

**U.S. Senate Committee on Finance**

**“Border Insecurity, Take Two: Fake ID's  
Foil the First Line of Defense”**

August 2, 2006

**Testimony of Janice L. Kephart, President  
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Terrorist Travel, A Staff Report of the National Commission on  
Terrorist Attacks Upon the United States*

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##### Introduction

Thank you for the opportunity to submit testimony for the record on *terrorist travel*, the *U.S. border inspection process* and the *Western Hemisphere Travel Initiative (WHTI)*. My testimony is based on the following work, plus additional research specific to today’s hearing:

- 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 a privately funded and unreleased 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 team also produced the drafts of the *9/11 Final Report* recommendations that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Representative Lee Hamilton.

I want to thank both Chairman Grassley and Ranking Member Baucus for holding this important hearing on the GAO’s findings pertaining to the need to tighten border inspection policy and processes. I am glad the Committee remains 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. I hope your Committee will help insure that any immigration bill sent to the President contains strong language pertaining to tightening border inspection, including the timely implementation of WHTI. WHTI was recommended by the 9/11 Commission to both tighten border security and

streamline the inspection process, especially at our land ports of entry. We must continue oversight hearings that highlight how essential border security is to national security, and set out agendas for achieving effective and efficient border security. We cannot afford to permit different aspects of our borders—such as the inspection process- to be bifurcated from the discussion of national security. Our economic strength as a nation is only as strong as our national security. We must continue to work alongside our friends in the trade and tourism industries to achieve both security and facilitation.

Assuring our border inspection process is fast, fair and complete is essential. It is also doable. We simply need to prioritize how personnel, budgets and technologies are allotted and deployed with precision. The focus must be on how to properly train and equip our border inspectors so that procedures assure security of our borders in the most effective and least intrusive manner possible. It cannot wait. It has been nearly five years since 9/11 and our border inspection is still waiting for the significant upgrades in procedures and processes that should have been forthcoming after 9/11. And while WHTI changes policy to shore up significant, large and sweeping holes in our border security so that *all persons* seeking entry into the United States show standardized travel documents or equivalents that can be vetted, this policy will not reach its potential in implementation unless DHS does its job and partners with the private sector to match policy with solutions that are tried and workable in the border inspection environment.

If we fail to upgrade our border inspection regime now, or permit WHTI to be defeated either by law or poor follow-through by DHS in the coming months, the result will be that terrorists, drug dealers and those who abuse our lax security will continue to easily move through our border system with fake documents or no documents at all. The policy in effect today at our ports of entry, the Western Hemisphere Travel Exception, actually encourages fraudulent entry by permitting any traveler claiming to be a U.S. citizen to talk their way into the United States or show any variety of identity document and claim to be from the Western Hemisphere.<sup>1</sup> And at least on the Canadian border, surveys show that 40% of Canadians state they have not been asked to show any identification when seeking entry into the United States. In testimony today before this Committee, GAO today again proves the point when in 42 of 45 instances between 2003 and 2006 GAO agents with counterfeit documents were able to flash false papers, or in a few instances, no papers at all, and enter the United States. Consider that number transferred over to attempted terrorist entries, and we have much to be concerned about.

The only way to secure our borders is to make the terrorists choose between using a passport, applying to a trusted traveler program, or enter illegally. As long as a terrorist can pose as a U.S. citizen or traveler from the Western Hemisphere by producing a birth certificate, fake driver license that can't be verified, or other forms of identification that

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<sup>1</sup> Take for example Venezuela, only within the last few months singled out by the State Department for close U.S. border examination of Venezuelan travel documents nearly three years after information surfaced that President Chavez had initiated a policy to assure that terrorists passed anonymously through their border system. Only a short distance from the Caribbean, (and adjacent to the island of Trinidad known for harboring at least three major terrorist organizations), terrorists passing through Venezuela for safe harbor need only have moved into the Caribbean, attain a counterfeit U.S. driver license or birth certificate, and easily make their way into the United States.

can be neither verified for identity, checked against a watchlist, or authenticated as a legitimate document, the Western Hemisphere Travel Exception is an open invitation to enter and embed in the United States with little disincentive not to try.

