Against this backdrop, motor carriers are extremely sensitive to legislative and regulatory issues that would discourage drivers from participating in cross-border carriage. With the advent of stricter requirements for hazardous materials background checks, many companies and drivers opted out of the hazardous materials carriage business. The requirement for drivers for C-TPAT certified motor carriers to obtain a FAST card has had a similar dampening effect on the number of drivers willing to cross the border.

Building a Wall Between Friends: Passports to and from Canada?

Thursday, November 17, 2005

Small Business Committee - Full Committee Hearing, 9 am, 2360 Rayburn HOB

**The Just-In-Time Shipment Process
At DaimlerChrysler**

Statement by William Cook, DaimlerChrysler Corporation

Introduction

Chairman Manzullo, Members of the Committee – thank you for the opportunity to address the committee on this important issue. The secure, safe and efficient operation of our borders is essential to DaimlerChrysler’s business model, and I am grateful for your leadership on this issue.

I would like to use this opportunity to highlight our Just-In-Time Shipment Process in light of the new passport requirements being considered for travel between the United States and Canada. I would like to submit my written statement to the committee in addition to my remarks here today.

Background

The Just-in-Time (JIT) manufacturing process is a management philosophy. It is not a technique. The philosophy originally referred to production of goods to meet customer demand exactly in the desired quantity, at the desired time and with the desired quality. The philosophy evolved into one which minimizes waste. Waste can take the form of wait time, transportation, inventory or poor quality. JIT manufacturing quickly exposes bottlenecks in production, as well as transportation and quality problems. This allows companies to respond to these problems before a customer is affected.

JIT requires close coordination between a company and its suppliers. Both production material suppliers and transportation companies are critical to the success of JIT manufacturing. Each part of the supply chain is aware of its role in this process and allocates dedicated resources to insure the success of each shipment.

DaimlerChrysler (along with other North American auto manufacturers and automotive suppliers) has been applying JIT manufacturing since the late 1970’s in response to the high cost of capital and competition from Japanese automakers who adopted the process in the 1950’s and 60’s. The deregulation of the US trucking industry in the 1980’s and

the consolidation of production suppliers also facilitated the adoption of JIT manufacturing.

Current Situation

JIT, also known as Lean Manufacturing, is the fundamental concept used by DaimlerChrysler. In the very competitive automotive business, automobile production plants are designed for high volume assembly of multiple models per plant. To be more responsive to market demands, automobile manufacturers have built assembly plants that can produce many body styles at very high volumes. DaimlerChrysler has assembly plants that produce over 1,500 vehicles per day over three shifts. This allows maximum use of capital expenditures.

This manufacturing volume and complexity requires flexible processes that can only be supported with minimal inventory levels and multiple deliveries of many parts per day. Components such as seat sets, engines, and metal body parts are delivered multiple times every day. A typical assembly plant will have less than 2 hours worth of these components on hand. Each part of the supply chain works seamlessly to insure that production continues without any disruptions. A typical assembly line stoppage can cost \$1.5 million per minute so the importance of consistent and predictable shipments is emphasized with each supplier. Supplier and carrier performance is monitored and measured instantaneously with electronic data interchange (EDI) communication between all parties.

The end result is a highly integrated supply chain that supports Lean (JIT) manufacturing and allows DaimlerChrysler and all automakers to compete effectively.

JIT and the US Border

JIT requires expert suppliers specializing in the production of their unique commodities. In the last two decades, there has been a consolidation of automotive suppliers into fewer companies that serve multiple customers from a single plant. In addition, DaimlerChrysler has consolidated internal production of engines and metal stampings into a fewer number of plants especially to service the Detroit – Windsor Ontario plants. Suppliers in Canada and Mexico ship to US plants and vice versa. Many components are shared across multiple vehicles that are produced in each of the three countries. Automotive production in any one country is sure to be supported by suppliers in all three and the finished vehicle is then shipped to all three countries.

On the Canada/US border, DaimlerChrysler is responsible for over 700 truckloads and 50 railcars of production material per day between Windsor, Ontario and Detroit. In addition, 300 loads of finished vehicles (2700 cars and trucks) travel from Canada to the US. An illustration of the process used for production material shipments is attached. It shows how one supplier ships six times per day at specific times to the Jefferson North Assembly Plant in Detroit. Total inventory at the plant is three hours which allows for

the two hour transit time. This supplier ships a component that is complex and bulky so it will shut the line down should it be delayed during transportation. The Jefferson North Assembly plant builds two vehicles so it is not possible to store these components in the plant. The supplier's proximity makes multiple shipments possible even though there is an international border to cross.

The US border therefore is part of the JIT supply chain. DaimlerChrysler and other OEM's use expedited customs clearance procedures in each country. Programs such as Customs – Trade Partnership Against Terrorism (C-TPAT) and Free and Secure Trade (FAST) were actively supported and promoted by DaimlerChrysler and other OEM's. Participation in these programs is required for our supply chain partners. These programs allow secure, consistent, predictable customs processes that support JIT manufacturing

Future Trends

Even though it is difficult to predict the future, it is highly likely that the global auto industry is going to be more competitive as new entrants from developing countries try to penetrate the North American market. It is essential the border clearance and security programs as well as infrastructure are improved. It is also important that these programs be made more uniform with those of the Canadian and Mexican governments to the extent possible while meeting critical US security objectives. Multiplicity of requirements for OEM's, suppliers and carriers will add confusion and congestion to borders that do not have the infrastructure to support long delays in customs and immigration processing.

The continued implementation of the Automated Commercial Environment (ACE) will also improve customs operations. The impact on infrastructure, security and cost of new programs such as the Western Hemisphere Travel Initiative should be clearly understood. It is therefore important that the committee consider these factors when reviewing the Western Hemisphere Travel Initiative. Flexibility will be important to ensure that cross-border business travel is not made more complicated and costly and cross-border trade is not constricted.

Thank you.



CONGRESSIONAL TESTIMONY
Statement of H. Thomas Chestnut
President-Chief Executive Officer
AAA Western and Central New York

Before the House Committee on Small Business
"Building a Wall Between Friends: Passports to and from Canada?"

November 17, 2005

Good morning, Chairman Manzullo and Members of the Committee. I am pleased to have the opportunity to appear before you to discuss the potential impact of the Department of Homeland Security and the Department of State's Western Hemisphere Travel Initiative (WHTI).

Our company, AAA Western and Central New York, is the twelfth largest AAA Club in the United States, headquartered in Buffalo, representing nearly 900,000 member motorists throughout 25 counties of upstate New York—providing automotive, travel and financial services. Additionally, our organization is the largest leisure travel agency in this region. We are not only a member-services company but a medium-size business in the travel and tourism industry, located on the northern border. We employ over 600 associates and are very much interested in the economic well being of the communities we serve.

To illustrate this commitment, our company, and I, personally, am involved in the Buffalo-Niagara Enterprise, an organization that works to attract private-sector business investment in the Buffalo-Niagara region. Being a service business, we understand that a strong economy is good for all of us.

The seamless border that has been driving commercial and tourism development and job growth on both sides of the Niagara River, in Ontario and Western New York, respectively, cannot be threatened by the requirements of the Western Hemisphere Travel Initiative. There is much at stake, as we move forward with these requirements. Tourism and casual travel between Canada and the United States for entertainment, shopping and cultural events is critical to the economic vitality of the Buffalo-Niagara region—a region whose economy is already challenged by a variety of forces. Much of this travel is spontaneous for many citizens, and is simply a natural extension of one's daily life.

Just how important is this cross-flow of people? Consider that travel and tourism is one of the largest employers in New York State, accounting for nearly 400,000 jobs. Additionally, Canadians visited New York State over 2 million times and spent \$490 million on trips to our state in 2004. Any disruption of this flow could be catastrophic.

A good example of Canadians' desire to visit the United States is the fact that a sister organization of ours in Canada, the Canadian Automobile Association's Central Ontario Automobile Club, does well over 100,000 TripTiks[®] for their members annually, with 70 percent of those personalized travel routings directed to an American destination. Conversely, Ontario consistently remains the second most popular destination for our members when they travel by automobile.

Canadians want to visit our country; and we, obviously, market to make that happen. Our border is unique since those of us living and operating businesses there are trying to stimulate cross-border traffic. We must ensure that any program balances both security and economic issues appropriately.

An excellent illustration in the Buffalo-Niagara region of this casual travel is that 12 to 18 percent of attendance at a home game of the NFL's Buffalo Bills, and 18 to 22 percent of fans at the arena of the National Hockey League's Buffalo Sabres, are Canadian.

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.

Specifically, the requirement that, beginning January 2008, people—including citizens of the United States and Canada entering the United States—show a passport or other secure document is problematic since it threatens this mobility. The concern with the passport proposal is that a passport is a special travel document that most North Americans do not possess. In fact, only 20 percent of Americans and 40 percent of Canadians have a passport. Also, there is a personal economic and customer service disincentive since a passport now costs \$97 in the United States and, administratively, a passport requires 6 to 8 weeks to process.

One idea offered by the agencies creates a special, pure border-crossing document, "Passport Lite," that asks people to apply and pay for it. This would be no less a barrier than a passport. Both approaches would discourage a large number of Canadians and Americans from crossing the border, adversely affecting tourism and commerce.

