

Testimony before the
Committee on Oversight and Government Reform,
Subcommittee on National Security
and the
Subcommittee on Health Care, Benefits and Admin-
istrative Rules

TERRORISM AND THE VISA WAIVER PROGRAM

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of S. 744, *Border Security, Economic Opportunity, and Immigration Modern-
ization Act*)

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Chairman Chaffetz, Ranking Member Cummings, Subcommittee Chairs DeSantis and Jordan and Ranking Members Lynch and Cartwright as well as esteemed Members of this Committee, thank you for the opportunity to testify on terrorism and the Visa Waiver Program (VWP). Creating a secure border system which operationally assures the tri-objectives of facilitation, efficiency and security requires a combination of clear statutory guidance, leadership, clear policies, appropriate resources in budgets, personnel and good technology.

The clear tension between increasing numbers of U.S.-bound international travelers alongside unprecedented possibilities for increased U.S.-bound terrorist travel from vulnerable Visa Waiver Program members¹ overwhelmed by Syrian refugees and its own radicalized demographics is a deep challenge to the national security of the United States.

In 2007, the biometric exit requirement became intertwined with Visa Waiver Program continuation and once more at today's hearing, the emphasis born on 9/11 will continue to be on the importance of thorough identity vetting via biometrics, borders and advance counterterrorism intelligence reviews. To be clear, progress has been substantial since 9/11 in curtailing terrorist travel, resulting in thousands of watchlisted individuals being denied visas or admission into the U.S. The men and women who commit every day of their careers to countering terrorism and securing our borders deserve both our sincere thanks and support. Yet as the threat evolves and technologies evolve to combat the threat, our policies, operations and legal structure must evolve as well. In addition, as the ad hoc and intermittent terrorist information-sharing with our international partners remains insufficient, strong U.S. leadership and support in the world is essential.

As you are well aware, the *The Final Report of the National Commission on Terrorist Acts Upon the United States* (the *9/11 Final Report*) and my border team's attending monograph, *9/11 and Terrorist Travel*, provided the factual and policy backdrop for the 2004 Intelligence Reform Act and subsequent 9/11 laws that were integral to reorganizing our intelligence bureaucracy as well as mandating key border recommendations such as first a fully automated biometric entry and exit system at all ports of entry, which today remains only partially fulfilled. I want to clarify that this testimony is intended to augment the many of the upgrades to the Visa Waiver Program announced by President Obama on November 30, 2015 and included in H.R. 158, the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015."

To clarify for the record, I have been called to testify today in my individual capacity as a former 9/11 Commission border counsel, along with my subsequent research and work over the past 11 years continuing to buttress the recommendations found in the *9/11 Final Report* and my team's supporting monograph, *9/11 and Terrorist Travel* regarding border and identity security. In addition to conducting much of the investigation and reporting into why the 9/11 terrorists were able

¹ According to the State Department website at <http://travel.state.gov/content/visas/en/visit/visa-waiver-program.html> the following 38 countries* are Visa Waiver Program participants: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom.

to exploit U.S. border vulnerabilities here in the U.S., some of the well-known 9/11 Commission phrases and concepts for which I was directly responsible are “terrorist travel,” “border security is essential to national security,” “for terrorists, travel documents are as important as weapons,” requiring a passport or equivalent for all persons entering the United States (implemented as the Western Hemisphere Travel Initiative), and a comprehensive biometric entry-exit system. I remain proud to serve this country by providing whatever analytical support is of value, and hope the 18 recommendations in this testimony are helpful.

I am currently the Homeland Security Solutions Director for MorphoTrak, LLC, a U.S. subsidiary of the largest and oldest biometrics company in the world, Safran Morpho, based in Paris, France. Every day, Morpho spends \$3 million in research, development and deployment of biometric technologies around the world, including border systems. I am also the founder, and was until September 2015, the CEO of the nonprofit trade association advocating on behalf of the biometrics and identity industry, the Secure Identity and Biometrics Association.

VISA WAIVER PROGRAM NATIONAL SECURITY CONCERNS and RECOMMENDATIONS

38 countries are currently designated as VWP participants. Five years ago, 45 percent of our global nonimmigrant admissions were from VWP countries.² These 20 million VWP visitors per year have remained steady through 2014. However, VWP today represents about 33 percent of global travelers to the U.S. as travel from the rest of the world to the U.S. continues to increase.

The VWP participants overlap with the Schengen Area of Europe, but for Poland, which still lacks VWP status. This is relevant because the Schengen area consists of 26 European countries that have created one common external border for international travel purposes, and a common visa policy. Within its borders the need for a passport has been abolished as well as border control. This system has been left the interior of Schengen extremely vulnerable to terrorist travel, and these weaknesses in turn make it difficult for European VWP partners to provide the type of intelligence and vetting we must require. VWP partner citizens receive a significant perk in not being required to obtain a visa prior to non-immigrant tourist or short term business travel, and as such, our partners must live up to their agreements in providing sufficient information on their citizens to assure we are not permitting terrorist travel unknowingly.

While the European Commission’s Smart Border initiative and a series of biometric pilots at Schengen land, air and sea ports has recently concluded after extensive testing that will help lead to full deployment of biometric solutions to further secure the external borders of Schengen, between the sovereign nation borders within Schengen terrorists will likely continue to travel relatively easily unless there are drastic changes to Schengen border crossing policies and operations. The worst type of result of such travel was witnessed by the atrocious coordinated attacks

² CRS Report RL31381 “U.S. Immigration Policy on Temporary Admissions” by Ruth Ellen Wasem (Feb. 28, 2011) at <https://www.fas.org/spp/crs/homesec/RL31381.pdf>.

in Paris on November 13, 2015 leaving 135 innocent people dead that included those now known to have had false passports, used the Syrian refugee flows, and traveled extensively throughout Europe and beyond.

Additional concerns are less well publicized, such as the VWP countries that have placed their passports and/or citizenship for sale like Austria, Hungary and Malta and island nations near the United States for whom we do not require a visa for short term stays, such as St. Kitts.

To be clear, as we learned during the course of our 9/11 Commission investigation, terrorists are resourceful, study border vulnerabilities closely, and continually remain a threat even when border control is strong, especially with digital alternatives such as social media and the dark net available to incite local terrorist activity. Yet weak borders are not an option; weak or no vetting procedures enable the ability to clandestinely meet, train, recruit and conduct deadly operations with little to no impediment. If a terrorist cannot get to his attack destination, that terrorist is not fulfilling his mission. It is that simple.