We can argue all we want about how to achieve the balance between actual secure borders and facilitation of trade and commerce, but we cannot *ever* afford to say it is not important or there is a segment of our border apparatus to which security does not apply. Nor can we afford to unravel well-based recommendations of the 9/11 Commission and passed into law by this body. Lest we forget that September 11 has taught us that secure borders are a matter of national security, and to secure them we must remember that terrorists will use any means to enter and embed into the United States.

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

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

In extensive testimony before the House Judiciary Subcommittee on Immigration, Border Security and Claims in June, I provided details of the threat of terrorist entry from the Western Hemisphere-- Canada, the Caribbean and Mexico. I will not repeat the litany of threats posed to the United States from terrorist entry in the Western Hemisphere here other than a few anecdotes of why it is not just the 9/11 hijackers we must look to in developing U.S. border security policy.

## **Findings regarding Terrorist Travel**

The majority of the factual findings that support a more robust border inspection and WHTI are not found in *9/11 Final Report*, other than the supporting commentary in the recommendations section of that report. Instead, as the border team staff hired to support the Commission's work, we intended for our staff report, *9/11 and Terrorist Travel*, initially published on the web and then published in more complete book form by Hillsboro Press, to be the factual support for all Commission recommendations pertaining to stronger border inspection, including what became WHTI. Instead of rehashing the entire report here, what I wish to emphasize is that our recommendations were based not only on what we learned about terrorist entry and embedding tactics by the 9/11

hijackers, but also what we gleaned from thorough review of other convicted terrorists whose immigration stories remained relevant. The stories of 1993 convicted terrorists Ramzi Yousef, the Blind Sheikh, and Millennium bomber Ahmed Ressam, to name a few, are all relevant and their histories are told in detail in our report.

In addition, in independent studies I conducted after the conclusion of the Commission on current terrorist activity in the United States and another on terrorist abuse of the immigration benefits system, I found many more examples of terrorist abuse of our lax border inspection practices. What was, and continues to be, of even greater concern is how much terrorist entry we will never know about due to clandestine entry either over our physical borders or by bypassing our border inspection process at land ports of entry through presentation of fake documents or through no check at all.

Examples of terrorist entry over land ports of entry are anecdotal because we have no way to measure the extent of the problem, although we know terrorist cases involving significant cross-border terrorist traffic exist. Less well known examples include the bust of likely al Qaeda member Nabil Al-Marabh in the back of truck cab in the summer of 2001; the Hizballah cigarette smuggling case that operated between North Carolina and Canada in the late 1990s; and the recent bust of the terrorist cell in Ontario where two Georgia men arrested on terrorist charges here had visited the cell in Canada by bus. With few checks and little database entry by inspectors at our land ports of entry, we will never know about most cross-border terrorist traffic—let alone stop it- unless we shore up our border inspection personnel and processes.

### **Key Excerpts from *9/11 and Terrorist Travel***

Below is the index for our 275-page staff report *9/11 and Terrorist Travel*. I include it to remind the Committee that when our team made recommendations to the Commission to be included in the *9/11 Final Report*, we did so after careful deliberation. I will also remind the Committee that each staff team was comprised of Republicans, Democrats, and in our case, an Independent as well. We submitted nothing to the Commissioners for consideration to which our team did not agree unanimously.

#### **9/11 and Terrorist Travel Staff Report, August 21, 2004**

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The recommendation on requiring passports or a biometric equivalent for all persons seeking entry into the United States we all agreed on, in concert with then DHS Secretary Tom Ridge, our Executive Director Phil Zelikow, and with unanimous support from within our team and our Commissioners.

The following are key bits lifted from *9/11 and Terrorist Travel* for the purpose of setting out some of the key findings that the 9/11 Commission considered substantial support for its recommendation that Congress later termed the Western Hemisphere Travel Initiative.

**1. Introduction: Factual Overview of the September 11 Border Story<sup>2</sup>**

Terrorists travel for many reasons, including training, communicate with other terrorists, collect funds, escape capture and interrogation, engage in surveillance of potential targets, and commit terrorist attacks.

To avoid detection of their activities and objectives while engaging in travel that necessitates using a passport, terrorists devote extensive resources to acquiring and manipulating passports, entry and exit stamps, and visas. The al Qaeda terrorist organization was no exception. High-level members of al Qaeda were expert document forgers who taught other terrorists, including Mohamed Atta, the 9/11 ringleader, their tradecraft.