In conclusion, we feel the following should be considered:

1. Department programs currently in place to manage frequent cross-border travel, such as Nexus, should be continued. These programs are proven effective in managing congestion at high-volume border facilities, such as those in the New York region.
2. The agencies also need to work with existing forms of identification that have a broad application, such as drivers' licenses and birth certificates, which are identified by the Real ID Act of 2005. The act requires the Department of Homeland Security certify states' drivers' licensing procedures to ensure appropriate safeguards are in place. The Real ID Act may provide an opportunity to meet the goal of the Western Hemisphere Travel Initiative without requiring frequent cross-border travelers to obtain passports.
3. The establishment of an advisory group—representing experts from the travel and tourism industry along with trade, security, bridge operators and border community representatives—should be considered to study the complexities of these regulations and recommend solutions to the Executive Branch and Congress. We envision this task force to have a short period of time to produce recommendations and stay within the timeframe for implementation of the initiative.

By aligning the security objectives and timing of the Western Hemisphere Travel Initiative, with the Real ID Act there is an opportunity for the administration and Congress to produce a balance in the security approach to land crossing between Canada and the United States.

At this hearing, experts from the manufacturing industries are talking about the importance of "just in time" delivery of goods. Systems designed to facilitate delivery of goods are only as effective as the ability of trucks to get across the border. If the proposals being suggested by the Departments of Homeland Security and State are implemented, those trucks are likely to be sitting in long lines of frustrated travelers trying to cross the border without passports or the "passport lite" document. This proposal not only threatens the travel and tourism industry but could be injurious to the largest trading relationship in the world between the US and Canada.

We urge you to press forward on this issue so that drivers' licenses and birth certificates can meet the requirements of the Real ID Act as acceptable forms of "other secure documentation" under the travel initiative.

Mr. Chairman, thank you for the opportunity to come before this Committee and for your efforts to get a business perspective—including one from the travel and tourism industry—an industry that is so critical to our nation's economic well being.

Thank you.

CONGRESSIONAL TESTIMONY

**Statement of Howard Zemsky
Managing Partner
Taurus Capital Partners
November 17, 2005**

Good morning Chairman Manzullo, Ranking Member Velazquez and members of the committee. I am here today representing a number of organizations in WNY. I have the privilege to serve as director of the Greater Buffalo Niagara Partnership, our region's largest business association. I represent Buffalo Place, a not-for-profit organization dedicated to enhancing the economic health of quality of life in Buffalo. I serve on the board of Buffalo State College, a SUNY school, and I'm a director of the Binational Tourism Alliance – a not-for-profit entity dedicated to reducing the barriers across Niagara River crossings. I serve as a volunteer in all regards.

I suppose if you were looking for a silver lining in the WHTI process to date, we have finally found one issue that has seemingly managed to unite virtually all public and private organizations on both sides of the border – no easy task!! We are all extremely concerned that the manner in which WHTI is implemented could have a depressing effect on our economies and our way of life.

We are a binational region. The Niagara River lies at the center of our binational region. We see it as a river, more than a boundary or border. It's a river in the way the Potomac is a river. You cross it during the course of your day or week, and some of you cross it often. In order to paint the proper picture for you, imagine requiring a passport to cross the Potomac River. That's how integrated our binational region is. The health of our cultural organizations, many of our

colleges and universities, our shopping centers, our professional and amateur sports teams, including the Buffalo Bills and Buffalo Sabres, our restaurants, hotels, are clearly dependent on the free-flow of people across our Niagara border crossings. We literally live, work and play on both sides of the river.

There was a time in Buffalo's history when our geographic location along the east/west axis was a key part of our development as a city. In the new era, it is our geographic location along the north/south axis that is so vital to our present and to our future. About four million Canadians visit New York State on an annual basis – many hundreds of millions of dollars of impact – the majority come from Ontario, our northern neighbor. Our economies are inextricably linked and interdependent, and that is particularly true of the trade and tourism relationship between Ontario and New York. For the past many years in Western New York, we have been building a tourism economy based on the foundation provided by the millions of visitors to Niagara Falls relating to tourism. In our Niagara Region, on both sides of the border, projects that are recently completed or under development related to tourism total more than \$2 billion. We have invested, or are in the process of investing, \$100 million on bridge upgrades between the two most popular bridges in our region – the Peace Bridge and the Queenston/Lewiston Bridge. We are also years down the road of designing potentially a new signature bridge connecting Buffalo with Fort Erie, Ontario. It is ironic that we are both designing a new bridge and simultaneously contemplating putting up a metaphoric wall between the U.S. and Canada.

I have had the opportunity to serve as President of the Martin House Restoration Corporation for the past four years – the most significant restoration of a Frank Lloyd Wright structure ever undertaken, \$30,000,000. Buffalo has not one but five Wright restoration projects currently underway. Additionally, over \$40,000,000 is also being invested in unearthing and rebuilding

the site of the original mouth of the Erie Canal where Governor Dewitt Clinton first married the waters of Lake Erie and the Atlantic Ocean in 1825. We are investing over \$50,000,000 to convert the abandoned Memorial Auditorium downtown to a flagship Bass Pro Store. The list goes on. My point is this – for 10 years we have been developing a coherent tourism economy – much of it aimed at Canadian visitors – the Greater Toronto Area (GTA) and Southern Ontario alone has over 6.0 million residents within a short drive of WNY. The GTA is the 5th largest urban region in the U.S. and Canada. Furthermore, 7.0 million Canadians – about 25% of the country’s population live within 100 miles of the GTA, and the GTA is expected to grow population by 100,000 annually. The growth of the GTA is the true bright spot in our binational region and stands in some contrast to our local WNY economy. In our region, we must be thinking of how we can safely facilitate more trade and tourism with Canada.

The passport requirement of WHTI obviously concerns us greatly, knowing that fewer than 40% of Canadians and 25% of Americans have them (passports). And recognizing they are expensive, complicated and time-consuming to obtain. We know from consumer research that passport requirements would severely curtail trips across the borders. We want to emphasize with equal or perhaps greater weight that we are no less concerned, and perhaps more so, that yet another form of new ID may be proposed. This new ID would likely be both confusing to consumers and no less a barrier to tourism. In truth, we have already experienced diminished cross border activity as a result of the ongoing confusion and debate regarding WHTI. We should be careful not to add to the confusion.

We in the Buffalo Niagara Region urge you to continue to take the time to find the way to use modern technology to enhance a current piece of ID such as a driver’s license. We also believe that staggering the implementation dates regarding air versus land implementation of whatever

the new policy requirement, if any, only serves to further confuse the public. We propose January 1, 2008, for both.

This is obviously a binational relationship (U.S. and Canada) that is perhaps the most peaceful and most economically dynamic in the world. It would serve us all well to be patient and to be collaborative so that we do not turn the war on terrorism into the war on tourism.

I want to thank Chairman Manzullo and Congresswoman Velasquez for holding this hearing and for giving me the opportunity to present this testimony.

Congressman Tom Reynolds (NY-26)
Statement to the Small Business Committee
Western Hemisphere Travel Initiative Hearing
November 17, 2005

Mr. Chairman, thank you for giving me the opportunity to share my thoughts and opinions on the Western Hemisphere Travel Initiative.

As I have already submitted to the Departments of State and Homeland Security, and as I will testify today, I am deeply troubled over any plan that would require citizens to have a passport to enter or re-enter the United States from Canada.

Mr. Chairman, the economy of the Western New York community I am proud to represent is dependent upon the free flow of goods and people across our northern border.

Just a few years ago, we celebrated the 75th Anniversary of the opening of the Peace Bridge; a span between Buffalo, NY, and Fort Erie, Ontario, which, in 1927, ushered in an era of near seamless commerce and travel between our two nations.

There's no question that September 11th changed all that, and mandated safer, more secure border crossings and entry points across the United States. It is certainly not lost on my community, where the Lackawanna Six, the first domestic terror cell, was discovered and destroyed.

But while we have a right and a need to know who is entering our country, and whether they are intending to do us harm, if this enhanced document requirement is not handled correctly, it could spell disaster for many of my constituents and the businesses they work for and support. This includes small businesses, manufacturers and the tourism which brings many people to Western New York from Canada and vice-versa.

In 2004, more than 1.3 million trucks crossed the Peace Bridge in Buffalo, while more than 14.2 million cars passed over the border. But with delay-related costs at the border already totaling more than \$5 billion annually, the situation would only worsen with a passport requirement in place.

Exported goods valued at \$28.5 billion enter Canada through the Buffalo-Niagara region. And that means jobs and economic growth here in Western New York.

As Arlene White, Executive Director of the Binational Tourism Alliance wrote me, "any restrictions to cross-border traffic will negatively impact all of these businesses and the labor market and taxation base supported by these sectors."

This is a sentiment I have heard over and over from my constituents and local business leaders in my district – this will have a devastating effect on our community.

Our proximity to Canada has long bolstered the traffic of exports and imports, providing jobs, growth and vast tourism opportunities.

As the State Department has reported, only about 20 percent of Americans have a passport. One in five.

Despite the cost and delays that this proposal will have on businesses, most will be forced to comply. But faced with the inconvenience and expense of a passport, many Canadians and Western New Yorkers who right now travel between our nations freely, each week, to work, to shop, to spend their dollars, will do the easiest thing there is to do: no longer travel between the borders.

Are these hard-working people the ones we are working to keep out? I think not.