Thus, as stated in our *9/11 Commission Final Report* recommendations, our nation's level of border security is significantly relevant to our national security. It thus essential that despite the many dedicated improvements to border control the U.S. has undertaken since 9/11, we continue to assess and determine how as a nation we can improve our border system here at home, as it is our ports of entry that are responsible for adjudicating admissions of VWP travelers.

Aligning the threat from terrorist travel today against the strengths and weaknesses of our nation's current border system will go a long way to making an objective assessment as to what to prioritize in terms of VWP and border control improvement. That analysis begins with three objectives:

1. Determine whether the current VWP eligibility requirements are sufficient and if not, how to improve the criteria.
2. Determine how to improve the current ESTA process, including determining whether any of the security elements of the current visa process administered by the State Department Consular Services could be incorporated into the ESTA procedures administered by the Department of Homeland Security; and
3. Determine whether the current admission requirements are sufficient to assure U.S. national security from VWP applicants for admission, and what improvements could be made.

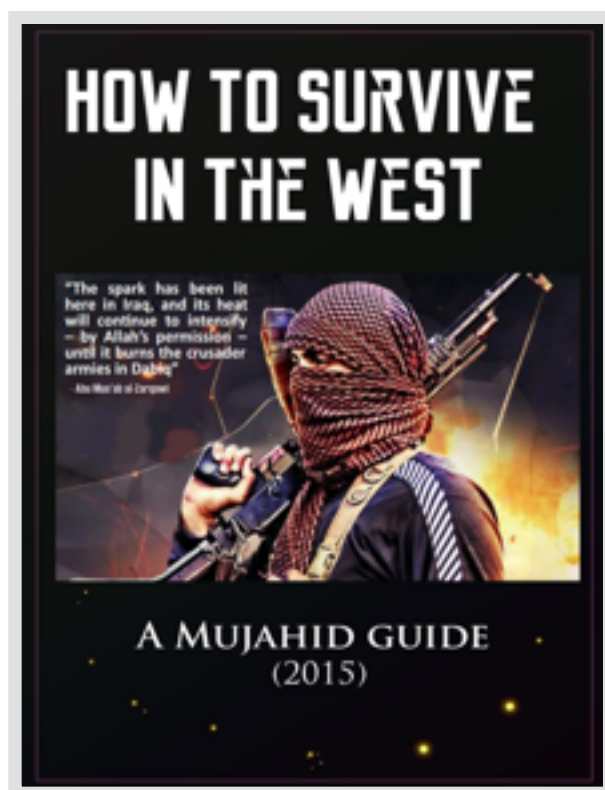
This testimony will conclude that while the VWP improved its processing with the addition of the ESTA processing of individual travelers, and this past September upgraded the online application further with a few somewhat helpful new data fields, equally important is assuring that the country criteria for VWP eligibility is adequate. We must make sure that we are doing all we can to enforce compliance with current criteria while considering new, additional requirements to be eligible, or retain the VWP designation. H.R. 158 that was voted on this week addresses many of

these issues, but it is worthwhile to conduct further analysis to place H.R. 158 in context, and expand beyond the confines of the bill. That is the intent of this testimony.

The Threat of Terrorist Travel

While the threat of terrorism to all those not adhering to ISIS' version of radical Islam is perhaps greater than ever in recent history, this is not the same as determining the threat of terrorist travel. I leave the former to counterterrorism experts. Here I will focus on analyzing the relevant and useful courses of action to enhance the VWP and our port of entry processing at home of VWP applicants.

From briefings received in July 2015 while speaking before the United Nations Security Council on *Curtailing Terrorist Travel*, there was a strong exchange on the issue of how terrorists are moving. Some intelligence authorities from European countries asserted that most of those seeking to join ISIS were using their own identities and passports, while others stated that false identities and use of counterfeit or stolen passports were the preferred means of travel. To be thorough, this testimony attempts to address both.



To be clear, because this hearing focuses on the Visa Waiver Program and not the entire border system, this testimony will not address those seeking clandestine entry between our ports of entry, a valuable alternative to those who either seek anonymity or are unable to use air travel for U.S. entry.

Manipulation of Identity a Key Element of ISIS Strategy

As ISIS expands its brand of terror and widens its net with its worldwide call for other terrorists to join them, there has been a rapid rise of the need for fighters to use fake passports to get out of their home countries undetected, travel into Syria, and then back out (if they survive) undetected to their designated locations to await instructions.³ In this case, ISIS has intended for over a year to use Syrian refugee flows as an additional means to hide themselves. Fake passports, aliases, and

³ International Business Times, "ISIS Terrorists Disguised as Refugees in Trojan Horse Plot Against Europe" (Oct. 2014) by Jack Moore at <http://www.ibtimes.co.uk/isis-terrorists-disguised-refugees-trojan-horse-plot-against-europe-1468701>.

bypassing border checkpoints are critical to success. Curtailing this terrorist travel is critical to stopping this rising tide and spread of terror,⁴ and some countries like Australia and the United Kingdom are placing stringent requirements or outright banning the return or exit of such fighters.

On March 28, 2015, ISIS published its *How to Survive in the West 2015*⁵ guide for ISIS recruits and members. Divided into chapters, its English translation [without grammatical corrections] begins with a section on the importance of changing and maintaining different personas depending on the audience. The section below is actually broken out in blue and red to highlight its importance as follows:

Changing your identity is important because you will come across different people in this struggle...

Identity change is so important that everything about you – your: (Alias name, Physical look, Voice, Meeting places, and even phone number.) are different to your real ones. This makes it extremely difficult for intelligence agencies to know who you really are if you always take security precautions before every meeting. If you can find people who can fake ID cards, that would be even better (and this may be possible if you can have contact with people in the dark underworld)."

These types of publications are proliferating on the dark net and intercepted by intelligence authorities. For example, this past spring ISIS also just published a 70-page manual in fluent English instructing ISIS members on how to best to "befriend, rob, and kill" from the inside of western society. The manual, according to an April 20, 2015 summary,⁶ begins with how to use online scams to steal money and raise funds, make bombs from household items, praises the Tsarnaev brothers for using a pressure cooker as their mode of attack, and then lays out how to conceal one's identity.

Along with funds and weapons, one last aspect the guide teaches is the methods of covert operation needed to keep the terrorist attack secret and launch it without attracting attention. The guide instructs terrorists not to wear Islamic clothing, take on a westernized name, and wear colored contact lenses to confuse witnesses. One covert tactic is to cover up terror acts. The guide's section on "secret white converts" explains how to manipulate Westerners to use them for alibis, and how to influence people in power.