The entry of the hijackers into the United States therefore represented the culmination of

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<sup>2</sup> 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. 3. 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](http://providence-publishing.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=PP&Product_Code=9ATT&Category_Code=FTANR)

years of practice and experience in penetrating international borders.

**Acquisition of New Passports**<sup>3</sup> Thirteen of the hijackers presented passports less than three weeks old when they applied for their visas, but the new passports caused no heightened scrutiny of their visa applications.

**Ports of entry**<sup>4</sup>

Once the operation was under way, the conspirators attempted to enter the United States 34 times over 21 months, through nine airports. They succeeded all but once. Border inspectors at U.S. airports were unaware of the potential significance of indicators of possible terrorist affiliation in conspirators' passports and had no information about fraudulent travel stamps possibly associated with al Qaeda. No inspectors or agents were trained in terrorist travel intelligence and document practices. The culture at the airports was one of travel facilitation and lax enforcement, with the exception of programs to interdict drug couriers and known criminals.

When they began to arrive at the U.S. airports in January 2000, the pilots traveled alone. With the exception of two of the hijackers, the "muscle" operatives arrived between late April and late June 2001. They came in groups of two or three, and in four cases were screened by the same inspector.

All but one of the hijackers presented visitor visas that immigration inspectors used to decide whether to admit them as tourists or on business. All but two of the nonpilots were admitted as tourists and were granted automatic six-month stays. This allowed them to maintain a legal immigration status through the end of the operation. One of the two nonpilots admitted on business was granted a one-month stay; he, along with another of the nonpilot operatives, was in violation of immigration law for months before the attack. The one pilot who came in on a student visa never showed up for school, thereby violating the terms of his U.S. visa. Another of the pilots came in on a tourist visa yet began flight school immediately, also violating the terms of his U.S. visa. This pilot came in a total of seven times on a tourist visa while in school. In both cases, the pilots violated the law after their entry into the United States.

Five hijackers attempting entry were referred by primary inspectors for a more intensive review by secondary inspectors. One pilot was referred at two entries, in one case by a customs inspector trained to look for drug couriers, and in the other by an immigration inspector thinking the pilot might be an intending immigrant. One pilot was referred for having the wrong visa and one nonpilot hijacker for failing to have a visa. Two others were referred for failing to complete their arrival and customs forms and for being unable to communicate with the inspectors. No lookouts or visa revocations were posted alerting border authorities to the terrorist association of two of the hijackers until after each has entered the United States for the last time.

Four hijackers were admitted after the secondary inspectors who interviewed them were

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<sup>3</sup> *9/11 and Terrorist Travel* at p. 2

<sup>4</sup> *Id.* at p. 5-6

unable to, or did not, verify information supplied by the operative, misunderstood the law, or failed to follow procedures. One was interviewed at length by a border inspector. The inspector concluded, on the basis of his hostile and arrogant behavior and contradictory statements, that he was unlikely to comply with U.S. immigration law and posed a risk. He was denied entry. The inspector was backed up by his superior, but acted in the face of a general expectation of leniency toward Saudi citizens at that airport. These entries occurred during a period when approximately 20 million people applied for visas, and more than 10 million people came into the United States through 220 airports of entry.