What, then, is the solution, besides an expensive, burdensome, passport system? I'm proud to say that one answer already lies within my state, within the wallets and pocketbooks of the working men and women I am proud to represent.

New York state is leading the nation in driver's license technology -- adding anti-fraud that will significantly thwart the ability of those who seek to use fraudulent identification to foster terrorism, break the law and cause harm.

I understand the importance of improving and enhancing our national security particularly at our borders in a post-9/11 world. However, as we are securing our borders and enhancing our national security, we must also keep in mind our economic security.

Our economic security, particularly in border districts such as the one I represent, relies on the free flow of people and commerce -- to the tune of hundreds of millions of dollars in public and private sector investment made in our region.

This free flow is critical to our local economies and livelihoods, and must be continued ensured.

I'm honored that one my constituents, Mr. Thomas Chestnut, is with us today to tell you more specifically about the impact this will have on the tourism sector of Western New York.

Mr. Chestnut is the CEO and President of AAA Western and Central New York, which is the 12th largest AAA Club in the United States, and represents nearly 900,000 member motorists through 25 counties in Western New York. He will tell you what as it stake with a burdensome and unnecessary passport requirement.

Mr. Chairman, once again, thank you, and I look forward to working with you and other members to develop a system that meets the needs of our national security and Western New York's economic security.

THOMAS M. REYNOLDS
26TH DISTRICT, NEW YORK
COMMITTEE ON
WAYS AND MEANS
COMMITTEE ON
HOUSE ADMINISTRATION
DEPUTY MAJORITY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515

September 21, 2005

WASHINGTON OFFICE:
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DISTRICT OFFICES:
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WILLIAMSVILLE, NY 14221
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Condoleezza Rice
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Robert C. Bonner
Commissioner
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Secretary Rice, Secretary Chertoff, and Commissioner Bonner:

I am writing to submit my comments in regards to Federal Register Document: FR Doc. 05-17533, a notice of proposed rulemaking dealing with Documents Required for Travel Within the Western Hemisphere.

I am very concerned with the progress of any plan that would require all U.S. citizens to have a passport to enter or re-enter the United States. Like you, I agree that the United States must undertake important measures to improve and enhance our national security, particularly at our borders. In light of the devastating attacks of September 11, 2001, the Congress has worked diligently with the Administration to coordinate intelligence efforts, fight global terrorism, and better equip our state and local first responders - often the first line of defense here at home. I know that I speak for many of my colleagues when I say that we are committed to maintaining this vigil.

As a representative of an area that closely borders Canada, the impact of border security issues a ripple effect throughout my congressional district and the entire Western New York area. The ability to preserve the free flow of people and commerce is critical to local economies and livelihoods. I have consistently been notified of the concerns of constituents and business leaders in my district who are reluctant to support a policy that could have a devastating effect on our community.

For generations New York state and particularly the border area near my congressional district have served as a major thoroughfare for the Northeast, filtering countless goods and services by land, sea, and air. Our proximity to Canada has long bolstered the traffic of exports and imports, providing jobs, growth, and vast tourism opportunities. A passport requirement that is too onerous has the potential to obstruct the already-clogged passageways of the Peace Bridge and could doom the tourism prospects of the Rochester-Toronto Fast Ferry project. These concerns, coupled with an already arduous application and administrative process, could spell disaster for small businesses, farmers, and casual travelers alike.

As you proceed in the rulemaking process, I respectfully urge you to not only take into consideration the legitimate concerns of constituents like mine, but also heed Congressional intent. While we can all support reasonable measures that assist in making America more secure, we must be certain that our actions do not unduly burden the very freedoms we are trying to protect.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Reynolds", written over a horizontal line.

THOMAS M. REYNOLDS
Member of Congress



H. Thomas Chestnut
President and Chief Executive Officer

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tchestnut@nyaaa.com

November 22, 2005

Honorable Donald A. Manzullo
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I would like to thank you and the House Committee on Small Business again for the opportunity to testify before you on November 17 with regard to the Western Hemisphere Travel Initiative. I would also like to clarify several statements I made during my testimony.

First, I wanted to provide further statistical documentation to my statement that border crossings between the United States and Canada had fallen 20 percent since the events of 9/11. This decline is from actual U.S.-bound bridge-crossing data from the Ambassador Bridge in Detroit, the Niagara Bridge Commission Crossings and the Peace Bridge in Buffalo--comparing the years 2000 and 2004. All of the bridges show steady declines since 2000, starting with 2001. Crossings for automobiles and buses were 12.5 million in 2000 compared with 9.6 million in 2004, for an actual decline of 23 percent.

Second, I would like to add some clarification to my statement that only 20 percent of Americans and 40 percent of Canadians possess passports, and, in addition, that only 30 percent of Congress people do. These figures are from a study prepared by the Detroit, Buffalo and Ontario Chambers of Commerce as they were evaluating the Western Hemisphere Travel Initiative. The 30 percent figure for Congress people represents their ownership of passports before they were elected to Congress. Once an individual has been elected to Congress, there is a necessity to have a passport, and there is a system in place to have that expedited administratively.

It was a pleasure meeting you and the members of the committee, and I thank you personally for giving AAA the opportunity to testify on behalf of the travel and tourism industry on this important issue.

If I can be of further assistance, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Tom Chestnut".

H. Thomas Chestnut
President-Chief Executive Officer

**TRAVEL BUSINESS
ROUNDTABLE**A Strategic Partner to 

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).

Rick Webster – Director, Government Affairs
Travel Industry Association of America

Melissa Gong – Legislative Representative
Travel Business Roundtable

BEFORE THE
DEPARTMENT OF HOMELAND SECURITY
and
DEPARTMENT OF STATE

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	:
DOCUMENTS REQUIRED FOR TRAVEL WITHIN	: RIN 1651-AA66
THE WESTERN HEMISPHERE	: RIN 1400-AC10
	: USCBP-2005-0005
	: DOS-2005-0004

COMMENTS OF THE
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

Communications with respect to this document should be addressed to:

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October 31, 2005

BEFORE THE
DEPARTMENT OF HOMELAND SECURITY
and
DEPARTMENT OF STATE

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	:
	:
DOCUMENTS REQUIRED FOR TRAVEL WITHIN	: RIN 1651-AA66
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	: USCBP-2005-0005
	: DOS-2005-0004

COMMENTS
OF THE
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

The American Society of Travel Agents, Inc. (ASTA®) hereby responds to the captioned advance notice of proposed rulemaking, 70 Fed. Reg. 52037, September 1, 2005. In June of this year ASTA testified on this subject matter before the United States Senate, Committee on Foreign Relations, Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs.

For the presentation of these comments, we have consulted with the Interactive Travel Services Association (ITSA), the International Council of Cruise Lines (ICCL), the National Tour Association (NTA) and the Student Youth Travel Association (SYTA). These comments will share some of their concerns along with our own. Some of them will likely file separate statements for the record.

We first want to make absolutely clear that the retail travel industry, and our related industries, concur fully with the need for improved security at all US borders and other points of entry. We applaud the commitment of the State Department and the Department of Homeland

Security to accomplish this difficult but vital goal. Our observation of the US Visit program suggests it is a true success story, in large part because of the measured and open consultative outreach through which it has been developed and implemented. Sustaining consumer confidence to travel freely in a post-Sept 11 world is critical to the survival and growth of our industry, the travel suppliers whose services we sell and the national economy whose vitality depends upon a thriving travel and transportation industry.

At the same time, it is important that the government have regard for the effects that enhanced security measures may have on the willingness of people to travel domestically and overseas. We will gain little to achieve absolute security and find fewer and fewer travelers willing to run the gauntlet to take a trip. Leisure travelers have choices of how to vacation, including the option to simply stay home, with disastrous consequences for our industry and the economy. Business travelers may have fewer options about whether to travel, but modern technology is providing new choices for them as well.

The goal should be a tourism policy that allows U.S. citizens to travel abroad and foreign citizens to visit our country, free of unreasonable restrictions and pre-conditions that deter law abiding people from traveling. A careful balancing between security and tourism concerns should be a key part of that policy.

I. The Phased Implementation of the WHTI Should Be Eliminated

The initial announcement of the WHTI had a three-phase implementation regime that was objected to by virtually all segments of the travel and tourism industry. That proposal not only assumed unrealistically that the industry and the public could be prepared for initial implementation by the end of 2005, but it also created a geographic discrimination among different markets by requiring early implementation of the passport requirement for some while

allowing others to continue for another year as they had operated prior to the announcement.

The current proposal simply eliminates the first implementation date and creates an air/sea rule for end-of-year 2006 implementation and a ground-crossings rule for end-of-year 2007 implementation. While far superior to the initial announcement, a form of market discrimination still inheres in the proposal. Travelers by air to Canada and Mexico will have a different documentation requirement during 2006 than will travelers by ground to the same countries. This new complication in the travel plans of American travelers and those traveling to the United States from countries in the Western Hemisphere can only serve to confuse the public and may even deter some from traveling at all.

There is no compelling case for rushing to a new system. It is not legally required, as there is no mention, let alone a requirement, in the statute that the implementation be phased or that it be started as early as the end of 2005. The statutory deadline for implementation of that plan is January 1, 2008. Nor has any security crisis involving American travelers seeking to reenter the country been identified. Yet the primary focus of the new document plan is precisely those persons.