⁴ While North America Director for an international border nonprofit, I organized and held an international security meeting in Washington D.C. Sept. 9-11, "Curtailing Terrorist Travel" that included the international community, the FBI, CBP, ICE and many others. It was quite informative on the level of threat and how to curtail it. The website is borderpolamerica.com

⁵ <http://www.blazingcatfur.ca/wp-content/uploads/2015/04/ISIS-How-to-survive-in-the-west.pdf>

⁶ [israelnationalnews.com](http://www.israelnationalnews.com), "ISIS Guide Teaches How to Befriend, Rob and Kill Westerners" by Dalit Halevy and Ari Yashar at <http://www.israelnationalnews.com/News/News.aspx/194292#.VmEf7OOfrGd>.

"Befriend good decent white people who are dissatisfied with their governments, be close to them and offer them support and guidance in life," it suggests. "If these people open up to you, you can decide if you want to tell them about Islam. You will tell them enough information to satisfy what service you require off them, but not more than that."

It is clear that an essential element of a successful terrorist portfolio, according to ISIS, is the ability to manipulate identity. Using fake IDs and taking on a different name while infiltrating western society to pretend to be a different individual, or with different intentions, is essential. ISIS is so well aware of the issue of identity and fraud that it has begun issuing its own ID cards to prevent its own "caliphate citizens" from using the fraud they advocate to manipulate the rest of the world. The image here was tweeted on April 17, 2015. According to Australian reporting,⁷ the IDs contain a "three-dimensional chip and anti-counterfeiting hologram and are being distributed among people living in IS controlled territories throughout Iraq and Syria."



Stolen VWP and American Passports

We know that legitimate U.S. passports are a high commodity on the black market, including for ISIS and those seeking travel out of Syria. Americans targeted for passport theft are then sold to individuals whose facial likeness best matches the buyer. The same is the case for those from VWP countries who have easy access to the U.S. as well, since the ESTA online application form itself is highly susceptible to fraud.



TV report by Dubai TV AlAan, "ISIS terrorists stealing passports from Westerners" (May 11, 2015) at <https://www.youtube.com/watch?v=1mkWW2DX6Mg>

⁷ [news.com.au](http://www.news.com.au/world/middle-east/images-have-emerged-on-twitter-of-new-identification-cards-for-those-under-is-rule/news-story/8d323b1e7bb126363803fb4067a876e4), "Images have emerged on Twitter of new identification cards for those under IS rule" (April 17, 2015) <http://www.news.com.au/world/middle-east/images-have-emerged-on-twitter-of-new-identification-cards-for-those-under-is-rule/news-story/8d323b1e7bb126363803fb4067a876e4>

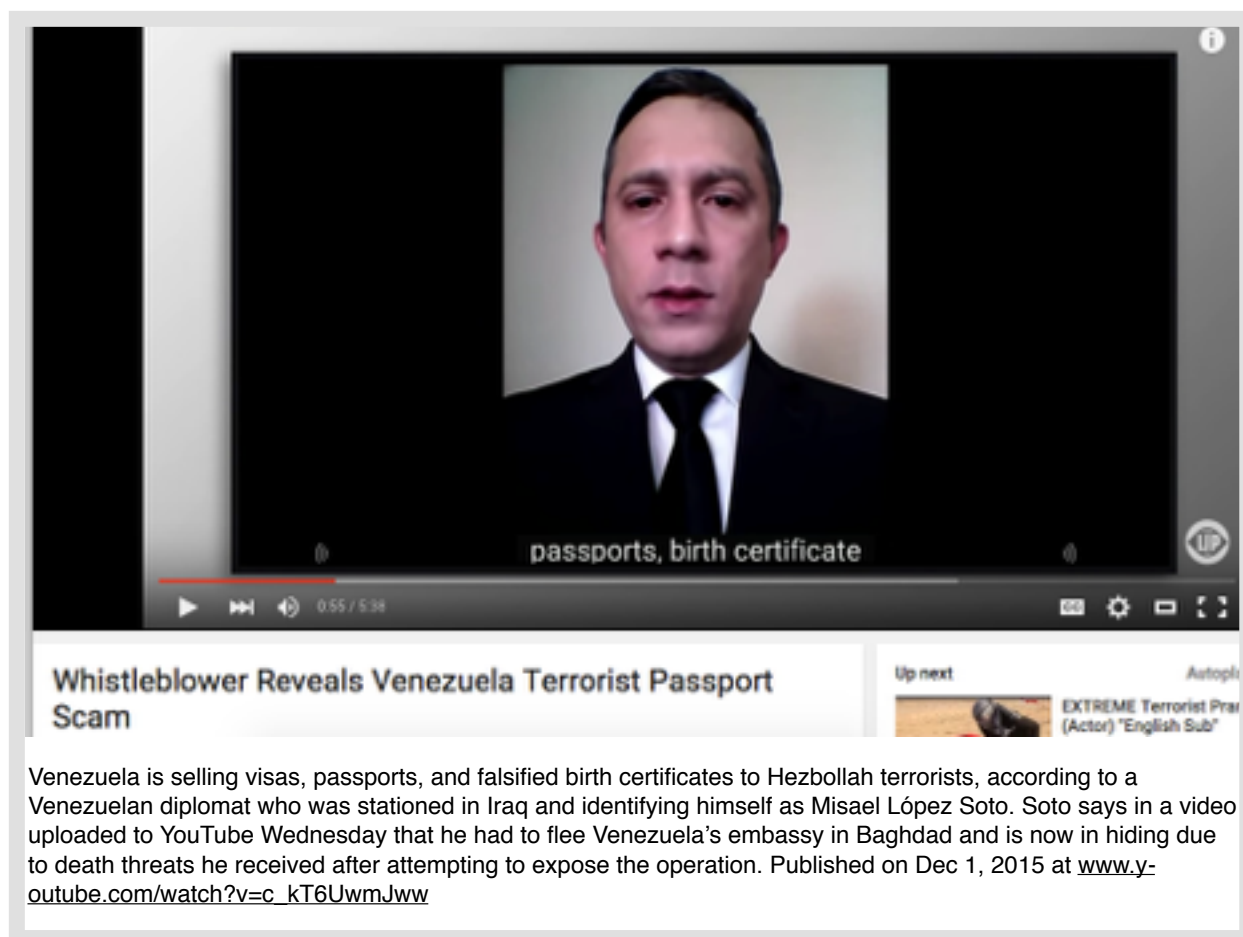
Fake Travel Document Production

Second best to legitimate travel documents are fake travel and breeder documents. Production of fake birth certificates, national ID cards and passports continue to have value for those to obscure their identities, including terrorists, as ISIS has made clear in its 2015 western survival guide. One of the November 13th Paris suicide terrorist attack bombers outside a soccer stadium had a Syrian passport that was not his own. As long as all countries are not requiring ePassports that hold biometrics verifiable by immigration authorities when travelers present for border crossing, fake document production will continue to facilitate travel. That will be the case for VWP countries too until machine-readable-only passports are eliminated as valid for border crossings and U.S. entry. Sites like this one abound, with fake document purveyors posting and seeking to outdo each other in the quality of their products:



