

**WELCOMING BUSINESS TRAVELERS AND TOURISTS  
TO AMERICA ACT OF 2011**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
IMMIGRATION POLICY AND ENFORCEMENT  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
SECOND SESSION

ON

**H.R. 3039**

MAY 17, 2012

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# CONTENTS

MAY 17, 2012

	Page
THE BILL	
H.R. 3039, the "Welcoming Business Travelers and Tourists to America Act of 2011" .....	3
OPENING STATEMENTS	
The Honorable Elton Gallegly, a Representative in Congress from the State of California, and Chairman, Subcommittee on Immigration Policy and Enforcement .....	1
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement .....	12
WITNESSES	
The Honorable Joe Heck, a Representative in Congress from the State of Nevada	
Oral Testimony .....	13
Prepared Statement .....	16
Janice L. Kephart, Director of National Security Policy, Center for Immigration Studies	
Oral Testimony .....	28
Prepared Statement .....	31
Jessica Zuckerman, Research Associate, Allison Center for Foreign Policy Studies, The Heritage Foundation	
Oral Testimony .....	43
Prepared Statement .....	45
Edward Allen, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations	
Oral Testimony .....	50
Prepared Statement .....	52
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
Response from Jessica Zuckerman, Research Associate, Allison Center for Foreign Policy Studies, The Heritage Foundation .....	60
APPENDIX	
MATERIAL SUBMITTED FOR THE HEARING RECORD	
Prepared Statement of the Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary .....	63



## **WELCOMING BUSINESS TRAVELERS AND TOURISTS TO AMERICA ACT OF 2011**

**THURSDAY, MAY 17, 2012**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION  
POLICY AND ENFORCEMENT,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:08 p.m., in room 2141, Rayburn House Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, King, and Lofgren.

Staff Present: (Majority) Andrea Loving, Counsel; Marian White, Clerk; and (Minority) Gary Merson, Counsel.

Mr. GALLEGLY. I call the Subcommittee to order. Today we are conducting a hearing on H.R. 3039, the “Welcoming Business Travelers and Tourists to America Act of 2011.”

The legislation raises important issues, including how we balance our Nation’s security and counterterrorism efforts with our desire to encourage increased tourism and more visitors from foreign countries.

H.R. 3039 requires the Secretary of State to process visas for Chinese, Indians and Brazilians within 12 days. The bill also requires the Secretary to conduct a pilot program using videoconferencing to interview visa applicants. Supporters believe videoconferencing should be used in remote areas far from a U.S. consulate office.

The bill also allows the Secretary to increase the period of visa validity for individuals from a certain country regardless of the reciprocal visa validity period for Americans traveling to that country.

I am looking forward to the hearing from each of our witnesses and getting their assessment of these provisions contained in H.R. 3039.

As we learned from past terrorist attacks in the United States or from other plots that have been foiled, we can never let down our guard in terms of preventing the entry of terrorists. And our visa processing system plays a critical role in keeping terrorists out of the country. For these reasons, I am eager to better understand how this legislation will impact the screening of potential terrorists by the State Department and other governmental agencies, while also ensuring that law abiding visitors can come to America for tourism and business.

I appreciate the hard work from the gentleman from Nevada, Congressman Heck, on H.R. 3039 and look forward to his testimony, and now I would yield to the gentlelady from California, the Ranking Member Ms. Lofgren.

[The bill, H.R. 3039, follows:]

112TH CONGRESS  
1ST SESSION

# H. R. 3039

To promote job creation in the United States by directing the Secretary of State to address inefficiencies in the visa processing system that discourage overseas business and leisure travel to the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 2011

Mr. HECK (for himself, Mr. MACK, Mr. AMODEI, Ms. BERKLEY, Mr. WILSON of South Carolina, and Mr. POSEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To promote job creation in the United States by directing the Secretary of State to address inefficiencies in the visa processing system that discourage overseas business and leisure travel to the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Welcoming Business  
5 Travelers and Tourists to America Act of 2011”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) International travel to the United States  
4 generates more than \$134 billion annually in exports  
5 and supports 1.8 million United States jobs.

6 (2) Each overseas visitor spends an average of  
7 \$4,000 at hotels, restaurants, and other United  
8 States businesses.

9 (3) As an industry sector, travel and tourism  
10 creates one of the country's only balance-of-trade  
11 surpluses, valued at \$31.7 billion in 2010.

12 (4) Global travel spending is expected to double  
13 over the next decade, reaching \$2.1 trillion.

14 (5) While world-wide long-haul international  
15 travel grew by 40 percent between 2000 and 2010,  
16 the United States market share of long-haul travel  
17 dropped from 17 percent in 2000 to 12 percent dur-  
18 ing the same timeframe.

19 (6) Over that decade, the United States lost the  
20 opportunity to welcome 78 million visitors and gen-  
21 erate \$606 billion in direct and downstream spend-  
22 ing.

23 (7) The volume of travel to the United States,  
24 as compared with other global destinations, is par-  
25 ticularly uncompetitive from emerging markets with  
26 fast growing demand.

1           (8) Lagging overseas arrivals result in large  
2 part from a United States visa application process  
3 that is perceived by potential business and leisure  
4 travelers as inefficient, time consuming, and inacces-  
5 sible.

6           (9) The Government Accountability Office has  
7 reported that the Department of State's efforts to  
8 address staffing, facilities, and other consular con-  
9 straints are generally temporary, unsustainable, and  
10 insufficient to meet expected increases in demand  
11 for nonimmigrant visa applications.

12           (10) Instituting new procedures to make the  
13 visa process more efficient without reducing security  
14 protocols and developing longer-term plans that ac-  
15 curately meet increasing workload demand can sys-  
16 temically address visa application backlogs and inef-  
17 ficiencies.

18           (11) By regaining 17 percent of the long-haul  
19 travel market in 2015 and sustaining it through  
20 2020, the United States can attract 98 million more  
21 visitors, create 1.3 million additional jobs, and gen-  
22 erate \$859 billion in United States economic output  
23 by 2020.

24           (12) Increased international travel to the  
25 United States also achieves United States foreign

1 policy objectives by introducing foreign visitors the  
2 United States and to Americans, who are the United  
3 States best goodwill ambassadors.

4 (13) The Department of State recently imple-  
5 mented some reforms to accelerate visa application  
6 processing in China and Brazil, laying the founda-  
7 tion to increase capacity, but still requires additional  
8 reforms to meet demand on a permanent, systemic  
9 basis.

10 (14) Removing the self-imposed barriers in the  
11 visa application process that currently discourage in-  
12 bound international travel to the United States  
13 would yield significant economic and public diplo-  
14 macy benefits for the United States.

15 **SEC. 3. VISA PROCESSING.**

16 Notwithstanding any other provision of law, the Sec-  
17 retary of State shall set a visa processing standard of 12  
18 or fewer calendar days at United States diplomatic and  
19 consular missions in China, Brazil, and India, and use ma-  
20 chine readable nonimmigrant visa fees to hire a sufficient  
21 number of Foreign Service officers and limited non-career  
22 appointment consular officers to meet and maintain such  
23 standard throughout the year.

1 **SEC. 4. VISA VIDEO-CONFERENCING.**

2 (a) **PILOT PROGRAM.**—The Secretary of State shall  
3 conduct a two-year pilot program for the processing of  
4 nonimmigrant visas using secure remote video-confer-  
5 encing technology as a method for conducting visa inter-  
6 views of applicants, and shall work with other Federal  
7 agencies that use such secure communications to help en-  
8 sure security of the video-conferencing transmission and  
9 encryption.