### **Terrorist Travel and Passports: Summary of *9/11 and Terrorist Travel Findings***

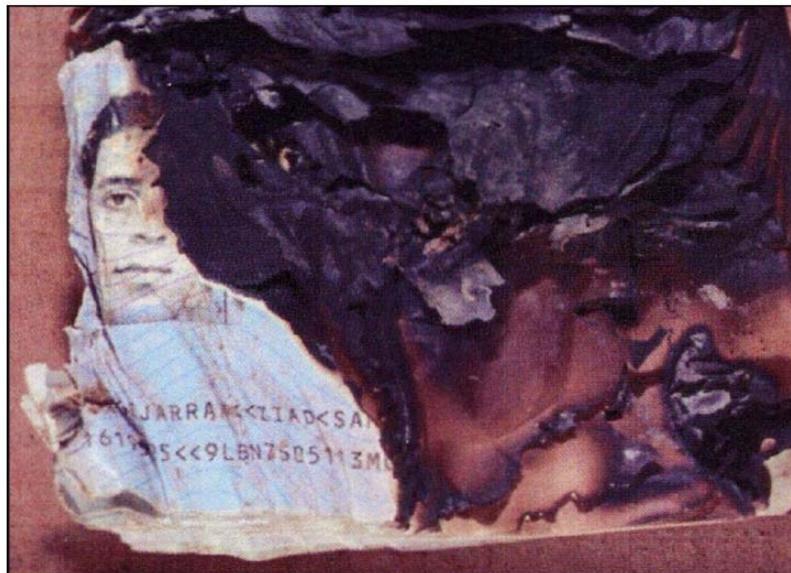
In the Al Qaeda Afghan training camps, we know that terrorists were well trained in travel and travel document forgery. Terrorists were instructed in how to move into Afghanistan through Iran or Pakistan, and what travel facilitators to use for acquiring travel documents and travel. Digital copies of 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 Mohamed 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 by, for example, erasing stamps that showed travel in and out of Afghanistan. Atta performed this task for co-conspirator Ramzi Binalshibh. Al Qaeda also kept digital copies of passports of members, likely used, for example, to recycle necessary bits and pieces of deceased members' actual passports by substituting in new faces of active members for future 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 to 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.

A partly-burned copy of Ziad Jarrah's U.S. visa recovered from the Flight 93 crash site in

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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 the case as long as the Western Hemisphere Travel Exception is in place, 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.

## Nabil Al-Marabh

A good example of what occurs when inspections are done wholly randomly and without an inspector's training in the forensics of travel documents is the story of likely Al Qaeda member Nadil Al-Marabh. 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 funds<sup>6</sup>—in the early 1990s.<sup>7</sup> 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

<sup>5</sup> *9/11 and Terrorist Travel*, p. A-1.

<sup>6</sup> USA v. Arnaout. "Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements." NDIL 02-CR- 892. Jan. 31, 2003 at p. 25.

<sup>7</sup> Steve Fainaru. "Sept. 11 Detainee is Ordered Deported." *The Washington Post*. Sept. 4, 2002.

Jordan.<sup>8</sup> These individuals identified Al-Marabh as an al Qaeda operative.<sup>9</sup> Al-Marabh maintained a Boston address from 1989 to 2000.<sup>10</sup> He also lived in Toronto, Detroit, Tampa, and Chicago.<sup>11</sup>

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.<sup>12</sup> He later told authorities he had regularly traveled illegally between Canada and the United States.<sup>13</sup> 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,<sup>14</sup> and a commercial driver's license and a permit to haul hazardous materials,<sup>15</sup> including explosives and caustic chemicals.<sup>16</sup>

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.<sup>17</sup> These men, who may also have been involved in a plot to kill former defense secretary William Cohen during a visit to Turkey,<sup>18</sup> were later charged with being part of an al Qaeda sleeper cell.<sup>19</sup> They were convicted, but the verdict was thrown out in September 2004.<sup>20</sup>

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.<sup>21</sup> In 2002, he pled guilty to conspiracy to smuggle an alien into the United States<sup>22</sup> and was ordered deported.<sup>23</sup> Prosecutors said

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<sup>8</sup> 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 Vandover, FBI Special Agent." June 25, 2004.

<sup>9</sup> Golden, Tim with Judith Miller. "Bin Ladin Operative Is Linked To Suspects." The New York Times. Sept. 18, 2001.

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

<sup>11</sup> Schiller, Bill. "Terrorism Suspect had Florida Link." Toronto Star. Oct. 26, 2001.

<sup>12</sup> Dimmock, Gary and Aaron Sands. "Toronto Shop Clerk Tied to World Terror." The Ottawa Citizen. Oct. 29, 2001.

<sup>13</sup> Ibid.

<sup>14</sup> Schiller, Bill. "Terrorism Suspect had Florida Link." Toronto Star. Oct. 26, 2001.

<sup>15</sup> Philip Shenon and Don Van Natta Jr., "U.S. Says 3 Detainees May Be Tied to Hijackings," The New York Times, November 1, 2001.

<sup>16</sup> Wilgoren, Jody and Judith Miller. "Trail of Man Sought in 2 Plots Leads to Chicago and Arrest." New York Times. Sept. 21, 2001.