We believe the better policy is to implement all of the documentation requirements at the same time. This approach allows the maximum time to educate the public about the new requirements. In addition, and this is extremely important, it will afford time for the government to develop and implement a substitute document for the passport, a subject to which we now turn.

II. An Alternative Secure Document Should Be Developed in Lieu of a Passport-only Regime.

The initial program announcement for the WHTI at least nominally contemplated the

possibility of a substitute for passports, an “other secure, accepted document,” but none of the listed options was a real substitute for the typical leisure or business traveler. The ANPRM also states that “DHS is currently considering what other documents may be deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship.” 70 Fed. Reg. 52039. No other instrument that is low in cost and relatively easy to obtain has been identified. The ANPRM provides no specifics about the nature of the documents being considered and the likely timetable for their disclosure and possible implementation. It seems clear that, as originally announced, “the passport (U.S. or Foreign) will be the document of choice.”

We continue to believe that requiring passports, or travel cards that require a passport to obtain one, will create a major new obstacle to millions of people who are otherwise ready to travel, including particularly the growing numbers of those who make their travel plans close to departure. There are several components to this problem.

One is that passports are expensive to obtain and require significant advance planning. Publicizing the requirement and having the traveling public absorb it, and then comply with it, will necessitate substantial lead time and effort. Alternatives that themselves require a passport to obtain only complicate the situation – they are not an improvement from the standpoint of cost or advance planning. The options mentioned in the program announcements are not solutions for most travelers most of the time.

The Secure Electronic Network for Travelers Rapid Inspection (SENTRI) is more expensive and complex than passport requirements and even a casual examination of its rules and limitations will make clear that it is not a meaningful option for many Americans in WHTI.¹ The United States-Canada NEXUS Air Program is a pilot program of limited duration. Its \$50

fee is an annual cost to the traveler. The highway version of NEXUS requires the applicant to appear at one of five offices located in places such as Blaine, Washington, Detroit, Michigan, Port Huron, Michigan and Champlain, New York.² NEXUS is not going to work for most US citizens. The Free and Secure Trade, or FAST, program is for shippers³ and The Border Crossing Card is for Mexican citizens only.⁴

Another element of the obstacle is the reality that many student travelers and senior citizens, especially, though not exclusively, in Border States, do not have passports. In the past these travelers have had the freedom to travel to Canada, Mexico and the Caribbean without a passport, relying instead on documents they already possessed, such as a driver's license or birth certificate. This freedom has encouraged the making of close-to-departure decisions to travel across the borders. Huge numbers of travelers have been able to move freely and spontaneously, for both leisure and business, across our neighbor borders, without material extra cost. This freedom will disappear under a passport-based regime.

New passports cost close to \$100 for an adult, and the total out-of-pocket procurement cost exceeds that amount when passport photos are included. While the total cost of a new passport in the range of \$125 may not seem like much money, it must be remembered that in the travel industry price differentials of less than 10 percent of that amount are seen as critical to consumer choices among travel suppliers and between travel packages. Differences of \$125 per person would, therefore, certainly and significantly affect destination choices, especially when the cost is multiplied for a family traveling together. And as the technology used to produce

1 http://www.cbp.gov/xp/cgov/travel/frequent_traveler/sentri.xml

2 <http://www.cbsa-asfc.gc.ca/travel/nexus/faq-e.html#12>

3 <http://www.cbsa-asfc.gc.ca/import/fast/menu-e.html#what>

4 http://travel.state.gov/visa/temp/types/types_1266.html

passports leads to incorporation of sophisticated biometrics, the prices are likely to rise still higher.

Yet another dimension of the advance planning impact is the question whether, in the time available, the Department of State can gear up sufficiently to handle a vast increase in passport applications in the normal course, without forcing many travelers to incur still higher costs for passport expediting services. Since the vast majority of Americans do not have passports now and since the markets affected by the WHTI are traveled predominantly by persons without passports, we anticipate the demand for passports in the wake of a rule requiring them may well exceed the processing capacity of the State Department.

The longer term consequences of a passport-based regime are also troubling. We are informed that about 80 percent of motor coach passengers are students and senior citizens. Canada is the number one market for motor coach travel. Senior citizens also comprise more than 60 percent of the group tour business. While no hard data appears to exist, industry experience suggests that these groups are a large part of the estimated 75 to 80 percent of Americans who do not currently possess a passport.

Any way one looks at this, the result is that the cost of international travel by U.S. citizens is going to rise significantly under the new document regime. And new advance planning restraints are going to be imposed on a large market of students and senior citizens whose ability to travel on short notice will therefore be impaired. For many people for whom cross-border travel for leisure and business has been almost a casual experience, a new and imposing degree of formality will be introduced. Unless costs can be lowered and efficiencies introduced, the almost certain result is a reduction in travel demand for cross-border and nearby air/sea destinations.

Congress has wisely chosen to permit enough lead time that direct consultations with industry groups can be held that could lead to new approaches that will enhance security while minimizing any intrusive and disruptive impact on the traveling public. Options that are not as expensive, and easier and faster to obtain than passports, should be devised, explored and tested by the Departments in conjunction with the affected industries and the traveling and touring public. The new travel instrument would accomplish the security requirements of identification and entry-exit tracking, but not provide for consular or other government services outside the US that we have been told are the largest drivers of passport costs.

In that regard, we urge senior representatives from the Department of State and Department of Homeland Security to convene discussions with executives and other experts from these affected industries, sitting together, at the earliest possible time. ASTA would welcome the opportunity to participate in such discussions. The goal would be to determine how security can be enhanced at our borders without unreasonably undermining a key segment of the economy.

III. The Government Should Work Directly With the Travel/Tourism Industry to Develop a Comprehensive Public Awareness Program.

ASTA and other elements of the travel/tourism industry have been engaged for some time in a consulting role with the Department of Homeland Security/Transportation Security Administration to assist in crafting a public awareness program for the soon-to-be-announced Secure Flight program. This program is essential to gaining public acceptance of Secure Flight and should ultimately reduce government costs associated with airport screening.

A similar program should be conducted in connection with the introduction of the new secure document requirements, whatever they eventually become. All organizations subscribing to these comments are ready to work with DHS and the State Department in this regard.

IV. Other Recommendations

We urge the government to consider linking WHTI to the evolution of the Registered Traveler program, so that more travelers would have the option to qualify in advance and thereby achieve assured rapid processing at points of exit and entry without the need for a passport. This approach would benefit the government by reducing on-site manpower requirements and would obviously benefit travelers most interested in expedited passage through the airport security system.

The government should also consider adoption of commercially tested and proven methods of influencing travel document consumer behavior by providing pricing incentives for early purchases, group purchases (family applications submitted together) and student and senior discounts, to name a few.

Finally, under no circumstances should an attempt be made to implement WHTI using passports as the core document less than one year after a final rule is adopted.

Respectfully submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

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Buffalo Niagara Partnership
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Bureau of Customs and Border Protection
Office of Regulations and Rulings
Regulations Branch
1300 Pennsylvania Avenue, NW
Washington, DC 20229

**Re: Regulatory Information Number 1651-AA66
Documents Required for Travel Within the Western Hemisphere**

The Buffalo Niagara Partnership (Partnership) formally presents our comments on the Advanced Notice of Proposed Rulemaking (ANPRM), cited above, pertaining to the implementation of the Western Hemisphere Travel Initiative (WHTI).

The Partnership represents over 2500 businesses in the greater Buffalo Niagara Region located in close proximity to the Canadian Border. The five bridges that span the Niagara River between Canada and the US have over 14,520,000 vehicles and \$60,000,000 in trade that cross them annually. Thus, the business community and our local government are intimately familiar with the complexity of the economic challenges and opportunities presented by this binational region.

Our first recommendation with respect to the implementation of WHTI is to create a task Force composed of private sector experts from the travel and tourism industry, representatives from the affected communities and from border crossing operators. The task forces should have a limited time that will fall within the deadlines for implementation of WHTI and it should report to the Executive and legislative branches.

The Data Management Improvement Act (“DMIA”) Task Force was a private/public group chartered in 2001 by the Attorney General to evaluate and make recommendations on how to improve the flow of traffic at United States airports, seaports and land border Ports-of-Entry (“POE”), while still improving security. The WHTI Implementation Task Force should follow this very successful model.

Economic Impact

The following chart shows the impact of Canadian visitation in states for which tourism is a major part of their economic activity. Data on visitation and financial impact for tourism between Canada and all our states is available on the Canadian Embassy web site at www.canadianembassy.org/statetrade/index-en.asp. and is

derived from data collected by Statistics Canada. There were 34.5 million visits by Canadians to the US in 2003 with an impact of \$10.9 billion on our national economy.

Economic Impact of Canadian Visitation by Select U.S. State.