10 (b) **RULEMAKING.**—Not later than 90 days after the  
11 date of the enactment of this Act, the Secretary of State  
12 shall initiate a rulemaking process to establish the pilot  
13 program described in subsection (a), criteria for participa-  
14 tion in such program, and the fee for such program in  
15 accordance with subsection (d).

16 (c) **PARTICIPATION.**—The Secretary of State shall  
17 ensure that the pilot program described in subsection (a)  
18 includes as many visa applicants as practicable by—

19 (1) establishing a reasonable cost of enrollment;

20 (2) providing such applicants with clear and  
21 consistent eligibility guidelines; and

22 (3) making program enrollment convenient and  
23 easily accessible.

24 (d) **FEES.**—The Secretary of State may impose a fee  
25 for the pilot program described in subsection (a). Such  
26 fee may not exceed the aggregate costs associated with

1 such program and shall be credited to the Department of  
2 State for purposes of carrying out such program. Amounts  
3 so credited shall remain available until expended.

4 (e) REPORT.—Not later than one year after initiating  
5 the pilot program described in subsection (a) and again  
6 not later than 90 days after the conclusion of the two-  
7 year period referred to in such subsection, the Secretary  
8 of State shall submit to the Committee on Foreign Affairs  
9 of the House of Representatives and the Committee on  
10 Foreign Relations of the Senate a report on such pilot pro-  
11 gram. Each such report shall assess the efficacy of using  
12 secure remote video-conferencing technology as a method  
13 for conducting visa interviews of applicants, including any  
14 effect such method may have on an interviewer’s ability  
15 to determine an applicant’s credibility and uncover fraud,  
16 and shall include recommendations on whether such pro-  
17 gram should be continued, broadened, or modified.

18 **SEC. 5. DATA ON VISA INTERVIEW WAIT TIMES.**

19 The Secretary of State shall post on the Web site of  
20 the Department of State the following data relating to  
21 nonimmigrant visas for each United States diplomatic and  
22 consular mission:

23 (1) The monthly median wait times measured  
24 in calendar days for the past 12 months for a non-  
25 immigrant visa interview appointment.

1           (2) The monthly median wait times measured  
2           in calendar days for the past 12 months for a non-  
3           immigrant visa to be processed.

4 **SEC. 6. VISA SYSTEM PERFORMANCE ASSESSMENT.**

5           The Secretary of State shall submit to the Committee  
6           on Foreign Affairs of the House of Representatives and  
7           the Committee on Foreign Relations of the Senate a re-  
8           port that includes the following:

9           (1) An annual forecast of demand through  
10          2020 for nonimmigrant visas in the key high-growth  
11          markets of Brazil, China, and India.

12          (2) A description of the methodology used to  
13          determine the annual demand forecasts in accord-  
14          ance with paragraph (1) for nonimmigrant visas in  
15          Brazil, China, and India, including—

16                (A) details on the internal and external  
17                studies utilized to prepare such forecasts; and

18                (B) details on whether such methodology  
19                utilizes the Department of Commerce’s analysis  
20                of visitor arrival projections.

21          (3) A comparison of the Department of State’s  
22          nonimmigrant visa demand projections and the De-  
23          partment of Commerce’s yearly visitor arrival projec-  
24          tions for Brazil, China, and India through 2020 and  
25          details on whether the Department of State’s work-

1 load projections for each such country align with the  
2 Department of Commerce's yearly visitor arrival  
3 projections.

4 (4) A description of the practices and proce-  
5 dures currently used by each United States diplo-  
6 matic and consular mission in Brazil, China, and  
7 India to manage nonimmigrant visa workload.

8 (5) Information on short- and long-term plans  
9 developed to meet the forecasted demand for non-  
10 immigrant visas through 2020 in Brazil, China, and  
11 India, including facility expansion needs.

12 (6) The total number of limited non-career ap-  
13 pointment (LNA) consular officers the Department  
14 of State would need to hire annually through 2020  
15 to maintain a 12 or fewer calendar day non-  
16 immigrant visa processing standard in Brazil, China,  
17 and India, in accordance with section 3.

18 (7) Information on the strategies the Depart-  
19 ment of State will use to maximize existing consular  
20 and embassy space to accommodate the new LNA  
21 personnel referred to in paragraph (6).

22 **SEC. 7. VISA VALIDITY PERIOD.**

23 If the Secretary of State can demonstrate no adver-  
24 sarial effects to the United States, the Secretary may  
25 modify or enter into agreements with certain countries on

1 a non-reciprocal basis to allow for longer visa validity peri-  
2 ods than the periods with such countries that are in exist-  
3 ence as of the date of the enactment of this Act.

○

Ms. LOFGREN. Thank you, Mr. Chairman. Tourism is a vital U.S. industry so I thank the Chairman for holding this hearing and also Representative Heck for coming here to testify on his bill.

As we emerge from the economic downturn, travel and tourism can help spark economic growth and create jobs. Currently international travel to the United States generates more than \$153 billion annually in exports and supports 2 million U.S. jobs. In 2011 total direct travel spending in my State of California was \$102.3 billion, supporting 893,000 jobs. Travel spending in 2011 generated \$2.3 billion in local and \$4 billion in State taxes for California.

However, while significant revenue and jobs are supported by travel and tourism, America has been experiencing a decrease in market share. According to a study conducted by a coalition of American industries, the U.S. is estimated to have lost billions, \$43 billion in 2005 alone, in visitor spending due to lost market share. According to the Department of Commerce, the positive balance of trade generated by inbound travel declined more than 72 percent between 1996 and 2005, from \$26.3 billion in 1996 to just \$7.4 billion in 2005. Since 2005 these losses have only grown as international travel continues to increase but the U.S. share of this travel market continues to decrease.

As we lose market share in international travel, we also lose the ability to share American ideals with the rest of the world. Studies have shown that foreigners who visit the U.S. are 74 percent more likely to have a favorable view of our country and 61 percent are more likely to support the U.S. and its policies. The country thus suffers with fewer foreign visitors who are able to experience real American hospitality, kindness and values.

Now I know some in America would like to further close down our borders to commerce and tourism. Some say that would make the country safer. But we know that would crush our economy in sectors ranging from agriculture to tourism, sap the vitality that immigrants bring to America, and go against the values we share with visitors, values that have been essential to our national character and exceptionalism. It would in fact make us much weaker economically and in other important ways.

Rules that facilitate visa issuance for eligible foreign nationals are not only important for travel and tourism but also for American educational institutions, scientific and academic research, as well as U.S. business in a variety of industries. What we need is to find ways to welcome foreign visitors while continuing to protect, of course, national security. Simply put, we need to have smarter visa issuance procedures. To do this we should explore new technologies, including threat assessment tools, and videoconferencing technologies for which a pilot is proposed in Mr. Heck's bill. We should also explore ways to expand the visa waiver program, again while continuing to protect national security.

This bill also has provisions to require faster visa processing for foreign nationals from some of the world's fastest growing economies. These are issues that are important for us to consider.

The bill's provisions echo the approach outlined in President Obama's January 19th Executive order, which also seeks to increase visa processing capacity in China and Brazil and to ensure that applicants are interviewed in a timely manner. These are

laudable goals, and I look forward to working with the Administration and Department of State to ensure that our visa process is as efficient and effective as possible.

On June 26, 1963, before the Berlin Wall, John F. Kennedy said in one of his most memorable speeches, "Freedom has many difficulties and democracy is not perfect, but we never had to put up a wall to keep our people in." What was true then remains true almost 50 years later. People from all over the world still want to come to America. Many come seeking a refuge from persecution, to get a job to support their families, to start a business or to begin their studies. And some just come to visit America to see Disney World, the Grand Canyon, to show their support at Ground Zero in New York, to visit our Nation's Capital. Many come because they love America and have dreamed of visiting our country for their whole lives.