<sup>17</sup> USA v. Hannan, et al. EDMI 01-C-R80778. "Criminal Complaint of Robert Pertuso, FBI Special Agent." Sept. 18, 2001.

<sup>18</sup> "Terror Supporters among Us." Associated Press, Nov. 17, 2001.

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

<sup>19</sup> USA v. Koubriti, et al. EDMI 01-C-R80778. Indictment. Sept. 27, 2001.

<sup>20</sup> Karush, Sarah. "Judge Drops Charges in Mich. Terror Case." The Associated Press. Sept. 3, 2004.

<sup>21</sup> "Boston Fugitive Arrested." Federal Bureau of Investigation Press Release. Sept. 20, 2001. and Wilgoren, Jody and Judith Miller. "Trail of Man Sought in 2 Plots Leads to Chicago and Arrest." The New York Times. Sept. 21, 2001.

<sup>22</sup> USA v. Al-Marabh. WDNY 01-CR-244-A. Plea Agreement. July 8, 2002.

<sup>23</sup> Fainaru, Steve. "Sept. 11 Detainee is Ordered Deported." The Washington Post. Sept. 4, 2002.

the government had no evidence linking him to terrorism.<sup>24</sup> The judge questioned the government's previous documentation of Al-Marabh's ties to terror and also noted he was found with \$22,000 in cash and \$25,000 worth of amber jewels in his possession when he was arrested.<sup>25</sup> He was deported to Syria in January 2004. Months later, a press release from Immigration and Customs Enforcement called Al-Marabh a "suspected terrorist."<sup>26</sup>

## Driver Licenses

Fourteen of 15 operatives and all of the pilots acquired one or multiple forms of U.S. state-issued identification. Only Satam al Suqami did not, possibly because he was the only hijacker who knew he was out of immigration status: his length of stay end date of May 20, 2000, was clearly inserted in his passport. Six hijackers presented these documents to airline personnel on the morning of 9/11. We know all the Virginia identifications were acquired through fraud. Those stories are laid out in detail in the staff report.



Ahmed al Ghamdi's photo as it appeared on his state of Virginia identification card. Ziad Jarrah, Abdul Aziz al Omari and Salem al Hazmi also obtained Virginia state identification cards. The hijackers used false affidavits to obtain their identification.<sup>27</sup>

<sup>24</sup> Ibid.

<sup>25</sup> 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.

<sup>26</sup> "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](http://www.ice.gov/graphics/news/factsheets/072704terrorist_fs.htm) (accessed Oct. 5, 2004).

<sup>27</sup> *9/11 and Terrorist Travel*, p. A-24.

**Identification Documents of the 9/11 Hijackers** (*9/11 and Terrorist Travel*, p.44)

Mohamed Atta  
FL DL, 05/02/01

Marwan al Shehhi  
FL DL, 04/12/01  
FL DL duplicate, 6/19/01

Khalid al Mihdhar  
CA DL, 04/05/00  
USA ID card, 07/10/01  
VA ID card, 08/01/01

Nawaf al Hazmi  
CA DL, 04/05/00  
FL DL, 06/25/01  
USA ID card, 07/10/01  
VA ID card, 08/02/01

Hani Hanjour  
AZ DL, 11/29/91  
FL ID card, 04/15/96  
VA ID card, 08/01/01  
Failed VA DL test, 08/02/01  
MD ID card, 09/05/01

Ziad Jarrah  
FL DL, 05/02/01  
FL DL duplicate 5/24/01  
VA ID card, 08/29/01

Satam al Suqami  
No DL or ID card

Waleed al Shehri  
FL DL, 05/04/01  
(duplicate issued with different address,  
05/05/01)

Ahmed al Ghamdi  
USA ID card, 07/2001  
VA ID card, 08/02/2001

Majed Moqed  
USA ID card, 07/2001  
VA ID card, 08/02/2001

Hamza al Ghamdi  
FL ID card, 06/26/01  
FL DL, 07/02/01  
(duplicate issued 08/27/01)

Mohand al Shehri  
FL ID card, 07/02/01

Ahmed al Nami  
FL DL, 06/29/01

Wail al Shehri  
FL DL, 07/03/01

Ahmed al Haznawi  
FL DL, 07/10/00  
(duplicate issued 09/07/01)