State	Visitations	\$ impact
Alaska	175,000	65,000,000
Arizona	350,000	227,000,000
California	1,000,000	587,000,000
Colorado	180,000	72,000,000
Florida	1,800,000	1,400,000,000
Georgia	784,000	71,000,000
Hawaii	298,000	321,000,000
Louisiana	100,000	53,000,000
Maryland	495,000	28,000,000
Massachusetts	590,000	121,000,000
Michigan	1,900,000	165,000,000
Nevada	780,000	438,000,000
New Jersey	289,000	65,000,000
New Mexico	45,000	19,000,000
New York	3,800,000	340,000,000
North Carolina	697,000	49,000,000
Oregon	348,000	58,000,000
South Carolina	634,000	126,000,000
Tennessee	451,000	57,000,000
Texas	304,000	158,000,000
Virginia	730,000	61,000,000
Washington	1,800,000	211,000,000

Impact of ANPRM

The announcement, in May of 2005, that a proposal is being formulated to require passports of all those entering the US across the Canadian border already has reduced seasonally adjusted visitation to the US. The ANPRM has exacerbated that impact

despite accurate reporting by the media that the implementation date is not until 2008. A survey conducted by the Niagara Ontario Regional Parks Commission in September found that 37% of respondents think that the passport requirement is currently in effect. It is estimated that a 12% reduction in visitation is resulting and is likely to continue. If that occurs the immediate annual impact on the US economy would be \$1.2 billion which would be felt disproportionately by border regions.

Along with providing you with immediate economic impact information, this misconception of immediate implementation should be an indication to you of the difficulty of educating the public as to new regulations. Much tourism along the border is spontaneous or conducted with minimal planning. Trips across the border to cultural, entertainment, sporting events and shopping will be seriously curtailed if crossing the border requires new forms of identification not readily available and free or inexpensive.

The proposal in the ANPRM to permit NEXUS, SENTRI and FAST cardholders to use these forms of identification as substitutes for a passport is a good idea. The Partnership endorses the use of NEXUS and has urged its members to apply for NEXUS cards. However, the system as implemented by DHS is seriously flawed.

Four years after NEXUS implementation it still takes weeks to receive the card. A card issued in one part of the nation cannot be used at border crossings outside of the region in which it was issued. There are few locations at which the mandatory interview may be conducted and those require crossing into either Canada or the US to attend. These interview locations are often not in the metropolitan centers in which the most potential users reside. To date only about 50,000 NEXUS cards have been issued during the four years of the program's existence. To further exacerbate the situation, marketing efforts by your agency for the NEXUS program have been nonexistent and citizens crossing the border at major crossing sites have experienced considerable resistance to the program by CPB employees.

This record provides little confidence that your agency or the Department of State can make a new identification card readily available by 2008.

The border between Canada and the United States is over 5000 miles long. Much of its length is in extremely rural countryside and large lakes. There are highways crossing the border without customs stations, because of low traffic. There are communities with a city street as the border and homes, schools and stores used interchangeably across this street. The incidence of recorded illegal entry into the US from Canada is minuscule in comparison to such activity along the Mexican border. The major effort in Mexico is to stop entry into the US. The major effort for communities along the Canadian border is to stimulate crossing because of the considerable economic benefit derived from Canadians whose average family income approximately equals or exceeds that of their immediate neighbors south of the border.

The stated goal of the WHTI is to create a system that will make it easier for low risk travelers to cross into the US in order for your employees to concentrate their efforts on

higher risk entrants. The proposal you have offered accomplishes exactly the opposite of this goal.

Low risk travelers will be required to acquire a new identification card at considerable expense for every member of their family, no matter the age. High-risk travelers or those with intentions to harm US citizens will still be able to cross at innumerable places where no patrol takes place.

Our second recommendation is that the identification required under WHTI be an adaptation of an existing document, in wide use, issuable with little delay at existing multiple locations and inexpensive.

We believe that the provisions of the Real ID Act , when implemented, will, or can easily be made to, meet these requirements. States now offer a non driver identification card for those seeking identification that do not drive at the same locations at which drivers licenses are issued. Under Real ID this offering could be easily extended as well. The Real ID drivers license issuers could offer, as an option, the ability to demonstrate citizenship and indicate so on the license for those desiring to use this card to meet the WHTI border crossing requirement. Given the demonstrated inability of DHS to implement broad based identification systems rapidly, it seems advisable for them to take advantage of the expertise and infrastructure that exists in every state for the issuance of drivers licenses.

The Partnership stands ready to work with DHS and DOS to implement WHTI. We believe it can be done within the time limits of the law and without disrupting the economies of our two nations. Security and the expeditious flow of travel and trade need not be incompatible activities. We urge you to reach out to organizations like ours to find solutions superior to those you have suggested in your Advanced Notice of Proposed Rulemaking.

November 14, 2005

Hon. Donald A. Manzullo, Chairman
Hon. Nydia M. Velazquez, Ranking Member
House Committee on Small Business
Rayburn House Office Building 2361
Washington, D.C. 20515

Dear Chairman Manzullo and Congresswoman Velazquez:

On behalf of our 1200 members from throughout Niagara County, Western New York and Southern Ontario, the Niagara USA Chamber would like to express our deep concern about the proposed requirements associated with the WHTI and the devastating negative impact we believe it will have on businesses on both sides of the border.

Western New York and Southern Ontario have long shared more than just a border. Countless businesses on both sides rely upon the free flow of cross border traffic. The extra burden of obtaining a passport or another required proof of ID that is not easily accessible or already in the possession of most Americans, will essentially shut down spontaneous commerce between our two great nations. We are concerned that the Department of State has not conducted extensive economic impact studies on the local economies and don't believe there is a good understanding of how much harm the current proposal will have upon our communities.

Tourist attractions, restaurants, cultural destinations, pro sports teams, hospitals, college and universities, and countless other businesses on both sides of the border rely upon the people of both nations. In addition, elementary students often travel across the borders for educational experiences. We may be two countries, but we are one market.

While the Niagara USA Chamber shares our nation's concerns for securing our borders, we believe it can and should be done with as little burden to US and Canadian Citizens as possible. Therefore, we believe the best course of action is to add technology to the current drivers' license, which would prove citizenship. If instead, a move is made toward a requirement of a new form of documentation, we ask that it be provided at as little financial cost as possible, and as quickly as possible. In addition, to accommodate the impulse traveler, of whom so many of our businesses survive rely upon, perhaps a temporary pass for a group or individual could be obtained for a time period of as little as a few hours.

A recent survey of travelers coming to Niagara Falls, NY found that nearly 70 percent of them had immediate plans to travel to Canada, and that a majority of them had chosen to come to this region because they can experience a 2 for 1 deal.....two countries at one destination. If these visitors are required to obtain documentation that is either expensive or time consuming, they will vacation elsewhere. For these people, as well as for all US and Canadian citizens, we implore you to keep the documentation requirements as simple and cost effective as possible.

If the Niagara USA Chamber can be of any assistance to you throughout this process, please do not hesitate to call upon us.

Sincerely,

Thomas J. Kraus
President and CEO
Niagara USA Chamber



Building a Wall Between Friends: Passports to and from Canada?

Thursday, November 17, 2005

Small Business Committee - Full Committee Hearing, 9 am, 2360 Rayburn HOB

**Western Hemisphere Travel Initiative's Implications
for Southeast Michigan/Southwest Ontario**

Statement by Detroit Regional Chamber

On behalf of the Detroit Regional Chamber, please accept our comments pertaining to the implementation of the Western Hemisphere Travel Initiative (WHTI). With more than 21,000 members, the Detroit Regional Chamber is the largest metropolitan chamber of commerce in the country. The Chamber's mission – to lead business growth and member success – is carried out through business attraction efforts, public policy advocacy, strategic partnerships and quality products and services for members.

Relevance of Southeast Michigan/Southwest Ontario Border

The United States and Canada share the longest non-militarized, non-actively patrolled border in the world, as well as the world's largest trading relationship. Of the 4,000-mile dividing line between the two countries (5,500 miles including Alaska), no single area is more significant than the Southeast Michigan and Southwest Ontario border crossings.

An estimated \$US 1.2 billion in trade crosses the U.S.-Canada border daily—40% of it at the five international, land-border crossings in the Detroit/Windsor Region. Of this daily trade, as much as \$US 234 million is automotive related.

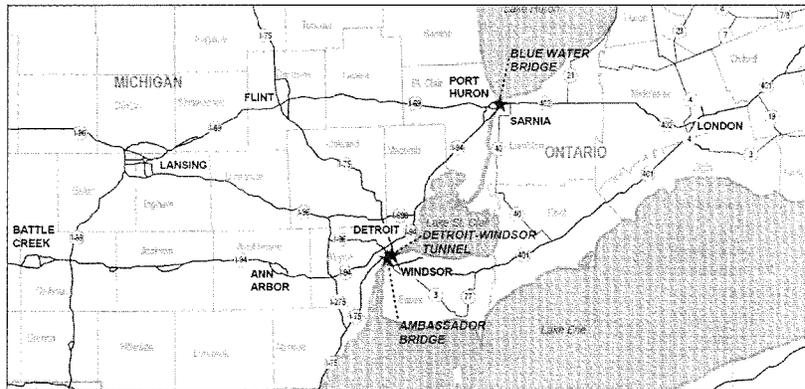
Annually, one million Canadians travel to Michigan, with an impact on the state's economy of more than \$166 million. Each year 1.7 million Michiganders visit Canada, with an economic impact of more than \$474 million.



Each day an estimated 58,000 crossings occur along the Detroit River and St. Clair River. Trade between the U.S. and Canada has climbed at nearly double-digit rates each year since NAFTA implementation in 1994, and economic development means more cross-border employment, tourism and recreation. By 2020 the number of daily crossings in Southeast Michigan could exceed 90,000.

Facilitating this volume across the Detroit River and St. Clair River are five crossings: two bridges, a passenger tunnel, and two freight tunnels. Thinking of trade alone, the Ambassador Bridge is the busiest border crossing in the world, carrying 25% of the value of trade between the U.S. and Canada.