We should encourage this with smart visa policies that support travel and tourism, and I yield back, Mr. Chairman.

Mr. GALLEGLY. I thank the gentlelady. We have very distinguished witnesses on both of our panels today. Each of the witnesses' written statements will be entered into the record in its entirety. I would ask that each witness summarize his or her testimony in 5 minutes or less to help stay within the time. There is a time, a little light out there that will be a good indicator. And I would just appreciate your consideration of that.

And with that we will move to our first panel and our first witnesses, our good friend and colleague from the State of Nevada's Third District, Congressman Joe Heck. Welcome, Joe.

Joe is currently serving his first term in the House. He serves on the Education and Workforce Committee and the Armed Services Committee. He also serves on the House Permanent Select Committee on Intelligence. And prior to serving in Congress Representative Heck spent 25 years in public service as a physician and Army reservist and community volunteer. Welcome this afternoon and we look forward to your testimony.

**TESTIMONY OF THE HONORABLE JOE HECK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA**

Mr. HECK. Thank you, Mr. Chairman. Chairman Gallegly, Ranking Member Lofgren, thank you very much for holding this hearing today on legislation I introduced this past fall, H.R. 3039, the "Welcoming Business Travelers and Tourists to America Act of 2011." I know there are several bills out there trying to address the visa processing issue. This is but one more trying to attack the problem from a different pathway.

As you have mentioned, I represent the Las Vegas area where travel and tourism is the main industry, with hundreds of thousands of Nevada families relying on the travel and tourism sector as a source of jobs and income. To give you an idea of how large the travel and tourism industry is in the United States, in 2011 travel and tourism generated approximately \$1.9 trillion in total economic output. This can be directly linked to 2 million American jobs being supported and the exporting of \$153 million in U.S. Goods.

Additionally, international travelers spend about \$4,300 during each visit to the United States. Over the past 10 years from 2000 to 2010, the travel industry has seen major growth. According to the U.S. travel organization, global long haul travel has increased by 40 percent. However, as Ms. Lofgren mentioned, over this same time period the share of international travelers coming to the United States has dropped, dropped from 17 percent to 12 percent. This decline in the number of travelers coming to the U.S. has definitely been felt nationwide as well as in my home State. The hospitality industry is the largest employer in Nevada as well as the largest contributor to the State's general fund. But while the national unemployment rate has remained about 8 percent for 30 months, the unemployment rate in Nevada has continued to hover around 12 percent.

The Department of Commerce estimates that just returning to the 17 percent market share would generate almost \$860 billion to our economy and create 1.2 million jobs. It goes without saying that America is struggling and something needs to be done to get folks back to work. Because I represent a district that is markedly dependent on the travel and tourism industry, I introduced H.R. 3039.

The decrease in number of travelers coming to the U.S. cannot simply be attributed to a lack of desire to visit the United States but more so to a cumbersome travel visa application and processing system. In the past it has been reported that the State Department has posted interview wait times of more than 30 days, sometimes as much as 180 days, which exceeds its own internal goal of interviewing all visa applicants within 30 days. This can present major barriers for those wishing to travel to the United States because travelers do not have an accurate idea of the timeline to get an interview or when an appropriate time to apply for a travel visa would be because of a lack of information on historical wait times.

My legislation seeks to modernize this process in several ways. H.R. 3039 mandates that the State Department implement a 12-day visa processing standard to ensure timely processing of visas, requires the disclosure of historical data, encourages better coordination between State Department and Department of Commerce, and allows for the establishment of a visa videoconferencing pilot program and gives the Secretary of State the option to modify visa validity periods.

I understand that some Members of the Committee will have concerns with the legislation, specifically from the homeland and national security aspect. Please let me assure you that as someone who has served in both the Army Reserves and its homeland security sector for over 25 years, national security is of the utmost importance to me. Some of the testimony you will hear later is somewhat inaccurate and off base, having largely nothing to do with the provision of H.R. 3039. Nothing in this legislation does anything to increase or modify the visa waiver program, it does nothing to change the visa interview process, nor does it change the approval requirements for actually granting a visa. It just tries to streamline the process.

The video processing, video teleconferencing provision I can tell you, from someone who has used secure videoconferencing in my

military career as well as in my medical career, being able to have secure communications around the world and provide cutting edge, lifesaving medical treatment because of a high resolution in quality of sound and video is something that we should be able to explore in trying to grant visa interviews.

As I mentioned, I have worked in the homeland security sector for a large part of my career, been both to Iraq and Afghanistan. As was mentioned, I am on the Armed Services Committee and the Select Committee on Intelligence. I know firsthand the threats of terrorism and national security. Nothing in this legislation that I have introduced is intended to compromise it in any way. Rather, it is bipartisan legislation that looks to streamline a process in a way that has already been proven by the Department of State's report on itself when it did its pilot study on how to use videoconferencing, and it is widely supported by the tourism travel and hospitality industry, by Discover America Partnership with over 50 members. We have letters of support that we would ask to enter into the record.

At a time when we need jobs and increased economic growth, H.R. 3039 provides a solution at no cost to the taxpayer while maintaining safety and security.

Thank you for this opportunity to testify before the Subcommittee on Immigration. I look forward to your questions and the discussion later today.

[The prepared statement of Mr. Heck follows:]

**Testimony for Rep. Joe Heck (R-NV)**  
**Judiciary Subcommittee on Immigration**  
***H.R. 3039, the Welcoming Business Travelers and***  
***Tourists to America Act***  
**May 17, 2012**

Chairman Gallegly and Ranking Member Lofgren:

Thank you for holding this hearing today on legislation I introduced this past fall, H.R. 3039, the Welcoming Business Travelers and Tourists to America Act. As you may know, I represent the Las Vegas area where travel and tourism is the main industry with hundreds of thousands of Nevada families relying on the travel and tourism as a source of jobs and income.

To give you an idea of how large the travel and tourism industry is in the United States, in 2011, the industry, which is about an \$813 billion industry, generated approximately \$1.9 trillion in total economic output. This can be directly linked to 2 million American jobs being supported by the travel industry and the exporting of \$153 billion in U.S. goods. Additionally, out of every \$7 spent by travelers in the U.S., at least \$1 of that is from international travelers. As a whole, international travelers spend about \$4,300 during each visit to the U.S.

Over the past ten years, from 2000 to 2010, the travel industry has seen major growth. According to the U.S. Travel Organization, global long-haul travel

has increased by 40 percent. On the contrary, over this same ten year period, the number of travelers coming to the United States has dropped from 17 percent to 12 percent.

This decline in the number of travelers coming to the U.S. has definitely been felt nation-wide, as well as in my home state. In Nevada, more than one in ten citizens is jobless. In fact, Nevada has had the worst employment record in the country for more than a year. While across the country, the unemployment rate has remained above 8 percent for 30 months, the Unemployment rate in Nevada has continued to hover around 13 percent.

It goes without saying that America is struggling and something needs to be done to get folks back to work, and because I represent a district that is extremely reliant on the travel and tourism industry, it is for that reason that I introduced H.R. 3039, the Welcoming Business Travelers and Tourists to America Act.

From the data I just mentioned describing the decrease in number of travelers coming to the U.S., I do not think we can attribute this to a lack of desire to visit the United States, but more so to a cumbersome travel visa application and processing system. In the past, the State Department has posted interview wait times of more than 30 days, which exceeds its own internal goal of interviewing all visa applicants within 30 days, as well as artificially withheld the availability of interview dates. This can present major barriers for those wishing to travel to the

United States because travelers do not have an accurate idea of the timeline to get an interview or when an appropriate time to apply for a visa would be because of lack of information on historical wait times. My legislation, H.R. 3039 seeks to modernize this process in several ways.