Fayez Banihammad  
FL ID, 07/10/01

Saeed al Ghamdi  
FL ID card, 07/10/01

Salem al Hazmi  
USA ID card, 07/01/01197  
VA ID card, 08/02/01

Abdul Aziz al Omari  
USA ID card, 07/10/2001  
VA ID card, 08/02/2001

Driver licenses are also a chosen method of entry into the United States. Take the example of the D.C. area snipers, John Lee Muhammed and Lee Boyd Malvo. John Lee Mohammed, the U.S. citizen responsible for 10 fatal shootings and 3 other near fatal shootings during a terrorist-style spree in the autumn of 2002, had financially survived

prior to coming to the United States by selling forged U.S.-accepted travel documents—driver’s licenses and birth certificates in Antigua and Barbuda.

Muhammed brought Lee Boyd Malvo and his three children into the United States under false names, and in at least 20 incidents forged or stole identities for clients, secured air travel, and provided documents in order to secure their travel to the United States. In some cases, he charged as much as \$3,000. He forged documents for Lee Boyd Malvo’s mother when she deserted her son, but when he was not paid, Muhammed kept Malvo as collateral.

With simply a birth certificate or baptismal record and a driver’s license, Mohammed’s clients, covered by the Western Hemisphere Exception for travelers from North, South or Central America or the Caribbean (but for Cuba), could easily pose as American citizens or citizens of one of the covered nations, and enter the United States.<sup>28</sup>

## GAO’s Most Recent Findings

GAO’s most recent findings regarding border inspection at a variety of land and air ports of entry on the north, south and east coasts of the United States highlight three important issues.

- **Not much has changed since 9/11.** The 9/11 hijackers were successfully able to enter the United States a total of 34 of 35 attempts (a 97 % success rate). Between 45 attempted entries by GAO between 2003 and 2006, 42 of 45 attempts (a 93% success rate) at entries were successful with even less acceptable documentation than a standard passport and visa, which the 9/11 hijackers did possess. A reasonable conclusion then, that there is little disincentive to presenting a fake document, as there is an over 90% chance at success and no chance it will be vetted like a passport is.
- Border inspectors still **operate under old policies and procedures** that emphasize customer service over security, and often provide ineffective security at our border ports of entry. For example, the Western Hemisphere Exception permits presentation of any of thousands of “identity” documents produced anywhere in the Western Hemisphere for citizens of the Western Hemisphere as legitimate identity/travel documents.
- There remains **significant laxity in our border inspection processing**, most acute at land ports of entry. Time allotted to process travelers varies from port to port—generally still in the one-minute range at air ports of entry, but at land ports of entry, checks are still random and many are not checked at all.
- Where border inspectors do conduct checks of documents, they lack the **time, training, technology** and **access to information** to make consistent distinctions between legitimate and fraudulent documentation amongst the thousands of

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<sup>28</sup> Antigua and Barbuda Final Report of Task Force Investigation of John Allen Williams, a.k.a John Allen Mohammad. December 2003.

varieties of identification documentation acceptable for presentation under the Western Hemisphere Exception.

- CBP has duplicated the efforts of the Forensic Document Lab (now located at ICE) by providing expensive machines in secondary inspection while not providing all primary inspectors with basic tools to do their jobs.
- CBP is cross training new inspectors in customs and immigration law, both of which are highly complex, while providing minimal training on forensics in documents in basic training. Such training still takes place at ports of entry “on the line”, for the most part.
- Basic information that should be available at primary inspections is still not available. This includes the declassification of terrorist indicator information on passports that I believe is still is not available to inspectors today and access to Interpol’s real time lost and stolen passport database to primary inspectors.

### **The 9/11 Commission Recommendation Regarding Passports or a Biometric Equivalent**

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 pre-enroll, with his or her identity verified in passage. Updates of database information and other checks can ensure ongoing reliability. (p. 388)

In making this recommendation, the Commission drew on intensive research not just about the 9/11 hijackers, but the pre-9/11 terrorists whose immigration files we were able to review in depth. Since then, I pursued a further study published by the Center for Immigration Studies in August 2005 which detailed how 94 terrorists (including six of the 9/11 hijackers) had abused our immigration benefits system to embed either permanently or for long periods of time. That paper, entitled *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel*, makes it clear that successful terrorist entry by any means- whether a tourist or business visa, student visa, or request for political asylum or naturalization- will have a high likelihood of attaining permanent residency and naturalization when sought. Naturalization, in turn, is an automatic access to a U.S. passport.