Map of Southeast Michigan/Southwest Ontario Region





WHTI Background

In Fall 2004 Congress passed the Intelligence Reform and Terrorism Prevention Act. Section 7209 requires the Department of Homeland Security and Department of State to “develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed . . . sufficient to denote identity and citizenship, for all travel into the United States by United States citizens” and others.

In April 2004 DHS and DoS announced that cross-border travelers, including those at land borders, would need a passport to get into the United States. Only 20% of U.S. citizens and 40% of Canadian citizens have a passport (and even fewer children). It is not surprising, therefore, that President Bush publicly questioned the requirement, reconsideration of which quickly followed. Over the course of the next several months, DHS and DoS conducted various meetings to obtain public input on how to meet the WHTI requirement.

Passport Alternatives

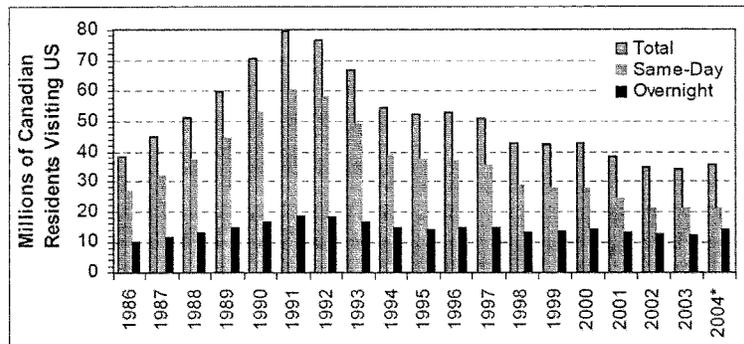
In addition to a passport, DHS and DoS have suggested that existing preclearance programs like NEXUS (for passengers) and FAST (commercial carriers) will be considered sufficient for establishing an individual’s identity and citizenship. Unfortunately, passports are costly (around \$100 per person) and time consuming to obtain (6-8 weeks). While NEXUS cards are cheaper (around \$60), they require substantially more documentation, in-person visits, and a lengthy processing time (also 6-8 weeks).

While individuals who cross the land border every day for work may have incentives to obtain a passport or NEXUS card, spontaneous travelers, including shoppers, tourists, those seeking to attend athletic events, etc., are not likely to plan ahead for such trips, nor spend the additional cost (from \$200-\$400 for a family of four) for a passport or pre-clearance document. On any given weekday, the Detroit River accommodates as many as 15,000 same-day recreation, entertainment and shopping trips. The vast majority of Canadian visitors who cross the Detroit River and St. Clair River Crossings are day-trippers, whose travel patterns are relatively volatile based on border-crossing conditions. (See Graphic #1)



Graphic #1

Number of Canadians Visiting U.S. Detroit River and St. Claire River Crossings
(Note variation in same-day trips versus overnight trips.)



* First 11 months, annualised.
Source: Statistics Canada International Travel Survey, Table 387-0004

In response to these concerns, DHS and DoS, in various public presentations, have proposed a border identity card (“Passport Lite”), which would have the same documentation requirements as a regular passport, but would be a card (rather than a multi-page book) that one could obtain at a lesser price (to be determined) than a passport and would be accepted only at land-border crossings.

While this is a possible alternative, it is far from ideal: First, it assumes people will continue choosing to cross the border. While border ID cards have been relatively successful along the U.S.-Mexican border, the socio-economic dynamics are different along the northern border: The area is more affluent, jobs are relatively plentiful on both sides of the border, people have many alternatives in their home countries for shopping and entertainment, and while many families are separated by the border, family visitations are one of the least likely growth areas for crossing the northern border. (See Graphic #2) Some of these dynamics play out in the facts that, in the U.S., the percentage of illegal alien Canadians totals 120,000, compared to Mexico’s 2.7 million (0.4%). Further, Canada’s illegal immigration growth rate is 5% of Mexico’s.



Graphic #2

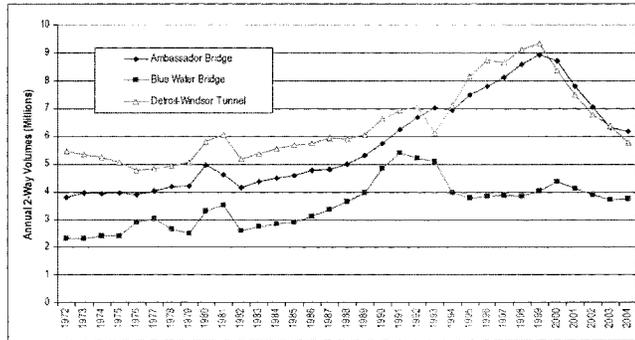
Detroit River Passenger-Car Volume Growth Factor by Trip Purpose Trip

Trip Purpose (trips to/from:)	August 2000 to August 2004 Increase	August to September Seasonal Increase
USwork – US work locations	1.02	1.1
CANwork – Canadian work locations	1.0	1.1
USvac – US vacation destinations	0.95	0.5
CANvac – Canadian vacation destinations	0.90	0.5
USrec – US recreation/entertainment/shopping	0.70	0.9
CANcasino – Canadian casino/gaming locations	0.50	0.9
CANrec – Canadian recreation/entertainment/shopping	0.45	0.9
Other – includes social visits/pick-up or drop-off	0.40	0.9

Second, the northern border identity card concept assumes people will plan ahead and pay money out of pocket in the off chance they will want to travel cross-border. However, even the perception of difficulty is a hindrance to those who might otherwise choose to cross the border. Evidence includes already declining border crossings due to 9/11, the SARS outbreak in Toronto, border delays, exchange changes, etc. (See Graphic #3).

Graphic #3

Total Crossing Volumes (Commercial and Passenger Vehicles)



Source: Bridge and Tunnel Operators Association (STOA)



Area bridge and tunnel operators predict that, among travelers, uncertainty caused simply by the discussion of a new border crossing document could result in an additional 12% decline in passenger volumes between now and WHTI implementation. This applies to both Americans and Canadians.

As for actual implementation of WHTI, recent analysis conducted by the Conference Board of Canada predicts that current plans could result nationwide in 3.5 million fewer crossings from Canada to the U.S. and more than twice this number from the U.S. to Canada. The result is \$785 million annual cost to the U.S. and \$1.7 billion to Canada. These costs will be born disproportionately by the states of Michigan and New York and the province of Ontario, where the bulk of northern border crossings occur. (See Graphic #4)

Graphic #4

Passenger Volumes at Ontario-U.S. Crossings 2000-2004

Crossing	2000 Volume (Millions)	2004 Volume (Millions)	Absolute Increase (Millions)	Percent Change
Ambassador Bridge	8.81	6.26	(2.55)	(29%)
Detroit-Windsor Tunnel	8.44	5.84	(2.60)	(31%)
Blue Water Bridge	4.40	3.77	(0.63)	(14%)
Peace Bridge	6.95	5.66	(1.29)	(19%)
Lewiston-Queenston Bridge	3.49	2.92	(0.57)	(16%)
Whirlpool Rapids Bridge	0.76	0.17	(0.59)	(78%)
Rainbow Bridge	4.24	3.46	(0.78)	(18%)
Sault St. Marie Bridge	2.55	1.72	(0.83)	(33%)
Ogdensburg Bridge	0.48	0.42	(0.06)	(13%)
Seaway International Bridge	2.27	2.39	+0.12	+5%
Thousand Islands Bridge	1.67	1.63	(0.04)	(2%)
TOTAL	44.07	34.21	(9.86)	(22%)
Share of Detroit River Crossings	39.2%	35.4%	-	-
Total Detroit River Crossings	17.25	12.10	(5.15)	(30%)
Total St. Clair River Crossings	4.40	3.77	(0.63)	(14%)
Total Niagara River Crossings	11.95	9.29	(2.66)	(22%)
Total St. Lawrence River Crossings	4.42	4.44	0.02	0.0%

Note: Annual volumes in millions.
Source: Bridge and Tunnel Operators Association



To the extent that the requirement makes it difficult for cross-border employees to reach their jobs, industries already struggling to find qualified employees—such as manufacturing and healthcare—will suffer. Around 5,000 Windsor residents work outside of Canada—most in the Detroit region. See **Graphic #5**. This does not include workers from outside the City of Windsor proper. For example, there are over 3,000 Canadian nurses working in Southeast Michigan. Under WHTI, these employees will have no choice but to obtain a passport or other ID, likely through a lengthy, difficult, and costly process.

Graphic #5

Industry of Work for City of Windsor Residents Working Outside Canada, 2001

Industry	Jobs	Percent
Manufacturing	1,130	23.4%
Professional, scientific and technical services	1,025	21.2%
Health care and social assistance	945	19.6%
Educational services	330	6.8%
Retail trade	205	4.2%
Transportation and warehousing	170	3.5%
Other	1,030	21.3%
Total Windsor residents working outside of Canada	4,825	100%

Source: Statistics Canada Census Place-of-Work

REAL-ID

In May 2005 Congress passed the REAL-ID Act, which creates more stringent requirements and standards for obtaining a drivers license. An alternative to “Passport Lite” simply may be to allow people to show their newly-secured drivers license, along with a birth certificate, to verify identity and nationality.