H.R. 3039 1) mandates that the State Department implement a 12 day visa-processing standard to ensure the timely processing of visa application; 2) requires the disclosure of historical data on visa processing wait times so that travelers can have a better idea as to when they should begin planning their travels to the U.S; 3) Encourages better coordination between State Department and the Department of Commerce so that State Department can better prepare itself to meet the demand for increases in travel visas to the United States; 4) Allows for the establishment of a visa video conference pilot program and ; 5) Gives the Secretary of State the option to modify visa validity periods.

While I understand that some Members of this Committee will have concerns with my legislation, specifically from the Homeland and National Security aspects, please let me assure you that as someone who has served in both the Army Reserve and in the homeland security sector for over 25 years, that national security is of an utmost priority for me. Nothing in the legislation I have introduced is intended to compromise it in anyway. Rather, I intend this bi-partisan legislation to be starting point for discussion amongst our colleagues and

the affected agencies to look at options for the U.S. to regain its share of the travel and tourism market, as well as create hundreds of thousands of jobs we so badly need.

Thank you for this opportunity to testify before the Judiciary Subcommittee on Immigration. I look forward to your questions and discussion.

**ATTACHMENTS**

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

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EXECUTIVE VICE PRESIDENT  
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May 16, 2012

The Honorable Elton Gallegly  
Chairman  
Subcommittee on Immigration  
Policy and Enforcement  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Zoe Lofgren  
Ranking Member  
Subcommittee on Immigration  
Policy and Enforcement  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Gallegly and Ranking Member Lofgren:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, thanks you for holding a hearing on H.R. 3039, the "Welcoming Business Travelers and Tourists to America Act of 2011." The Chamber strongly supports this important legislation which would help address key barriers in the visa processing system that discourage international business and leisure travel to the United States.

Travel and tourism is a small business-centered sector that accounts for more than \$700 billion in revenues and 7.4 million American jobs. Additionally, when business visitors travel to the U.S. to buy products or participate in conferences, training, and trade shows, they strengthen America's role as the center of innovation and global commerce. By increasing efficiency in the visa processing system and reversing the perception that the U.S. does not welcome international travelers, the U.S. could restore its share of the travel market to its 2000 level of 17 percent and create an additional 1.3 million jobs by 2020.

H.R. 3039 would address key barriers in the visa processing system by:

- Aligning consular staffing with market demand by requiring U.S. diplomatic and consular missions in China, Brazil, and India to meet and maintain a 12-day visa processing standard throughout the year.
- Facilitating visa issuance to visitors with limited access to a U.S. consulate by establishing a pilot program for conducting visa interviews through the use of remote video-conferencing technology.
- Preparing visa applicants for their travel to the U.S. by requiring the State Department to post historical data about seasonal or monthly nonimmigrant visa interview wait times on its website.
- Requiring the Secretary of State to conduct a performance assessment of the visa application processing system to help improve short- and long-term planning.

- Allowing the Secretary of State to modify or enter into agreements with certain countries on a non-reciprocal basis to allow for longer visa validity periods.

The Chamber strongly supports H.R. 3039 and applauds your consideration of this important issue.

Sincerely,



R. Bruce Josten

cc: The Members of the House Committee on the Judiciary, Subcommittee on Immigration  
Policy and Enforcement  
The Honorable Joe Heck, U.S. House of Representatives

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December 1, 2011

The Honorable Joe Heck  
U.S. House of Representatives  
132 Cannon House Office Building  
Washington, DC 20515

Dear Representative Heck,

The Discover America Partnership, a broad coalition of organizations that understand the importance of international travel to the U.S. economy, writes to express our enthusiastic support for H.R. 3039, the *Welcoming Business Travelers and Tourists to America Act of 2011*. This legislation will significantly improve an unnecessarily burdensome U.S. visa system that has demonstrably hurt our nation's ability to grow travel-related exports and employment. The U.S. visa system needs improvement, and we thank you for your commitment to this laudable goal.

The international in-bound travel and tourism sector, as you know, is vital to the economic well-being of the United States. It constitutes the top industry export sector, supporting 1.8 million jobs and generating \$134 billion annually in direct travel spending in the U.S. Unfortunately, America's edge in the international travel market is slipping. Since 2000, global long-haul travel grew by 40 percent, but America's share of that market fell from 17 percent to 12.4 percent. Had our country kept pace with the growth in global long-haul travel over the last decade, 78 million more travelers would have visited the U.S., adding a total of \$606 billion to the economy and 467,000 additional jobs annually.

With strong growth expected to continue in worldwide overseas travel, recapturing America's historical 17 percent of the market should be a top priority. H.R. 3039 will help achieve this goal by addressing troublesome aspects of the U.S. visa system that serve to deter travel to the United States. Most importantly, it will require the Secretary of State to hire consular officers sufficient to achieve a maximum 12-day visa processing standard. Moreover, it will ensure that delays in visa processing are avoided by requiring the State Department to report to Congress on the short and long-term plans it is implementing to meet the growth in visa demand in key emerging travel markets. To allow for greater access to a U.S. Consulate, the bill directs the Secretary of State to carry out a two-year pilot program to demonstrate the viability and benefits of conducting non-immigrant visa interviews via videoconferencing, and it will increase transparency around visa wait times in order to further improve visa procedures. Finally, to improve efficiency at U.S. Embassies and Consulates around the world, H.R. 3039 grants explicit authority to the Secretary of State to grant longer term visas to foreign nationals from specific countries if it is in the nation's economic interest.

In proposing to simplify the visa process while safeguarding homeland security, you have advanced one of the most effective means of stimulating the nation's economy. Again, we thank you for thoughtful leadership on our nation's visa system, and we look forward to working with you to enact this important legislation.

Sincerely,

**Discover America Partnership Members**

American Express Co.	Hawaii Tourism Wholesalers Association
American Hotel & Lodging Association	Hilton Head Island-Bluffton Chamber of Commerce
Around the Hook	Hilton Worldwide
Association for Manufacturing Technology	Hong Kong Business Association
Austin Convention & Visitors Bureau	Hong Kong, China, Hawaii Chamber of Commerce
Best Western International	Hunterdon County Chamber of Commerce
Boston Convention & Visitors Bureau	Illinois Tool Works Inc.
Carlson Hotels	InterContinental Hotels Group
Choice Hotels International, Inc.	International Association of Exhibitions and Events
CityPASS	International Franchise Association
Clipper Navigation, Inc.	Kauai Chamber of Commerce
Consumer Electronics Association	LA INC.
Cruise Lines International Association	Las Vegas Convention & Visitors Authority
Destination Marketing Association International	Latinos Unidos de Nueva Jersey
Florida Chamber of Commerce	LilMeg Ventures, LLC
Four Seasons Hotels and Resorts	Loews Hotels
Fragomen, DelRey, Bernsen, & Loewy LLP	Mariott International
Frenchtown Café	Maui Hotel & Lodging Association
Global Business Travel Association	Molokai Chamber of Commerce
Greater Miami Convention & Visitors Bureau	Myrtle Beach Area Chamber of Commerce
Greater Phoenix Convention & Visitors Bureau	National Restaurant Association
H.S. Concessions	National Retail Federation
Hawaii Chinese Tourism Association	National Tour Association
Hawaii Lodging & Tourism Association	New Jersey Restaurant Association
Hawaii Lodging & Tourism Association	
Hawaii Restaurant Association	

NYC & Company	Society of Petroleum Engineers
Ocean Today	Starwood Hotels
Ohio Hotel & Lodging Association	Tacoma Regional CVB
Orlando Regional Chamber of Commerce	The Chamber of Commerce of Hawaii
Oshkosh Corporation	Travel Portland
Packaging Machinery Manufacturers Institute	U.S. Chamber of Commerce
Palm Springs Desert Resort Communities	U.S. Conference of Mayors
Convention and Visitors Authority	U.S. Olympic Committee
Pasadena Convention & Visitors Bureau	U.S. Travel Association, Chair
Pennsylvania Tourism Office	UBM
Polynesian Cultural Center	United States Airports for Better International
Rachel Holland Special Events	Air Service
Receptive Services Association of America	Universal Orlando
San Diego Convention & Visitors Bureau	Vail Resorts
San Francisco Travel Association	Visit Florida
Service Employees International Union	Walt Disney Parks and Resorts
Smart Business Hawaii	Washington Airports Task Force
Society of Independent Show Organizers	

Southwest King County Chamber

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Mr. GALLEGLY. Thank you for staying within the guidelines of the lights. You obviously have a military background, and I appreciate your credentials both from military and serving on the Intelligence Committee. You obviously know about many of the challenges that we are facing at a national security level, I am sure many cases beyond many of us.