Venezuela Producing Fake Documents for Terrorists. From the vantage point of fake document purveyors comes the case of *state sponsored* fake document purveyors. “According to a declassified CBSA [Canada Border Services Agency] report, Venezuelan authorities provided at least 173 passports, visas, and other documents to Islamic extremists seeking to slip into North

America unnoticed.”⁸ In a video was posted onto YouTube featuring a former diplomat from the Venezuelan embassy in Baghdad, in Spanish, this official blows the whistle on a scheme whereby employees at Venezuelan embassies throughout the Middle East create false immigration documents. According to this officer, between June 2014 and February 2015 he witnessed the sale of thousands of visas, passports, national identification cards, and birth certificates to thousands of Syrians, as well as some Iraqis, Palestinians, and Pakistanis. The man even confesses that embassy workers assisted known terrorists, specifically detailing a case involving a member of the terrorist group Hezbollah in Lebanon.



Syrian Refugee Crisis

With the Syrian refugee crisis creating preferential treatment for Syrian refugees, the crisis itself is itself creating a surge in blackmarket fake Syrian passports sought for those seeking refugee

⁸ Toronto Sun, "Passports: Rogue regimes, black markets for identity documents pose border security challenge" by Candice Malcolm (Nov. 28, 2015) at <http://www.torontosun.com/2015/11/27/bogus-passports-create-refugee-challenge>.

status in the U.S. and elsewhere in the West.⁹ Meanwhile, ISIS strategy to date has been to use the Syrian refugee crisis as cover to move its own people. On November 19, 2015 five Syrians were arrested in Honduras using stolen Greek passports in an attempt to make their way to the U.S. According to news reports, the men were going to move through northern Honduras, cross Guatemala and Mexico to illicitly cross the U.S. southwest border.

Fake Syrian passports, stolen VWP passports, and illegal entry are all vulnerabilities that the Syrian refugee crisis is fomenting. In addition, in a report by the House Homeland Security Committee on the Syrian refugee crisis published this month, the depth of evidence that ISIS is infiltrating the Syrian refugee camps is substantial. The report lists known terrorists now in Germany, Italy and Hungary and of course France, all known to have come in via the Syrian refugee flows.¹⁰

Recommendation 1: While taking into account the human factors involved with any refugee crisis, and the factors of persecution and genocide of particular groups within the Syrian population, **the U.S. must remain vigilant that ISIS will target the refugee population to seek legitimate immigration status to embed in the U.S.. Vetting is far from inhumane; it is a standard operating procedure that must be invoked categorically on any demographic where it is impossible to be assured that an individual is who they say they are, and has no nefarious information attached to them. Such vetting should be automatically ramped up when the threat is known to be high.**

There are many ways to maximize adequate vetting and minimize risk which include but are not limited to background investigations, forensic document analysis, extensive overseas interviews and biometrics as well as choosing which demographics pose the least risk. All must be examined. However, in a population where there is substantial information that terrorists known to be overtly threatening the U.S. are infiltrating, it is imperative that all factors are considered prior to a final Syrian refugee policy determination.

Conducting a Visa Waiver Program Assessment

While it is highly encouraging that the President is requiring DHS and the State Department to jointly conduct a review of “identifying any countries that are deficient in key areas of coopera-

⁹ Toronto Sun, “Passports: Rogue regimes, black markets for identity documents pose border security challenge” by Candice Malcolm (Nov. 28, 2015) at <http://www.torontosun.com/2015/11/27/bogus-passports-create-refugee-challenge>.

¹⁰ House Homeland Security Committee, “Syrian Refugee Flows Security Risks and Counterterrorism Challenges: Preliminary Findings of a House Homeland Security Committee Review” (Nov. 2015) at https://homeland.house.gov/wp-content/uploads/2015/11/HomelandSecurityCommittee_Syrian_Refugee_Report.pdf.

tion,”¹¹ Congress has both an obligation and a right to oversee the Visa Waiver Program and insist upon access to the VWP compliance reports the White House has asked for in its Fact Sheet.

In its November 30, 2015 VWP Fact Sheet announcement, the White House verified that many nations in the VWP program are not able to adequately share terrorist information or are not fully cooperating with information-sharing. It is encouraging that both the White House and the House are seeking corrective action to assure information-sharing on terrorists, those nations who are having difficulty doing so as well as INTERPOL, and are willing to provide incentives or penalties where appropriate. Also of value is the Fact Sheet statement that the President is seeking a full report within 60 days to “identify possible pilot programs designed to assess the collection and use of biometrics (fingerprints and/or photographs) in the VWP to effectively increase security.”¹²

Recommendation 2: Congress should continue to conduct its own assessment of the VWP in parallel to the White House to assure that enhancements requested by the administration are adequate to curtail terrorist travel, and do so annually.

Enhancing Visa Waiver Program Requirements

In addition to the requirement for a less than three percent visa refusal rate to be eligible for VWP designation, the State Department website¹³ lists the following criteria for eligibility for a VWP designation is discretionary and includes:

- enhanced law enforcement and security-related data sharing with the United States
- issuing ePassports (program still accepts machine-readable passports issued prior to 2006)
- having a visitor (B) visa refusal rate of less than three percent
- timely reporting of both blank and issued lost and stolen passports
- maintenance of high counterterrorism, law enforcement, border control, and document security standards
- requiring its residents to fill out an online authorization form, ESTA, before traveling to the United States
- increased airport security requirements

The House Homeland Security Final Foreign Fighter Task Force released in September 2015 states that “The level of terrorist travel we are seeing today is without precedent. The numbers are now so high that Western governments are becoming increasingly worried they will be un-

¹¹ White House, “FACT SHEET: Visa Waiver Program Enhancements” (Nov. 30, 2015) at <https://www.whitehouse.gov/the-press-office/2015/11/30/fact-sheet-visa-waiver-program-enhancements>.