Skeptics of this concept have several concerns. First, they worry that the timelines for implementation for WHTI and REAL-ID differ, with the former to be in place before the latter, making a REAL-ID alternative infeasible from an implementation standpoint. This could be corrected by Congressional action, which is not unprecedented given the 2004 Visa Waiver Country extension granted for electronic passports.



Second, there is concern that relying on birth certificates is impractical, as over 50,000 different versions exist nationwide. However, the same act that created WHTI also called for greater standardization of birth certificates. Over time, more standard birth certificates would be phased in, or people could be required to obtain new copies of the document that meet requirements under the new federal law. Despite concerns, birth certificates, despite their many variations, currently are used to obtain a passport, and the cost of ensuring proper training of staff (state or federal) to detect fraudulent certificates must be weighed with the economic costs associated with current implementation plans.

Third, there is concern that states are not required to share with the federal government certain data that could be used to cross-reference criminal and other databases. This does not mean, however, that incentives could not be created for sharing this information. For example, regarding linking of databases, the REAL-ID Act has used financial incentives:

"SEC. 203. LINKING OF DATABASES.

(a) **IN GENERAL.** To be eligible to receive any grant or other type of financial assistance made available under this title, a State shall participate in the interstate compact regarding sharing of driver license data, known as the "Driver License Agreement", in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States."

Other language has required states to enter into compacts and memorandums of understanding for data-sharing relating to immigration status. Meanwhile, the machine-readable nature of new REAL-ID cards will facilitate any necessary data sharing. Most important, however, is that WHTI specifies that people need only to establish their nationality and citizenship: It does not say the information must be cross-referenceable with other databases.

Fourth, some worry that the application of REAL-ID to meet WHTI requirements will result in jurisdictional issues between state and federal government. However, state and federal governments historically have worked together in addressing homeland and domestic security. For example, for more than twenty years, states have functioned under federal law for the issuance of Commercial Driver's Licenses (CDL). After September 11, 2001, standards and rules for CDL issuance rose substantially. Commercial drivers transporting hazardous waste must undergo fingerprinting and federal background checks before they can receive a state driver's license—a policy that is more restrictive even than proposed requirements under



under WHTI. Finally, state county offices for years have served as accepting agents of passport application materials and have helped establish identity.

The benefit of combining REAL-ID with WHTI is that drivers-licenses and birth certificates are documents that people already have on hand and that are used commonly for border crossing. This alternative option could greatly reduce both the cost and time associated with any other option (up to and including redundant state and federal government systems that would have to be in place to issue both REAL-ID documents and a new border identity card), while still greatly improving security relative to the status quo.

It also is important to note that the same documents required to obtain a REAL-ID drivers license in most cases are the very same ones used to obtain a passport. This means that most people already will have everything they need to cross the border and will not be hindered by additional documentation requirements.

Using REAL-ID as a border-crossing card under WHTI could be optional for citizens desiring to cross the border, decreasing concerns of REAL-ID as a national identity card or further privacy intrusion. For children, the elderly, and others without driver’s licenses, state identity cards could be suitable options that could be offered under a similar REAL-ID platform.

Comparison of Current Michigan Driver’s License and REAL-ID under WHTI

Current Driver’s License	REAL-ID Solution to WHTI
Proof of citizenship required	Citizenship could be collected (optional)
Proof of identity (driver’s license suggested)	Proof of ID includes verified documents required to obtain driver’s license
Two recent color photographs sent by applicant	Photo taken at time of application
Completed application form	Application could be part of REAL-ID process
Costs \$97 (~\$30 for “Passport Lite”)	Costs \$25 in MI (\$18 to renew); may be adjusted to accommodate REAL-ID
6-8 weeks to process	Currently about one week to process (likely will increase w/ REAL-ID)



NOTE: The State of Michigan is in a unique position pilot the REAL-ID alternative, given its high ranking as a tech-savvy state (Michigan has continuously received first or second ratings nationwide from the Sacramento-based group *Digital Government*), and given a substantive legislative earmark to make adjustments to the current motor vehicles system.

Essential Policy Elements

Regardless of whether policymakers proceed with implementation of a northern border identity card or accept REAL-ID as a viable alternative, adherence to certain key principles is essential:

(1) Sufficient time and resources must be allocated for notifying and preparing residents for this monumental change. Currently WHTI must be implemented by December 31, 2007. Many people do not even realize that the change is forthcoming, and this will be especially true of people who do not live along border areas.

Nearly 7,000 passengers who travel through the Detroit River and St. Clair River crossings are traveling long-distance to long-distance. Making the general population aware of documentation changes at the border will be difficult; making long-distance travelers aware will be *extremely* difficult. Passenger-vehicle delays that result from uncertainty over documentation necessarily will affect commercial traffic, which has been plagued by border congestion problems at great cost.

With regard to public notification, DHS and DoS must glean lessons from enrollment experiences with programs like NEXUS, which are far less ambitious than WHTI. Due to lack of public information, slow roll out, and difficulty obtaining the card, only 40,000 people nationwide so far have enrolled in the program. A similar pathway under WHTI could mean devastation for border communities and business sectors that rely on the smooth flow of goods and people.

(2) Take steps to thoroughly understand the true economic and other cost of implementing WHTI. Requesting economic impact information from interested communities through the ANPRM process, which includes only 60 days' notification, is not sufficient to understand truly the broad reaching economic consequences of WHTI. It would be reasonable and advisable to request a study of



the Government Accountability Office (GAO) or other similarly positioned entity prior to proceeding with WHTI implementation.

(3) Formally seek out the advice and expertise of border stakeholder groups as part of WHTI implementation. We encourages the creation of a public/private task force to evaluate and make recommendations on how the flow of land travel to and from Canada, Mexico, and other western hemisphere destinations can be improved while enhancing security.

Currently, the Detroit Regional Chamber staffs Northern Border for Economic Security and Trade (NBEST), a group that has been meeting regularly since shortly after September 11, 2001, to discuss border-related staffing, policy changes, and other concerns along the border in our region. The group, which comprises business, bridge and tunnel owners and operators, Customs and Border Protection, state police, DHS, government and other officials, would be an excellent model to consider, at least insofar as composition is concerned.

(4) Finally, all of the alternatives discussed under WHTI, including "Passport Lite" and REAL-ID, apply only to U.S. citizens. It is essential that U.S. and Canadian government discussions begin soon and in earnest to ensure reciprocity. For this policy to be implemented smoothly, the Canadian government must agree to accept new documentation carried by U.S. citizens as a result of WHTI. Further, it is important that cheaper, easier-to-obtain documentation alternatives also exist for Canadians coming into the U.S.; otherwise, these travelers will have no choice but to obtain a passport, which—at a cost of several hundred Canadian dollars per family—will reduce cross-border visits and cost Southeast Michigan considerably.

The Canadian government already has expressed an interest in REAL-ID as a solution to WHTI. State of Michigan and Province of Ontario officials responsible for state driver's licenses already have begun a dialogue on serving as pilot areas for such a program. Both Michigan and Ontario adhere to standards set by the American Association of Motor Vehicle Administrators (<http://www.aamva.org/>), and the Canadian federal government has submitted public support for the concept, both in formal remarks, through media releases, etc.

It would be remiss to exclude further members of the Security and Prosperity Partnership from early discussions relating to WHTI implementation.



Conclusion

There is logic in improving documentation requirements for border crossings. Events have shown that the threat of terrorism is real, and we must take national security very seriously; however, we must be careful not to forsake economic security in the process. There is merit in taking into consideration the full-range of policy options at our disposal in implementing a program to verify nationality and identity, including REAL-ID. No new border-crossing policy can succeed, though, unless it is marketed successfully, developed with comprehensive economic data and stakeholder input, and embraced also by the Canadian government.

As WHTI is implemented, the Detroit Regional Chamber offers its experience as a major land-border stakeholder, as well as its facilities and staff for coordinating public awareness initiatives and other related meetings. We will remain engaged in this issue as we strive to reach the appropriate balance between national and economic security for the sake of economic development along the northern border.

Richard E. Blouse Jr., CCE
President & CEO
Detroit Regional Chamber

Lisa Katz
Director, Government Relations
Detroit Regional Chamber



November 15, 2005

Congresswoman Louise M. Slaughter
2347 Rayburn House Office Building
Washington, D. C. 20515

Dear Congresswoman Slaughter:

We deeply appreciate your offer to include comments by the Buffalo Niagara Partnership in your testimony before the House Small Business Committee. Thus, we have also have sent you our response to the Department of Homeland Security and Department of State on their proposed rulemaking. That statement, on behalf of the over 2500 members of the Partnership and their 200,000 employees, criticizes the proposal; at the same time, it makes specific suggestions for ways in which the law may be implemented without undue disruption of trade or travel.

Thank you as well for your persistent championing of the need for border security to be conducted without disruption of travel by low risk frequent travelers. The amendment you are sponsoring to increase availability of NEXUS processing locations and require DHS to do a better job of marketing the program is just one recent example of your important efforts.

We urge you, and the members of the Small Business Committee, to support Congressman McCotter's effort to pass legislation requiring bilateral negotiations on US Canadian border issues. Such a law would suspend implementation of any proposed regulation for northern border crossing until a treaty is signed. This appears to be an excellent way to allow focus on the uniqueness of the border relationship between the US and Canada.

