Building a Wall Between Friends: Passports to and from Canada

Testimony by Congresswoman Louise Slaughter, House Committee on Small Business

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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 asses 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 passports 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 State move forward in the rulemaking process