## **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 provisions providing for more robust screening procedures at ports of entry and the new passport rules that are both the subject of today's hearing. I look forward to working with this Committee in supporting the need to implement this law in step with the *9/11 Final Report* recommendations.

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

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

It is positive to see the Immigration Reform Act of 2006 embracing the card.

### **Addressing Concerns About Ramped Up Border Inspection**

Today, there is much concern that ramped up border inspection, including implementation of WHTI, is going to substantially impede the flow of trade and tourism across ports of entry. These concerns (*in italics below*), can be addressed as follows:

1. *Passports or an approved equivalent will significantly slow down traffic at POEs.* Not so. If we give border inspectors the tools they need to do their job efficiently and effectively, the implementation of WHTI can be painless, taking away from the border inspector the need to question and review in depth (and never verify) the authenticity of thousands of varieties of birth certificates (about 50,000 in the US today) and driver licenses (about 240 varieties today) down to a passport or equivalent that verifies-- at a much lower rate of fraud- citizenship and identity with the right tools to get the job done.
2. *That security is sufficiently achieved by retaining random checks of vehicles and their passengers at land POEs.* The GAO study makes it clear that random checks mean no checks of some and insufficient checks of others provides minimal, and often no security whatsoever.

3. *RFID technology and the type of RFID applied, and by whom, is the key to operationally implement WHTI.* That simply is not the case. Different courses of action should be pre-tested with a variety of technologies and use of that technology with a variety of lane and personnel uses—e.g. by maximizing the best combination of technologies with physical infrastructures and personnel at POEs, we can mitigate much of the potential concern about ramped up border security slowing down trade and tourism.

## **Nexus and FAST**

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

In addition, these programs—once they have achieved a threshold of enrollment-- are proving their worth in cutting down wait times at northern land ports of entry for all entrants, siphoning off the SENTRI, NEXUS and FAST drivers and passengers into dedicated lanes and allowing wait times for remaining travelers to be reduced as well. Right now, SENTRI exists at three locations on the southern border with 30 lanes operating and NEXUS exists at 12 land border ports of entry and has 15 lanes. FAST is in place at 35 land ports of entry and has 136 dedicated lanes. Canadian NEXUS now exists at eight land border ports of entry for commerce flowing from the United States into Canada. NEXUS has reduced processing time from a potential stop by a border officer to a guaranteed five to seven second crossing time once at the border station.

The result is that commerce—in terms of commuter and commercial traffic, as well as tourism- is enhanced across the board, a win-win situation. Americans commuting to Canada will find a similar upgrade in their wait times when the Canadians expand their version of NEXUS, with a contract just recently awarded for a Canadian NEXUS to be developed further and installed over the next few years. We must work to insure that NEXUS, FAST and SENTRI are easily available to those who seek to enroll, and that the ports are configured to maximize the benefits of the program.

## **REAL ID Act of 2005**

I also want to thank Congress for their work in making driver licenses meet minimum standards of identity verification and document 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.<sup>29</sup> We know that at least six hijackers presented these ids on the morning of 9/11 to disguise their lack of affiliation with the United States.<sup>30</sup>

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 driver licenses and state-issued 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. If Congress wants to have U.S. issued state driver licenses pass muster as a “biometric equivalent” to a U.S. passport, we must all understand what that would mean. Congress would have to be willing to step up to fund REAL ID in a manner that makes U.S. driver licenses machine readable at ports of entry so that the license was scanable; could automatically verify identity and citizenship; be vetted for security; and authenticate both driver license and immigration status. In other words, the driver license would need to interact and act in partnership with the federally issued U.S. passport.

With over 240 varieties of state-issued driver licenses, one important reason for implementing WHTI is to streamline the inspector’s time and enable forensic subject matter expertise. A single document like the passport can be trained for forensic review by border inspectors. In juxtaposition, we can never ask border inspectors to verify 240 varieties of driver licenses (or even 50 for that matter) in the 45 second time frame that most inspectors are allocated to adjudicate an applicant seeking admission into the United States unless the inspectors are given the training, tools and sufficient information to make that inspection occur quickly and adequately.