Regarding the in-person visa interview, you spoke a little bit about the electronic versus the in-person interview, but the in-person interview requirement was put in place as a result of the fact that only 2 of the 19 9/11 hijackers were interviewed for visas despite the State Department's authority to do so. Given that terrorists constantly attempt to and some are successful in entering the country by abusing U.S. immigration policy, shouldn't we make sure that every visa applicant has a sit down, face-to-face interview so that the consular has the best ability possible to determine the intent?

I would yield back.

Mr. HECK. Thank you, Mr. Chairman. I think the important point that you brought up was that only 2 of the 19 actually had an interview. This does nothing in changing having the interview, this actually opens up additional pathways to conduct interviews so that more people can actually have the interview. And with the newer technology, especially telepresence technology, it is almost like sitting in the room with the individual while you are conducting that interview. And so the technology has progressed significantly, even since the pilot study was done in 2006, that actually allows the ability for an individual to conduct a very comprehensive interview. I tell you I have talked to people from the consular staff. And they do have a lot of discretion. In fact I was given one anecdote where the person claimed to be a farmer but their visa was denied because according to the interview official they didn't have calluses on their hands to make it look like they were a farmer.

I think that we need to be much more selective in how we decide to grant or not grant the visas, but what this program does is actually increase the ability for more interviews to be accomplished.

Mr. GALLEGLY. The gentlelady from California.

Ms. LOFGREN. Yes. I remember when I was in local government we did—the courts did arraignments by video. Something as fundamental as your due process rights in a criminal proceeding could be accommodated through a video transaction. So I think, and you are right, Cisco is headquartered in my district. Their telepresence, I mean it is like you could touch the person, it is so like being there, it is amazing technology. So I think it is very creative and I think there is a lot of promise with that.

I wanted to talk about the 12-day visa processing standard. I like it, but here is the concern I have and I am not sure that I have the solution and maybe you do. If you don't have additional resources, and I realize using the video capacity will help some in that, the easy thing is just to say no. And so you might end up with an increased number of arbitrary noes to accommodate the 12-day requirement. Have you thought about that and what we might do about that? Because these decisions are not reviewable by anybody.

Mr. HECK. Yeah, thank you for that question. In fact, we do allow within the bill for the State Department to increase the visa fee to be able to offset the additional resources that may be necessary to meet that timeline of trying to get them done within 12 days. In addition, I will say that when we met with the Department of State officials they were concerned that in the event they would need to move people due to humanitarian crisis or evacu-

ation of U.S. citizens and they needed more officials in another area, that that would pose some difficulty for them and we were willing to help them with that and say look, we would be willing to allow—

Ms. LOFGREN. I saw that you accommodated that, yes.

Mr. HECK. During a time of national crisis or humanitarian crisis where individuals needed to be redeployed. I think the key is that they already looked at increasing some of the resources in these three targeted countries.

Ms. LOFGREN. I met with the ambassador in Brazil and they are in the process of gearing up right now. I mean it is insane, you can't even get inside the building for your application to be heard, and they are gearing up so that they can do, he says, a better job.

I guess I would just say I don't know I have a solution but we have all in our capacity as advocates for our constituents seen cases where it is inexplicable why someone doesn't get a visa and then they are coming for the daughter's wedding and they can't get in and you get the call. Certainly we want national security issues but in some cases there is really almost arbitrary denials for people who have legitimate needs to visit family. So I am just concerned this could aggravate it. But maybe there is a way to get around that. I would love to talk to you further after the hearing about it and brainstorm on that.

Thank you. I yield back Mr. Chairman.

Mr. GALLEGLY. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. Thank you, Mr. Heck, for your testimony and taking the initiative on a bill that I understand matters to your constituents and a number of people across the country. I always look at numbers and I get curious about how they are derived, so I want to just take you back that \$1.9 trillion in economic activity that is derived from tourism and let's see then from that. The first question I had was how much is derived from foreign tourism and I think you had 1 out of \$7 in the United States derived from foreign tourism. So I am extrapolating these numbers but can you source that 1.9 trillion for me first?

Mr. HECK. The 1.9 trillion is the tourism industry in general, both domestic and international, to the United States and the number comes from the U.S. Travel Organization.

Mr. KING. Okay, generally a consensus between all of them then. And so I began to wonder then what percentage of the U.S. GDP that would be, so I took one-seventh of that number and came up with 271 billion and divided it by 15 trillion GDP just to pick a round number, and I came up with 1.8 percent of our economic activity that is foreign travel according to this number. Then you also had testimony that says that the global longhaul travel has been reduced—or been increased by 40 percent in the same period of time longhaul global travel to the U.S. Has dropped from 17 to 12 points.

Do you have an estimate on how much of global longhaul travel is for impact on the United States economy?

Mr. HECK. It was estimated by the Department of Commerce that if we were able to get from 12 percent back up to 17 percent that that would be about \$860 billion worth of economic activity.

Mr. KING. That number was on the first page of your statement, I understand. But how much of this then can be tied to a delay in visa, issuing visas, how do you link those two together?

Mr. HECK. Well, we know that certainly from the experience that we have had in southern Nevada which is very dependent on travel and tourism and especially business travel and the convention industry, there was a travel and tourism summit held that had representatives from all of the major trade shows in attendance, and they have talked about how they have had difficulty in bringing foreign travelers to the trade shows here in the United States, primarily for people to come, those who want to show their wares because the lead time takes too long to know whether you are going to get a visa before you actually book convention space. And they have found that those same shows have seen an increase in their attendance in foreign locations; those shows are held in Europe, they are seeing an increased attendance there and they are seeing a dropoff in attendance in the shows in the United States.

Mr. KING. And I do hear some of these complaints. Is the lead time all together from say the average application time until such time as the visa is issue, what is that average lead time, do you know?

Mr. HECK. Well, for the countries we are trying to address through the bill the wait times has been as high as 180 days just for the visa interview, not the granting or denial of the visa, just to get an interview.

Mr. KING. Is there a mean time or an average time though rather than extreme time?

Mr. HECK. In those three countries they vary. Brazil has been—China has been as high as 180 days, Brazil has been as high as 60 to 70 days. India has been even higher at times. So I do not have a mean time of all three countries.

Mr. KING. But I do have some information here that gives I believe it was average wait times for different cities in China, Beijing, Shanghai and several others, that show 2 to 4 days of an average lead time. Do you have experience also that that happens?

Mr. HECK. Right, those numbers have been within the last 4 to 5, 6 months, actually since the bill has been introduced. But again we have seen wait times far exceeding that.

Mr. KING. And I think to be clear for this panel, too, that what I have expressed here is wait time for the interview, not the full time for the issuance for the visa, just to put some balance to this discussion.

Mr. HECK. Right.