¹² <https://www.whitehouse.gov/the-press-office/2015/11/30/fact-sheet-visa-waiver-program-enhancements>

¹³ <http://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>

able to prevent violent extremists from entering their countries undetected.”¹⁴ The report states that three of the top ten countries producing the 25,000 foreign fighters (that number is now 30,000) known to have traveled to ISIS controlled territories are VWP countries. In September, France was fourth with 1,550 of its citizens having gone to ISIS and Germany and the United Kingdom are tied for eighth with 700.

For every one of these individuals from VWP countries, there is not only the possibility of returning home to recruit others or commit terrorist attacks as seen in Paris this past month, but it is possible that with access to a lost or stolen valid machine-readable passport issued prior to 2006, they will be able to fraudulently enter the U.S. relatively easily based on a false name and document if they have never attempted U.S. entry before and our terrorist or foreign national databases do not currently hold their fingerprints. More alarming is that since the U.S. does not read the ePassport chip currently, it is possible to abuse the ePassport system as well.

However, much of the world does understand the value of a biographic + biometric border system. More than 80 countries now have ePassports whose embedded chips contain information that replicate the MRZ on the passport and add in at least a photo that can be retrieved using facial recognition software. I have been told that 34 of the VWP countries have added both face and fingerprints to their passport e-chips.

While ePassports are flourishing, the world is catching up with actually reading these chips to enhance security. The U.S. still does not systematically read the chips, but nor can they. In fact, a 2014 European Commission Schengen Final Smart Border Technical Report (not available to the public) states that the European countries within Schengen system cannot read the fingerprints on the e-chips.

Recommendation 3: All VWP countries should be required to replace all valid machine-readable passports with ePassports immediately to reduce the risk of fraud associated with lost and stolen passports and the priority use of such passports for terrorist travel. Such ePassports should include the bio page contents and facial image as they do today (ironically, U.S. facial image quality is considered the worst in the world), as well as fingerprints and the visa itself.

Recommendation 4: All VWP countries should be required to provide the PKI to open and read their face and fingerprint images or templates on the chip to authenticate the passport and verify the identity of the traveler.

Recommendation 5: All VWP countries should be required to contribute to, and use, INTERPOL’s lost and stolen passport database, as well as its foreign fighter database, in a timely manner.

¹⁴ House Homeland Security Committee, “Foreign Fighter Final Task Force Report” (Sept. 29, 2015) at <https://homeland.house.gov/wp-content/uploads/2015/09/TaskForceFinalReport.pdf>.

Enhancing the Electronic System for Travel Authorization (ESTA)

The Electronic System for Travel Authorization (ESTA) is a statutory requirement mandated by the Implementing Recommendations of the 9/11 Commission Act of 2007¹⁵ for participating VWP tourist or short term business travelers. ESTA is an automated, biographic system that makes an initial determination of visitor eligibility visitors without a visa to the United States, where a Customs and Border Protection (CBP) inspector will make an admission determination upon arrival, usually at an air port of entry. ESTA applications for all travelers, including babies, must be submitted prior to travel, and failure to comply with the ESTA process may result in denial of check-in on the day of travel although it is still possible to attain an ESTA approval same day. Canadians and Mexicans arriving at U.S. land ports of entry are exempted from ESTA.¹⁶

The fee for the ESTA application is \$14, with \$10 going to the travel industry, and the remaining to CBP.

Recommendation 6: Authorize an increase in ESTA fees for the purpose of establishing CBP Preclearance at designated VWP airports. For example, a \$6 increase in the current \$14 paid by VWP travelers for submitting the online ESTA application today could be increased to a \$20 fee. (An additional \$6 is not much in relation to the cost of travel itself). However, this \$6 increase applied to the average of 20 million VWP travelers per year could raise an additional \$120 million/year in additional revenue, and do so in a way that would minimize the impact on appropriation requests. (See Recommendation #9 on Preclearance as a requirement for VWP eligibility.)

By way of comparison, visa integrity processing protects the U.S. from foreign nationals who threaten public health and safety or national security, while at the same time welcome legitimate foreign nationals who bolster the U.S. economy and foster international exchanges. Balancing these dual, and some would say competing, missions is an ongoing challenge.

More specifically, the non-immigrant visa process¹⁷ for non-VWP countries includes biometric identity verification, an interview, robust database checks and opportunities for greater investigation. In short, the non-immigrant visa process is significantly more secure than the ESTA process. More specifically, processing of visas for tourist or short term business non-immigrants usually includes the following processing to which ESTA applicants are not subjected:

¹⁵ Pub.L. 110-53 at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/html/PLAW-110publ53.htm>.

¹⁶ For more on ESTA processing see Lisa Seghetti, Congressional Research Service “Border Security: Immigration Inspections at Ports of Entry” (Jan. 26, 2015) <https://www.fas.org/sgp/crs/homesec/R43356.pdf>.

¹⁷ Visas are processing by the Department of State Consular Affairs under the auspices of over 20+ statutes.

Non-Immigrant Visa Process Requirements not Required by VWP ESTA Travelers

Personal interviews are required for all nonimmigrant visas. 22 C.F.R. § 42.62 However, in defined circumstances waivers may be granted to children under age 14, persons 79 years or older, diplomats and representatives of international organizations, aliens who are renewing a visa they obtained within the prior 12 months, and individual cases for whom a waiver is warranted for national security or unusual circumstances. 22 C.F.R. § 41.102. The ESTA process does require in-person interviews for those whose application produces a hit in US terrorist watch-list.

Physical and/or mental examination [Sec. 212(a) inadmissibility grounds]

Consular Consolidated Database screening [biographic and biometric database] including screening of 143 million visa applications dating back pre 9/11 [includes 75 million face photos, digital images of visa applications since 2001, and 10 fingerprint scans]

Capture and check of 10 fingerprints in DHS OBIM IDENT system for prior immigration identity information and in FBI NGI for criminal/terrorist check.

Background check in Consular Lookout and Support System (CLASS), uses name searching algorithms to match names to potential derogatory information including prior visa issuance, denials [info from DHS, FBI, DEA re individuals who may pose a threat]

Security Advisory Opinions (replaced by Kingfisher Expansion) whereby 100 percent of all visa applications examined to identify any connections to terrorism by comparing applicant data to the classified data holding in FBI Terrorist Identities Datamart Environment (TIDE) database [reducing SAOs by 80%] enabling DHS, FBI, Terrorist Screening Center to proactively respond in coordinated manner. Nonimmigrants denied visas based on terrorist grounds of inadmissibility were close to 1200 in 2014.