## **9/11 Commission Terrorist Travel Recommendations Remain Valid**

Today, terrorists with Canadian, Caribbean or Mexican citizenship can move in and out of the United States virtually unconcerned about detection. There are legitimate concerns about both the northern, southern and sea borders. And with a growing group of jihadists in Canada, Trinidad and Venezuela openly supporting terrorist activity and clandestine movement of terrorists, the Tri-border area in South America known for fraudulent document production and a volatile Mexican border ripe with smuggling activities, and an embedded Hizballah contingent within the United States, we cannot underestimate the value of deploying the most efficient and effective border security technology, training and information-access to our border personnel on our physical borders and at our ports of entry.<sup>31</sup> Ramped up border security that provides border inspectors what they need in

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<sup>29</sup> 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](http://providence-publishing.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=PP&Product_Code=9ATT&Category_Code=FTANR).

<sup>30</sup> *Ibid* at p. 43.

<sup>31</sup> My testimony before the House Committee on the Judiciary Subcommittee on Immigration, Border Security, and Claims, Oversight Hearing on "The Need to Implement WHTI to Protect U.S. Homeland Security" June 8, 2006. I also testified on November 17, 2005 before the House Small Business Committee, “Building a Wall Between Friends: Passports to and from Canada?”

time, technology, training, information and policy thus becomes essential to chilling terrorist travel between the U.S. and Canada/Mexico and the Caribbean. This includes any terrorist, whether a Mexican Islamic convert (as sought out by Al Qaeda) or Canadian or third country national posing as a citizen of the Western Hemisphere. 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.

*9/11 and Terrorist Travel* details in great depth how the 9/11 hijackers exploited our vulnerabilities using our legal border system and in our state-issued driver license regime. Part of the everyday business of terrorist travel is the bustling black market in doctored and false passports and other false or illegally obtained identity documents. In addition, an estimated 10 million lost or stolen passports or national identification cards worldwide afford terrorists easier access to world travel.<sup>32</sup> 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 inspectors no longer need to play a guessing game as to who is and who is not a U.S. citizen. On the borders, having a combination of the standard passport or equivalent and registered traveler programs that limit what a border officer must review gives border officers a better chance of snuffing out Canadian, Mexican or other Western Hemisphere passports that might be fake or stolen.

## **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 the entry portion of U.S. Visit in place and a new emphasis on increasing interior and physical border law enforcement under the Secure Border Initiative, ramping up border inspection now while working to implement WHTI is essential 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. Stopping terrorist entry and embedding must be a high priority objective.

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<sup>32</sup> Levine, Samantha. “Terror’s Best Friend.” *US News & World Report*. December 6, 2004.

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.

***To break down the national security policy implications further of the effect that the Western Hemisphere Travel Initiative will have on the terrorist, here are the options that exist for a terrorist today:*** (1) use a legitimate passport using his or her real name and risk showing up on a database check; (2) use a whole variety of other documentation such as driver licenses or birth certificates that can be neither verified for content nor authenticated as government issued documents yet permits a "clean" entry; 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 and current rumblings within the administration keep setting back making a decision on a due date for implementation.

The lesson learned from study of pre-9/11, 9/11 and post 9/11 terrorists is that verifying identification, appropriately conducting a security check on that identification, and authenticating travel documents are all absolutely essential at all stages of contact with the U.S. border apparatus—whether it be in a consulate office abroad, at a port of entry, or an immigration benefit office. However, since the port of entry is the last chance to prevent *physical* entry into the U.S. where a series of other rights seem to accrue once in the U.S. under practice, the port of entry becomes the crucial last place to prevent terrorist entry into the United States.

As the terrorist conspiracy in Ontario with U.S. links and established cross border traffic between terrorists in the United States with Canada established, our national security might indeed depend on just that. If Congress fails to insist that DHS (in concert with the State Department) ramp up border security *now*, the result will be that terrorists and criminals will continue to be able to enter the United States unfettered on forged documents such as birth certificates and driver licenses until it is in place. Is that worth a delay? No. Can we do things now to help assure more accurate screening until implementation in another year and a half? I believe so, but it will take the will of Congress in both oversight and budget to make it happen. I hope this hearing will provide such impetus.