We also commend Congressman Manzullo for holding these hearings and highlighting that implementation of a rule, along the lines of the proposal made by DHS and DOS in their proposed rulemaking, is technically unworkable. The dismal record of these agencies at implementing the much more limited NEXUS Pass System makes it highly unlikely that they can implement a system that would require millions of Americans to acquire a new "passport lite" by January 1, 2008.

Again, thank you for your continued advocacy on behalf of those of us who live and work near the second busiest border crossing between the US and Canada.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Rudnick", is positioned below the word "Sincerely,".

Andrew J. Rudnick



November 16, 2005

The Honorable Donald Manzullo
Chair
House Small Business Committee
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Manzullo:

The American Society of Travel Agents (ASTA) applauds your effort in holding a hearing on November 17, 2005 titled "Building a Wall Between Friends: Passports to and from Canada?" ASTA has been actively expressing its concerns regarding the Departments of Homeland Security and State's Western Hemisphere Travel Initiative (WHTI) since its release on April 5, 2005.

ASTA understand that enhancing the security of our citizens is of great national importance. However, we also understand that our nation's economic and cultural well-being depends on sound tourism policy that allows U.S. citizens to travel abroad and foreign citizens to visit our country, free of unreasonable restrictions and pre-conditions that deter law abiding people from traveling. A careful balancing between security and tourism concerns should be a key part of that policy; however, we respectfully submit that the WHTI fails to strike that balance.

Please find attached ASTA's official comments to the Departments of Homeland Security and State's Advance Notice of Proposed Rulemaking on Documents Required for Travel Within the Western Hemisphere. We ask that these comments, which outline our recommendations on WHTI, be made part of the hearing record.

Again, we thank you for your leadership role in conducting this hearing. The freedom to travel across our borders is a critical issue for the entire travel and tourism industry.

Sincerely,

A handwritten signature in black ink, appearing to read "P. M. Ruden", is written over a light-colored background.

Paul M. Ruden, Esquire
Senior Vice President
Legal & Industry Affairs

Attachment



October 31, 2005

Bureau of Customs and Border Protection
Office of Regulations and Rulings
Regulations Branch
1300 Pennsylvania Avenue, NW
Washington, DC 20229

**Re: Regulatory Information Number 1651-AA66
Documents Required for Travel Within the Western Hemisphere**

Dear Commissioner Bonner:

On behalf of the National Business Travel Association (NBTA) we would like to present our comments on the Advance Notice of Proposed Rulemaking regarding the implementation of the Western Hemisphere Travel Initiative (WHTI).

The National Business Travel Association represents over 2,500 corporate travel managers and travel service providers who collectively manage and direct more than \$170 billion of expenditures within the business travel industry, primarily for Fortune 1000 companies.

NBTA acts as the parent organization of 45 U.S. chapters that provide regionally specific services to their members and work to support the business travel industry at the grass-roots level. NBTA works to provide benefits and services to Canadian business travel professionals through the Canadian Alliance of Business Travel. The association also focuses on global outreach through the Paragon Partnership, a strategic international alliance with business travel associations representing countries in Australasia, Europe, North American and South America.

NBTA members represent a diverse cross-section of business travel. Our members are heavily vested in both domestic and international business travel, and possess a great interest in the implementation and effects of the WHTI. The following comments provide insight into the concerns presented to NBTA staff regarding the WHTI.

Introduction

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) mandated that the U.S. Secretaries of Homeland Security and State develop a plan to require U.S. citizens and foreign nationals to present a passport or other appropriate secure identity and citizenship documentation when entering the United States. NBTA would like to reiterate its strong support for the efforts of the Department of Homeland Security in addressing issues of critical national security. NBTA clearly recognizes the legislative mandate facing the federal government in implementing the WHTI, and believes that in the process of final rulemaking, the concerns of NBTA members can be addressed.

As the Department of Homeland Security moves forward in crafting and implementing WHTI provisions which will satisfy the legislative requirements enumerated in the IRTPA, we urge the careful consideration of the effects on the business community, specifically the large constituency of business travelers who traverse U.S. borders each and every day. NBTA and its 2,500 corporate travel managers and travel service providers share a commitment in supporting increased security at our ports of entry and borders, but would like to express our collective concerns with respect to the advancement of the WHTI.

Acceptable Documents for Entry

It is the understanding of NBTA that the framework of the WHTI will allow for documentation such as the Border Crossing Card (BCC), the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), NEXUS, and the Free and Secure Trade (FAST) to be acceptable as substitutes for a passport. NBTA supports an “acceptable document substitutes” category and believes this will most likely reduce the negative economic impact of the WHTI. However, we remain concerned that these programs are not widely known, there has been little attempt to educate the public at-large, and the degree of availability with respect to some of the documents is quite small.

NBTA remains concerned that document requirements do not comport with precedent established under related law—such as the REAL ID Act—which finds the combination of driver licenses together with birth certificates, and/or another secondary document such as a Naturalization Certificate, as proper substitutes to a passport in land border crossings. The combination of such documents is considered sufficient to establish nationality and identity for the purpose of obtaining a passport. Given the fact that the combination of such documents is sufficient for obtaining a passport, it follows that such a combination should be considered as sufficient as a substitute for a passport. We understand the arguments of requiring a minimum and uniform standard of identification; however, we believe that many states have individually addressed concerns associated with the security of their driver licenses. Since September 11, 2001, states have undertaken efforts to produce machine-readable documents which possess tamper resistant security features. We do not necessarily endorse uniform acceptance of

the combination of these driver licenses and birth certificates as entry documents, but we believe that a safe, secure, and responsible policy could be crafted, in conjunction with the states. NBTA believes that the federal government should seek maximum flexibility in determining which documents will be accepted.

Implementation timelines

Under the proposal put forth by the federal government, implementation of the WHTI is planned for a two-tier phase in, proposed by DHS as the following:

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

NBTA cannot stress strongly enough our concern with this timeline. We are pleased that our calls for a delay of the December 2005 deadline have resulted in a new rescheduled deadline, however, as representatives of business travel, our experiences lead us to believe that a fragmented timeline for such an initiative will only serve to heighten confusion, thus resulting in significant noncompliance with the WHTI standards. Many travelers will find themselves unwittingly noncompliant, and confused by a timeline that provides different phase in dates for differing destinations. We strongly urge that the implementation of the WHTI occur on one date—December 31, 2007. We believe that a single date would significantly lessen the confusion that would likely occur under a regime requiring two separate standards on two separate days. NBTA is joined by 37 leading travel industry associations in pushing for a unified single deadline. The industry stands firmly behind the recommendation that we combine the multi-part deadlines into a single deadline of December 31, 2007. Nothing in the Congressional mandate requires that there be a multi-tiered deadline. Instead, we believe the most prudent course of action would be to follow the guidelines enumerated by the Congress; to establish and implement WHTI by January 1, 2008 in accordance with the law.

In his testimony before the Senate Foreign Relations Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs on June 9, 2005, Frank Moss, Deputy Assistant Secretary, Consular Affairs Department of State, stated the following:

We are currently able to meet demand, but based on projected passport demand increases over the next three years we expect to face significant resource shortfalls as we implement the WHTI. In 2004, the Department of State's Office of Passport Services issued over 8.8 million passports - a workload increase of some 22 percent over the prior year total. Workload this year is up another 13 percent, putting us on target to issue more than 10 million passports to American citizens this year. And, based on our current analysis of the scope of WHTI and other projected growth in passport demand, we expect that applications for passports will total about 12 million in FY-2006, about 14 million in FY-2007 and reach a potentially sustainable annual demand of 17 million by FY-2008.

Based on the Department of State's own data, it will face significant shortfalls in the development and implementation of the WHTI. Again, NBTA stands firmly behind the recommendation that the multi-part deadlines be combined into a single deadline of December 31, 2007. NBTA believes the interest of the traveling public and the spirit of the legislative mandate can be best honored by establishing this uniform deadline for a single phase in date. Further, we believe the passport demand increase projections by the Department of State over the next three years further support setting a uniform deadline of December 31, 2007, which will allow for both consumer education and additional resource allocation to the Department of State to ensure it is equipped to effectively address increased consumer demand.

NBTA believes that an effective component of any consumer education program would be an incentives-based approach to the impending WHTI deadline. We believe that the Department of Homeland Security, working in conjunction with the Department of State, could provide incentives for travelers who chose to obtain passports before the deadline. Structuring an incentives-based approach will help ensure that travelers will not wait until the last minute before obtaining proper documentation, thus avoiding inevitable capacity constraints inherent in many similar processes. The Department of State itself has asserted its concerns before Congressional Committees. NBTA echoes these concerns and strongly believes that an incentives-based approach will help shift demand to a level that federal officials can readily manage. As an additional component of this incentives-based approach, the federal government must reach out to industry partners who can quickly and effectively disseminate accurate information to a broad spectrum of travelers. NBTA looks forward participating in such public/private partnerships.

Conclusion

We wish to reiterate our support for the underlying goals of the WHTI. Our comments are meant to address areas of concern with the proposed implementation of the WHTI in order to avoid potential negative impacts to legitimate business travel and trade. We believe that a necessary component of WHTI development and implementation will be a broad-based public/private partnership to educate the traveling public. NBTA looks forward to playing a role in this partnership with federal officials to educate our membership on the enumerated requirements of WHTI.

We look forward to working with the Department on the development of the WHTI and appreciate the opportunity to submit comments.

Sincerely,



Bill Connors, CTC
Executive Director and COO
National Business Travel Association