Kingfisher real time review of issued visas based on emerging threats

Visa revocation authority

ICE Office of International Affairs expert advice and investigation onsite via DHS Visa Security Units authorized to conduct terrorist investigations and forensic document examination; these deployed at high risk diplomatic posts

Visa issuance includes biometric identifiers (e.g., scans of the right and left index fingers) in addition to the digitized photograph that is linked to OBIM's IDENT for verification upon admission at POEs

This table was derived from CRS Report R43589 "Immigration: Visa Security Policies" (Nov. 18, 2015) by Ruth Wasem at <https://www.fas.org/sgp/crs/homesec/R43589.pdf> and CRS Report RL32564 "Immigration: Terrorist Grounds for Exclusion and Removal of Aliens" (Jan. 12, 2010) by Michael John Garcia and Ruth Wasem at <https://www.fas.org/sgp/crs/homesec/RL32564.pdf>.

Recommendation 7: Conduct a full assessment of ESTA vetting versus non-immigrant visa vetting, and determine what elements of consular processing both essential to national security and feasible to include in the ESTA process.

These include biometric identity verification, current interview requirements, access to robust database checks within the U.S. and with our VWP country partners, opportunities and procedures to deter fraud in the online ESTA application process and opportunities for greater terrorist and forensic investigation offered by ICE's Visa Security Units and State Department's Diplomatic Service. For example, there are only

19 existing Visa Security Units while there are 225 U.S. visa-issuing posts worldwide. With VWP countries such as France, Germany and the United Kingdom among the top ten countries producing foreign fighters, semi-permanent VSUs in VWP designee countries should be considered.

Recommendation 8: Consider establishing Visa Security Units in VWP countries known to have a high concentration of ISIS foreign fighters, at least for the duration of the assessed threat.

Enhancing Preclearance

Today CBP has 15 Preclearance offices in Canada, Ireland, and the Caribbean. These offices were set up under The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) in response to the February 1993 terrorist attack on the World Trade Center. The lead perpetrator, Ramsey Yousef (nephew of Khalid Sheikh Mohamed who later was integral in operationalizing the 9/11 attacks), had boarded a plane from Europe with a fake European passport, threw that passport in the plane toilet, then claimed asylum upon landing and was paroled into the U.S. In a post-1993 World Trade Center bombing atmosphere, the purpose of Preclearance was to keep inadmissible terrorist aliens from departing for the U.S. as Yousef had done and then claiming asylum upon arrival.

IIRIRA required the implementation of legacy Immigration and Naturalization Service pre-inspection (now Preclearance) programs at select airports overseas. The 9/11 Commission supported this program, and its first statutory vehicle for its recommendations, The Intelligence Reform and Terrorist Prevention Act of 2004, required DHS to meet a 15 foreign airport minimum and authorized up to 25 airports.

Recommendation 9: Require every VWP member to have in place an operational CBP Preclearance program at its highest volume U.S.-bound international airports or other relevant ports. CBP officers should have full authority to conduct full inspections of travelers and their luggage, collect biometrics and verify identity, and refuse clearance if necessary. This is the most logical operational means of collecting biometrics and verifying identity within the current ESTA program.

CBP is currently in negotiations with seven other VWP participating countries: Belgium, Japan, Norway, Netherlands, Spain, Sweden, and the United Kingdom. This work should be encouraged and supported with appropriate authorization and appropriation and/or ESTA fee increase. Priority should be given to those nations assessed at being most at risk for terrorist travel.

Curtailing Use of Citizenship for Sale for Visa-Free Entry to the United States¹⁸

In a BBC New York article from June 2014 entitled “Where is the cheapest place to buy citizenship?” it estimates that several thousand people a year spend a total of \$1.9 billion dollars to acquire second and third passports. The largest buyers are those from China, Russia and the Middle East. Countries struggling to make ends meet have noticed the interest and some are providing citizenship with no or minimal residency requirements for large sums of cash. Some of these countries happen to be our island neighbors whose citizens are not required to obtain a visa for short visits to the U.S. and include St. Kitts and Nevis (the first country to do so in 1984), Antigua and Barbuda, Dominica, and Grenada. These island offerings range from \$100,000 by Dominica to \$400,000 in Antigua and Barbuda. St. Kitts is the no. 1 selling “second passport” in the world, and in 2011 had to stop selling to Iranians due to U.S. pressure, who were buying to bypass U.S. sanctions.

Others offering passports for large sums of “investment cash” for minimal residency requirements that can lead to citizenship are VWP countries. Australia, Austria, Belgium, Bulgaria, Cyprus, Hungary, Malta, the Netherlands, Portugal, Singapore, Spain, United Kingdom and the United States all offer such programs. Cyprus and Malta grant passport access with a simple investment; the other countries require a term of residency, usually in excess of \$1 million. The Austrian passport is considered of extreme high value, enabling its buyer access to 171 nations in the world visa-free, including the United States.

Recommendation 10: Make ineligible for the VWP program any country that place citizenship without residency for sale.

Recommendation 11: For those that offer second passports after minimal residency, require that the appropriate country authority notify the U.S. of any individuals who currently “bought” access to their VWP passport, and the particulars of that passport. Such individuals must be notified that they are exempt from VWP status in regard to the U.S. and thus must apply for visas for all U.S. travel.

Biometrics in Support of Identity Intelligence Operations

Assuring that foreign national identities are biometrically vetted across the border system against all intelligence data available to our government, including those identities acquired by the intelligence community, Department of Defense, the FBI and the DHS Office of Identity Management IDENT system, is critical. This includes persons unknown to the system - whether Special Interest Aliens who cross illegally between the ports of entry, or refugees, or travelers. There is a pilot ongoing now in that regard, the Identity Intelligence (I2B) Pilot. Its purpose is to “assist the

¹⁸ BBC, New York “Where is the cheapest place to buy citizenship?” by Kim Gittleson (June 4, 2014) at <http://www.bbc.com/news/business-27674135> and “10 Best Second Passports and Citizenship by Investment Programs” by Christian Reeves (August 12, 2015) at <http://premieroffshore.com/10-best-second-passports-and-citizenship-by-investment-programs/>.

HUNGARIAN INVESTMENT IMMIGRATION PROGRAM [sic]

Europe's newest and most attractive investment immigration program presents an exceptional opportunity for getting PR in an EU and Schengen member state, and live, do business, or travel freely to and within Europe. In exchange for a safe and state-guaranteed investment of EUR 300,000 to be returned at the end of the 5-year term, applicants of all nationalities can obtain permanent resident permits with only a single visit to Hungary (and a 60,000-euro processing fee). Invest for 5-years – and get lifetime residency for the entire family in a matter of weeks!