Mr. KING. So to some degree your bill has had a positive affect in a positive way. I would make that point so you don't have to or actually you already did. But I have been looking on. I would add also we have a similar times down in South America, Brazil, 2 days, 2 days, Rio de Janeiro 1 day, Sao Paulo 25 days. Odd that it would be had a high out of Sao Paulo. And then you go into Asia and you see New Delhi 4 days, Mumbai 4 days, but there are some longer dates there too. It looks to me like the issue time is reasonable if you look at it from an average standpoint or a mean standpoint and probably plenty of lead time for someone to be able to

plan a convention and book their travel, but it is the extremes that you are concerned about. Do I interpret that correctly?

Mr. HECK. That is correct. And also one of the major reasons for the videoconferencing provision is that those 2 to 4-day times is in that city, somebody applies within that city, but in these larger countries it may take somebody 2 days to travel to the consulate to be able to get the interview, and that is after being scheduled for the interview. And so the videoconferencing from remote locations will help expedite that process as well.

Mr. KING. Would you do patient exam over conferencing?

Dr. HECK. I have many times.

Mr. KING. And would you diagnose over that?

Dr. HECK. We have many times. The resolution and the quality now is such that you can provide cutting edge life saving care via telemedicine around the world, and I have done it on several occasions.

Mr. KING. I have another topic we will talk about in person. Thank you, doctor, I appreciate your testimony.

Mr. GALLEGLY. I thank the gentleman from Iowa, and I thank you for being here today, Joe.

We will turn to our second panel.

Our first witness is Janice Kephart, the Director of National Security Policy at the Center for Immigration Studies. She served as counsel to the 9/11 Commission. Ms. Kephart received her JD from Villanova Law School and her Bachelor's Degree from Duke University. Welcome.

**TESTIMONY OF JANICE L. KEPHART, DIRECTOR OF NATIONAL SECURITY POLICY, CENTER FOR IMMIGRATION STUDIES**

Ms. KEPHART. Thank you for having me. Thank you for the invitation to testify and your continued interest in visa security.

The bill we are considering today mimics President Obama's visa waiver interview pilot program announced in January 2012 for China, India and Brazil. The effect of the President's program is still unknown in terms of reducing application processing time. If the pilot achieves the aims the President seeks; that is, to dramatically reduce visa processing times by negating many visa interviews and visa re vetting, then this bill is unfortunately unnecessary, untimely and premature. Especially concerning is that this bill probably unknowingly supports the President's amnesties policies that include not enforcing immigration law against illegal population but for convicted criminals and terrorists.

What does systematic enforcement of immigrant immigration law have do with this bill? Well, crunching out more tourist visas will add to more tourists likely becoming overstays. According to 2011 GAO reporting, ICE only actively pursues 3 percent of the overstay population due to resource constraints. None other than criminals and terrorists are pursued now, and even the criminal deportation numbers are half of what they were in 2010, with a paltry 5,500 identified in the first quarter of 2012, with twice that many identified in the same quarter in 2010. What does this mean for Chinese, Brazilian and Indian illegal population numbers? To me this means they will grow.

For years Brazilians and Indians have come to the United States for many reasons, but also to get away from poverty, while Chinese often come to escape a repressive regime. That is good, right? This is America, we welcome people here for a better life. But unfortunately, that is not the end of this story. China openly commits significant corporate government and university espionage on American soil, and it uses its own citizens to do it.

Just as disturbing is the incredibly high illegal alien population numbers from China, India and Brazil currently in the U.S. These three countries have increased their illegal status in the U.S. By nearly 70 percent collectively in the last decade, with 700,000 illegal aliens in the U.S., representing 6 percent of the total 11.5 million of the illegal population. China is the biggest producer of illegal aliens outside this hemisphere ranking fifth of the 180 Nations in the world, India ranks seventh, Brazil is close behind. And here is the clincher, most of these illegals must be overstays from issued visas.

As to those arguing that there is sufficient security in the automated check State now does of visa applicants and 12 days is sufficient time to get all applicants, let me say this. First few, if any of the problems in visa issuance with the 9/11 hijackers had anything to do with technology or databases vetting the applicants. Rather, the issue is that the interviews that could have detected fraud and lies were simply not done. In the one instance where there was an extensive interview at a border security inspection at Orlando International Airport, potential Flight 93 hijacker Mohammed al-Qahtani was forced to return to Saudi Arabia only because his interview was done.

Second, fraud does not change depending on where a person is from or what the intent is in coming to the United States. Fraud is fraud whether used by terrorists, spy, criminal or simple economic migrant. Whether committed in 2000 or the year 2012, the commonality is it that it all breaks the law, it is all detectable, but usually only through the interview process.

Third, State's Deputy Assistant Secretary of Consular Affairs, Ed Ramotowski, reiterated this point in a September 2011 hearing before House Homeland, making clear that the automated security checks and review of submitted documents don't catch what an interview will, saying, "The personal interview that our officers conduct in our embassies and consulates often note discrepancies in the interview that open a line of inquiry and lead to a visa denial when necessary."

Fourth, it is also important to re-visit visas, a case made manifestly clear by the fact of the Christmas Day bomber's visa issuance and which is reduced in this bill.

And lastly, terrorist organizations or governments seeking to use their citizens as spies are likely to recruit from those that have already been issued U.S. visas. It is foolish to assume that vetted once means no re-vetting need take place.

In regard to videoconferencing, there are a host of security issues that are specific a visa interview, including State Department personnel safety that I note in my written testimony that are not addressed in the bill fully.

In regard to section 7 of the bill it gives limitless authority to the Secretary and what can be done to visa categories or visa terms with any country, under any circumstances, very dangerous for immigration policy and diplomacy and our national security.

In conclusion, illegal activity needs to be curtailed significantly and current immigration law enforced before we consider broadening out our visa policies even further than already done by the President as this bill would do.

Thank you.

[The prepared statement of Ms. Kephart follows:]

HEARING BEFORE THE  
HOUSE JUDICIARY  
SUBCOMMITTEE ON IMMIGRATION  
POLICY AND ENFORCEMENT

*“H.R. 3039, The Welcoming Business  
Travelers and Tourists to America Act of  
2011”*

MAY 17, 2011 at 1:00 pm

TESTIMONY OF JANICE L. KEPHART

Former Counsel, 9/11 Commission

National Security Policy Director, Center for  
Immigration Studies

HEARING BEFORE THE  
 HOUSE JUDICIARY SUBCOMMITTEE ON  
 IMMIGRATION POLICY AND ENFORCEMENT  
 “H.R. 3039, *The Welcoming Business Travelers and Tourists to America Act of 2011*”  
 MAY 17, 2011 at 1:00 pm  
 TESTIMONY OF JANICE L. KEPHART  
 Former Counsel, 9/11 Commission  
 National Security Policy Director, Center for Immigration Studies

**Introduction**

I want to thank Committee Chairman Smith, Subcommittee Chairman Gallagly, Vice-Chairman King, and Ranking Member Lofgren for the invitation to testify on the importance of the visa security apparatus to curtail terrorist (and other nefarious) travel to the United States. 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 where I drafted two bills which became law under President Clinton;
- 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 National Security Policy Director for the Center for Immigration Studies for nearly four years where I have investigated and reported border and identity security; and
- As the radio host of “The Homeland Security Show with Janice Kephart” on vipinternetradio.com where I engage experts on a wide variety of related homeland security topics.

At the Commission, I was responsible for the investigation and analysis of the Immigration and Naturalization Service and current Department of Homeland Security (DHS) border functions as pertaining to counterterrorism, including the 9/11 hijackers’ entry and acquisition of identifications that are mostly contained in our staff report, *9/11 and Terrorist Travel*. My team also produced the terrorist travel portions of the *9/11 Final Report* that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Rep. Lee Hamilton.