....

IMPORTANT! Currently the Hungarian Immigration Office is experiencing delays due to the high popularity of the program.

The Hungarian residency bond program

Hungary's immigrant investor program (also known as "golden visa") has the following benefits in comparison with other similar programs:

- the cheapest government-backed, risk-free investment offer in Europe
- fast: get residency in just a few weeks
- only one visit required to Hungary and no obligatory stay afterwards
- investment covers the whole family (spouse and any children who are under 18 at the completion of the application process)
- no minimum education or health check
- no country of origin restrictions

Residence permit in Hungary – benefits:

- visa-free travel into and within the Schengen zone
- no minimum stay in Hungary
- the possibility to live and work in a safe and central European location
- lifetime residency in exchange for just 5 years' financial commitment

Is it possible to get citizenship by investment in Hungary?

Yes and no. Currently, you need to have permanent residency in Hungary for several years before you can apply for citizenship and get a Hungarian passport. However, there is a modification to the Hungarian immigration law in the works that would speed up this process for participants of the investment immigration program. Speak to one of our experts and get the latest updates directly!

Online advertisement at <http://helpers.hu/services/immigration/investment-program/>

Department of Homeland Security (DHS) with determining whether this modality can augment existing biometric screenings for Syrian refugee applicants and also identify a threat-nexus for a subset of non-U.S. persons who attempt illegal entry.”¹⁹ More specifically, the pilot, according to the accompanying DHS privacy assessment, seeks to (1) identify unknown terrorists seeking refugee status; (2) provide actionable information on unknown persons who have attempted illegal entry; and (3) inform DHS on how interoperable, accurate and thus useful intelligence community biometric information is to their border operations.

Recommendation 12: The effort to create a concerted biometric identity vetting for foreign nationals that integrates foreign national data and data acquired by the intelligence community should be supported and appropriately expanded to all recommended classes of foreign nationals as deemed appropriate to the threat of terrorist travel.

¹⁹ <http://www.dhs.gov/publication/dhsallpia-054-identity-intelligence-biometrics-i2b-pilot>

Biometric Exit

At least 32 countries have biometric entry or entry/exit border control. The U.S. only has biometric entry control and even today, a “biographic-only” approach to exit continues, at least for now. Today’s immigration exit system requires advance passenger data and name records of foreign nationals who have checked in for departure, which are then logged into the immigration arrival-departure database. While our current biographic-only system is the best it can be, operating in real time between airlines and DHS, a biographic-only system will always be unable to confirm identity. This is the case with the online ESTA application as well. The only way to confirm identity is through biometric means such as facial recognition software, iris scans, or fingerprints. In addition, a biometric solution is the only solution that provides the benefits for government, the traveler, the airport, and the airline (or, in the case of the sea ports, the sea carrier).

The Problem with Names. A serious issue that remains unsolved more than a decade after 9/11 is misspelled or inaccurately recorded names that are the foundation of a biographic-only system. The 19 9/11 hijackers collectively had over 300 spellings of their names. Boston Marathon bomber Tamerlan Tsarnaev’s name was misspelled on a manifest list of a flight to Russia, meaning that the FBI did not have the benefit of an important lead in investigating his terrorist ties. While that particular problem has been fixed, simply requiring a “next generation” version of such software will not solve the problem. Merely enhancing software that picks up name anomalies can never be sufficient because thousands of varieties of uncommon names from all over the world are spelled differently in English or even purposefully misspelled. Nor does such software pick up complete biographic identity changes or outright fraud, a much more nefarious problem that biometrics solves in seconds.

Identity verification produces actionable information. When an individual purchases a plane or boat cruise ticket, the federal government (indeed, most all governments) require advance passenger identity information, including Passenger Name Records (PNR) taken by airlines. This information is then turned over to government authorities for risk assessments. Upon arrival at the airport for departure, the identity associated with the passenger must be verified. The seconds it would take to process a biometric solution is essential to assuring that the name matches the individual, eliminating nearly all varieties of fraud.

Recommendation 13: VWP countries should be required to implement a biometric entry/exit system. Those within Schengen should assure that exterior borders - vehicular, air, rail and sea - have an integrated person-centric biometric entry exit system for Schengen residents while interior borders both record travel and biometrically verify the traveler. Such information should be available upon request to U.S. authorities in terrorism investigations on an as needed basis.

Improvements at U.S. Ports of Entry

There are 327 official ports of entry in the United States. VWP's value and security is at least in part determined by ports of entry processing, mostly air. It is worth noting, however, that an ISIS or other terrorist who fails at obtaining a VWP passport, a visa, or refugee status may well seek support of a human trafficker willing to help illegally cross our 6,000 miles of physical border. Thus, it is imperative that CBP have the best tools available to identify individuals seeking to hide their true identity, or simply become anonymous, no matter where that individual is encountered. In regard to the VWP, however, the greatest immediate concern remains strengthening processing at air ports of entry and implementing biometric exit capabilities.

In 2007, the 9/11 Commission Implementation Act amended certain sections of the Immigration and Naturalization Act (8 U.S.C. 1187) pertaining to the control of foreign nationals' travel. The law reiterated the need for exit data and required exit data collection apply to all foreign nationals entering under the Visa Waiver Program. The amendment in section 217(h) mandates that air carriers be required to "collect and electronically transmit" passenger "arrival and departure" data to "the automated entry and exit control system" developed by the federal government.

The amendment to section 217(i) mandates that "the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving from the United States of every alien participating in the visa waiver program" that

(1) shall--(A) match biometric information of the alien against relevant watch lists and immigration information; and

(B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

The issue with overstay remains a valid one. As recently as 2013, even after a scathing 2011 GAO report that stated that overstay had not been reported on since 1994 and there were 1.6 million unmatched records of individuals who the U.S. did not know whether they were still in the U.S., or had departed, in a 2013 update to that report the GAO stated:

As of April 2013, DHS continues to maintain more than 1 million unmatched arrival records in ADIS [Arrival Departure Information System]. GAO's preliminary analysis identified nonimmigrants traveling to the United States on a tourist visa constitute 44 percent of unmatched arrival records, while tourists admitted under a visa waiver constitute 43 percent. The remaining records include various types of other nonimmigrants, such as those traveling on temporary worker visas.²⁰

²⁰ GAO-13-602T Report: IMMIGRATION ENFORCEMENT: Preliminary Observations on DHS's Overstay Enforcement Efforts by Rebecca Gambler (May 21, 2013) at <http://www.gao.gov/products/GAO-13-602T>

The issue of VWP tourist overstay (which should be same individuals who are filing ESTA applications to gain admission) remains. Implementation of a biometric exit at all ports of entry, with initial emphasis on air ports of entry, is now heightened by the terrorist threat. Implementation is necessary sooner than ever to provide (1) the adequate data to know who is here and who is not, and (2) enable the next step of determining who is a security risk and who is not. In full recognition that CBP is working diligently to improve both air entry and seeks to test air exit capabilities (that is the goal) in 2016, Congress can remain helpful to CBP by mandating requirements for improved processing that will eliminate the need for subsequent CBP justifications.