I have spent the years since the publication of our 9/11 work ensuring, in part, that our border findings, lessons learned, and recommendations be properly understood and implemented as both policy and law. I also work to ensure that other types of terrorist travel not specifically covered in the 9/11 investigation be considered under the tenets and intentions of the 9/11 Commission findings, lessons learned, and recommendations in light of ever-changing times. To be clear, the views I represent are as the National Security Policy Director at the Center for Immigration Studies, and not official positions of 9/11 Commission leadership.

I am glad this Committee takes to heart the policy put forth in the *9/11 Final Report* that securing our borders is in our national security interest. Ensuring that we implement, and not roll back, key 9/11 Commission recommendations piece by piece, by strengthening appropriate authorities judiciously where necessary, helps build a stronger and more flexible border framework able to adjust to changes in terrorist travel and fraudulent methods as we move forward. From this vantage point I testify on the value of the visa interview and its relationship to national security, and unfortunately, against H.R. 3039, “*Welcoming Business Travelers and Tourists to America Act of 2011*.” As National Security Policy Director at the Center for Immigration Studies, I will also discuss the relationship of the visa interview and visa term to border control and overstays.

#### Findings of Fact

The following facts lead me to conclude that the “Welcoming Business Travelers and Tourists to America Act of 2011” is (1) unnecessary, (2) untimely, (3) (perhaps unknowingly) supports the administration’s amnesty policy, (4) will likely increase the illegal populations from China, India and Brazil currently residing in the United States, (5) could seriously impinge 9/11 Commission recommendation implementation pertaining to visa interviews, and thus national security; and (6) support China’s espionage efforts against us. More specifically:

- The Obama administration has articulated numerous policies that make clear enforcing immigration law is not a priority on the border, on the interior, in visa issuance, in immigration courts, in change of status applications. Nor will the administration work in concert with states to enforce immigration laws or support state immigration laws.
- The Obama administration’s amnesty policies extend beyond the population currently within the United States, and includes opening up visa categories and cutting back on visa interviews overseas, despite the visa interview problems made clear by the 9/11 hijackers and Christmas Day bomber, as I trace in detail on the evolution of Obama’s amnesty policies at <http://www.cis.org/amnesty-by-any-means-memos>.
- Despite the Obama administration’s focus on high deportation numbers, the amnesty policy in place has now ensured that the deportation numbers are down. As of April 2012, <http://trac.syr.edu/immigration/reports/281/> “(ICE) is identifying fewer individuals as deportable owing to alleged criminal activity, according to the latest Immigration Court data on new deportation proceedings. During the most recent quarter (January - March 2012), ICE sought to deport a total of 5,450 individuals on criminal grounds. While this number is preliminary and is likely to increase once late reports are in, it represents a drastic decrease compared with 10,732 individuals against whom ICE sought deportation orders just two years ago (during the period January - March 2010)”.
- In fact, immigration enforcement is so lacking that House appropriators are limiting funding for Immigration and Customs Enforcement if their work extends to and includes all immigration-related mission categories (see <http://cis.org/kephart/house-appropriators-nix-obama-request-less-enforcement-funding>).
- Even with leadership to enforce the law, according to a GAO 2011 report (see <http://www.gao.gov/products/GAO-11-910T>), ICE only actively pursues 3 percent of the overstay population due to resource constraints.
- According to DHS reporting, the illegal population from *China, India and Brazil*-- the two nations (China and India) with the largest populations in the world-- have *increased* their

illegal status in the U.S. *by over 70 percent collectively in the last decade* and rank at the top of illegal alien production to the United States.

- *For 2011, the three countries together represented 6 percent of the estimated total illegal population of 11.5 million with 700,000 illegal aliens.*
- Overstay rates for these three countries is more directly attributable to visa issuance than illegal entry, as nationals from none of these countries account for a significant share of currently reported illegal entries over physical borders. Even without overstay rates (Secretary Napolitano states will not be released until June 2012), for reasons listed above the illegal alien rates from China, Brazil and India logically represent a very large overstay rate which likely will not be reduced by current administration policies nor by the current high rate of illegal immigration.
- Terrorists exploit every vulnerability to get to the United States including using the easiest visa processing they can find, as explained fully in the *9/11 Final Report* and staff monograph *9/11 and Terrorist Travel*.
- China is one of the most serious violators of our espionage laws from within the United States at universities and corporations, and consistently seeks our weapons research.
- The effect of President Obama's January 2012 announcement easing visa interview requirements specifically for China, India and Brazil are still unknown in terms of reducing the application processing which Mr. Heck's tourism bill seeks to reduce for these countries.
- Requiring a quick turnaround for visa application adjudication without standards in place opens up a potential for rubber stamping visas at an increasing rate.
- While secure, encrypted video conferencing could provide much support to visa interviewing in theory, it is likely unable to be secured nor a true replacement for an interview which is very different than a meeting.

#### **China, India and Brazil are Poor Choices**

*China, India and Brazil's Illegal Population Has Increased an Average of 70 Percent since 2000, with China and India in the Top 10 of Illegal Alien Populations in the United States*

One of the most negative aspects of Mr. Heck's bill is the countries chosen: China, India and Brazil produce some of the highest illegal population numbers we have in America. As stated, most of these numbers must necessarily come from overstays as none of these countries are adjacent to or near the United States. (Overstay numbers are critical in determining the value of this bill, but are not available and according to Secretary Napolitano, will not be until June 2012.) This bill is set up to produce more overstays by hastening visa processing in order to produce more tourists to the United States. Tourism per se may be wonderful, but when tourism becomes an illegal overstay and the now illegal alien must go underground in order to stay in the United States, the tourist-now-illegal-alien becomes a liability in terms of our economy, security, and rule of law.

Even without the direct overstay numbers, the fact that illegal populations from these countries have nearly doubled in the last decade is enough to set this bill aside and focus instead on what must be done to enforce existing laws regarding such populations, so not to encourage more entry. All three countries top the list of illegal alien "country of origin" statistics. According to the DHS' reports for 2010 and 2011 "Estimates of the Unauthorized Immigrant Population

Residing in the United States? Brazil, China and India combined increased their illegal alien population collectively from 410,000 in 2000 to at least 700,000 in 2011 (for Brazil, only the 2010, not 2011 statistic is available). This is a 71 percent increase in illegal alien population from Brazil, China and India combined. For 2011, the three countries together represent 6 percent of the total 11.5 million illegal population.

The March 2012 report noted that China was in the top five leading country contributors to illegal immigration to the United States, with all the rest in this hemisphere:

*Mexico continued to be the leading source country of unauthorized immigration to the United States (see Table 3). There were 6.8 million unauthorized immigrants from Mexico in 2011, representing 59 percent of the unauthorized population. From 2000 to 2011, the Mexican-born unauthorized source countries were El Salvador (660,000), Guatemala (520,000), Honduras (380,000), and China (280,000). The ten leading countries of origin represented 85 percent of the unauthorized immigrant population in 2011.*

China's illegal population has increased 43 percent from 190,000 in 2000 to 280,000 in 2011. It is the largest illegal population from outside this hemisphere and it represents more than 2 percent of the illegal alien population in the United States. India ranked the seventh source country (out of 180 countries), with a 94 percent increase in illegal population: from 120,000 in 2000, to 240,000 illegal Indians in 2011. It too represents about 2 percent of the illegal population. Brazil's illegal alien numbers are high as well, with an increase from 100,000 in 2000 to 180,000 in 2010. They represent about 1.5 percent of the illegal population.