For example, CBP conducted a successful facial comparison pilot earlier in 2015 at Dulles International Airport on U.S. citizens that simply compared the U.S. passport face image to the live person seeking admission. The purpose of the pilot, in part, was to assure against the known trafficking in U.S. passports that enables foreign nationals to pose as U.S. citizens and thereby avoid the ten fingerprint capture that is mandatory for all foreign nationals, with few exceptions. Such facial comparison between the passport and traveler seeking admission is essential. While the pilot is being expanded to other airports currently, CBP does not have a mandate to operationalize this essential border security check. Congress should do so.

Recommendation 14: Support a deployment of biometric exit at all air and land pedestrian ports of entry as soon as possible as required under current law.

Recommendation 15: Require all U.S. ports of entry to have the capability to conduct one to one facial recognition check against stored digital photo and fingerprints in ePassports for all travelers.

Recommendation 16: Provide appropriate support modernization of the DHS Office of Biometric Identity Management so that the program can efficiently and accurately process not just fingerprints as is the current practice, but implement multi-modal biometric processing to include facial images (collected at U.S. ports of entry, iris images (collected by the Border Patrol and some consular offices), with the ability to expand to voice recognition and other biometric modes over time as necessary.

Improvements in U.S. Interagency Coordination

In the House Homeland Security Committee's Foreign Terrorist Travel Task Force Report of September 2015, the Committee outlined the continual failure of any administration since 2004 to establish at the DHS a Terrorist Travel Program Office, a key border recommendation from the *9/11 Commission Final Report*. In addition, the report chronicles the failure of the "Department of State and Department of Homeland Security to prepare a strategic plan to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, or use of visas, passports and other documents used to gain entry to the

United States. This strategic plan is to emphasize individuals and organizations that may have links to domestic terrorist organizations or foreign terrorist organizations.”²¹

The report further found that dozens of government projects exist to combat terrorist travel, most operating independently and none within an overarching framework that assesses the threat nor coordinates a government-wide delineation of roles and responsibilities. The following recommendations are mostly in line with Task Force recommendations.

***Recommendation 17:* DHS should lead the standup Terrorist Travel Program Office in conjunction with the Department of State, FBI, relevant members of the intelligence community.** The office could be overseen by the National Security Council to assure its status and relevance as an ongoing federal government national security requirement.

***Recommendation 18:* This Terrorist Travel Program Office should conduct a full audit of current terrorist travel preventive actions and produce a strategy to combat terrorist travel both domestically and internationally.**

²¹ House Homeland Security Committee, “Foreign Fighter Final Task Force Report” (Sept. 29, 2015) at <https://homeland.house.gov/wp-content/uploads/2015/09/TaskForceFinalReport.pdf>.

JANICE KEPHART

Janice Kephart is a former 9/11 Commission border counsel responsible for significant analysis and drafting of the 9/11 Commission Final Report border recommendations and attending staff monograph, 9/11 and Terrorist Travel. Janice has since dedicated her career to implementing 9/11 Commission recommendations, including those on use of biometrics at borders. Today she serves as Homeland Security Solutions Director at a leading biometric company, MorphoTrak.

An attorney by trade, Ms. Kephart has served as staff to the Senate Judiciary Committee twice, most recently as Special Counsel during the Senate debate on immigration reform in 2013. In conjunction with her oversight roles, she had two laws she directly supported passed by unanimous consent in both the House and Senate, one making digital identity theft a federal crime and the other the millenium information-sharing cyber security bill.

She has published numerous reports on terrorist travel - a term she coined while on the 9/11 Commission - and is considered a leading expert in the nexus between border security and national security, as well as issues regarding identity. Ms. Kephart ghost wrote a book on the extent of foreign terrorist activity in the US after 9/11 and led national security at a DC think tank for five years. Her public and media appearances are in the hundreds.

Ms. Kephart is founder and former CEO of SIBA, the Secure Identity & Biometrics Association. Last year, she also was appointed Director of the Americas for a border nonprofit and held a high level terrorist travel meeting here in Washington DC Sept. 9-11. This will mark Ms. Kephart's 19th appearance before Congress.

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
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Congress of the United States
House of Representatives

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November 25, 2015

Ms. Janice Kephart
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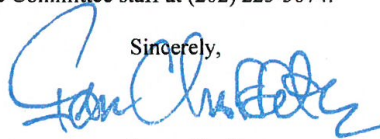
Dear Ms. Kephart:

The Subcommittee on National Security and the Subcommittee on Health Care, Benefits and Administrative Rules of the Committee on Oversight and Government Reform hereby requests your testimony at a joint hearing on Wednesday, December 10, 2015, at 9:00 a.m. in room 2154 of the Rayburn House Office Building. The hearing is titled, "Terrorism and the Visa Waiver Program."

This hearing will address vulnerabilities identified by recent terrorist attacks in Paris, and will assess whether the Visa Waiver Program (VWP) can be exploited by foreign nationals who may pose a national security risk to the United States.

Instructions for witnesses appearing before the Committee are contained in the enclosed Witness Instruction Sheet. In particular, please note the procedures for submitting written testimony at least two business days prior to the hearing. We ask that you please contact the Committee as soon as possible, to confirm your attendance. If you have any questions, please contact Dimple Shah of the Committee staff at (202) 225-5074.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
The Honorable Ron DeSantis
The Honorable Jim Jordan
The Honorable Stephen F. Lynch
The Honorable Matt Cartwright

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

None.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

No. However, to be clear, I am testifying in personal capacity although I am with a leading biometric company, MorphoTrak, as of Sept. 2015.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None.

I certify that the above information is true and correct.

Signature:

Janie L. Krolm

Date:

Dec. 8, 2015