#### ***China's Espionage against the United States***

As the administration and Mr. Heck's bill focus on the growing need for friendship with China, experts closely monitoring our security landscape are increasingly concerned with the economic and national security implications of the breadth of Chinese activity in the United States. The Chinese are increasingly singled out for their cyber intrusions, university spying (*see <http://www.examiner.com/article/american-universities-and-colleges-infected-by-army-of-student-spies>*), and corporate espionage as described by former senior lawyers for the National Security Agency, Joel Brenner in his Foreign Policy *article* "The Calm Before the Storm", and Stewart Baker (who was also the first Assistant Secretary for Policy at the Department of Homeland Security) in his book *Skating on Stilts*. Further reducing vetting for the Chinese in relying on an unproven pilot of video conferencing when economic and national security is clearly at stake is foolish.

#### **9/11 Lessons (the Nation Had) Learned**

In the aftermath of 9/11, one of the things about which the 9/11 Commission did not have to bludgeon the State Department (State) was the absolute importance of visa interviews that enable Foreign Service officers to ask more direct questions determining an applicant's true intent in seeking a U.S. visa. Until January of this past year when President Obama announced his new visa interview waiver policy, State had been conducting interviews much more thoroughly, and

hundreds of terrorists and other criminals were identified and prevented from entering the United States. *Visa processing was rightly viewed as a turnkey for immigration security.*

While the 9/11 Commission made abundantly clear that at least some of the more flagrant fraud employed by Al Qaeda would require review by specially trained and cleared personnel to determine a terrorist nexus, it was also clear that the visa interview itself would likely have discerned lies on the applications and in some cases, would have determined behavior warranting further investigation. Just as important to note, an affiliation with terrorism (or espionage or criminal activity), may develop after — or because of — an already existing U.S. visa, as was the case with the Christmas Day bomber. Osama bin Ladin and Khalid Sheikh Muhammad specifically sought out individuals with existing U.S. visas. Additionally, any country known for active espionage against our corporations, universities and government such as China may await visa issuance to approach a visa holder to do the government's bidding. In these situations, a review of visa validity upon renewal becomes paramount.

Our key 9/11 Commission findings of fact show that: (1) visa acquisition was critical to the success of the 9/11 travel operation and execution of the plot; (2) fraud was an essential component of the visa applications submitted by Al Qaeda; and (3) terrorist passports contained indicators of extremism to which only the intelligence and law enforcement personnel would be privy. Anti-crime, anti-fraud and anti-terror investigations can be intricately tied to each other, and the visa interview, buttressed in some consulates by Visa Security Units (which I testified to before this committee on May 11, 2011 at <http://judiciary.house.gov/hearings/pdf/Kephart05112011.pdf>) are providing a critical function in working alongside other law enforcement overseas in supporting a broad array of national security-related investigations.

***Relevant Findings of Fact from Staff Monograph, "9/11 and Terrorist Travel"***

- The success of the September 11 plot depended on the ability of the hijackers to obtain visas and pass an immigration and customs inspection in order to enter the United States. If they had failed, the plot could not have been executed.
- A review of visa and border processing and interviews were an integral part of our investigation on the 9/11 Commission.
- Only two of 19 hijackers were interviewed for their visas.
- 15 of the 19 hijackers received 18 visas in Saudi Arabia. Saudi Arabia became the country of choice for a hijacker's visas, as these applicants were not interviewed in person.
- The 9/11 hijackers submitted 23 visa applications during the course of the plot, and 22 of these applications were approved. During the course of the plot, these visas resulted in 45 contacts with immigration and customs officials.
- The hijackers applied for visas at five U.S. consulates or embassies overseas; two of them were interviewed. One consular officer issued visas to 11 of the 19 hijackers.
- Fourteen of the 19 September 11 hijackers obtained new passports within three weeks of their application for U.S. visas, possibly to hide travel to Afghanistan recorded in their old ones or to hide indicators of extremism that showed ties to Al Qaeda. The new passports caused no heightened scrutiny of their visa applications as consular officers were not trained, and would not have been privy to, such intelligence.

- Two hijackers lied on their visa applications in detectable ways, but were not further questioned.
- Three of the hijackers, Khalid al Mihdhar, Nawaf al Hazmi, and Salem al Hazmi, presented with their visa applications passports that contained an indicator of possible terrorist affiliation. We know now that Mihdhar and Salem al Hazmi both possessed at least two passports, all with this indicator.
- There is strong evidence that two of the hijackers, Satam al Suqami and Abdul Aziz al Omari, presented passports that contained fraudulent travel stamps that have been associated with al Qaeda when they applied for their visas. There is reason to believe that three of the remaining hijackers presented such altered or manipulated passports as well.
- Hijackers Nawaf al Hazmi and Khalid al Mihdhar were the first to submit visa applications because they were originally slated to be pilots. The four hijackers who did become pilots applied for visas in 2000. The remaining “muscle” hijackers applied in the fall of 2000 through the spring and summer of 2001, three applying twice.
- Eight other conspirators in the plot attempted to acquire U.S. visas during the course of the plot; three of them succeeded. The remaining five could not obtain visas, although none were denied for national security reasons. One, al-Kahtani, was stopped at Orlando Airport by an astute immigration officer. One dropped out. The other was Khalid Sheikh Mohammed, the mastermind of the 9/11 plot, who obtained a visa in Jeddah, Saudi Arabia, in July 2001 under an alias.
- There were opportunities to stop both World Trade Center pilots in secondary interviews at the border. That did not happen. We know what happened to the World Trade Centers.
- We also know that not having a fifth man on the Pennsylvania flight mattered as well. Al-Kahtani’s turn around at Orlando International Airport after an extensive secondary interview meant there were only four hijackers on the flight that was headed for either the White House or the Capitol on that fateful day in 2001. That plane was overrun by the passengers who knew their plane was headed for disaster, and gave their lives to stop the hijackers. This one secondary interview prompted by two astute border inspectors in Orlando did determine how many hijackers the passengers had to fight on Flight 93.
- *Few, if any, of the problems in visa issuance with the 9/11 hijackers had to do with technology or databases vetting the applicants; rather, the issue was that interviews that could have detected fraud and lies were either not done, or done incompletely. In the one instance where there was an extensive interview at a border secondary inspection al Kahtani was prevented from taking his place on Flight 93.*

#### ***9/11 Commission Recommendations Relevant to Visa Interviews and Issuance***

The 9/11 Commission recommendations emphasize that terrorists are best stopped when “they move through defined channels.” The first, and best, opportunity to stop terrorist travel is in the visa adjudication process. It is best to stop at issuance, where there are triggers for further investigation. These can range from a recently obtained new passport, suspicious (fraudulent) travel stamps, incomplete visa applications to indicators of extremism, as was the case with the 9/11 hijackers. Interviews are essential if any of these conditions arise, or to notice them in the first instance.

Just as important is post-issuance information that indicates a terrorism (or espionage or criminal activity) affiliation. This requires the same vigilance as prior to issuance. Visa interviews with a purpose to reassess visa issuance upon renewal, or prior to U.S. travel, are an excellent tool for denial of entry or removal of those already in the United States. It is the in-person consular officer or Visa Security Unit's special agent expertise and access to information that can be the critical element to denying terrorist entry in such cases. The same is the case with any kind of criminal activity or illegal purpose.

The point is that the visa process does not end with initial issuance. The visa process continues during the life of the visa. Indeed, visa life cycles (term life of the visa) and types of visas (single or multiple entry) are negotiated with countries by the State Department on a case-by-case basis with countries (United Arab Emirates had 10-year visas at the time of 9/11, for example), and the ability to review the visa for security-related reasons remains throughout its life span. Yet again, it is not all about issuance. Those with existing U.S. visas will be sought after by those with nefarious purposes, and thus review of existing visas prior to travel and re-interviews should be a priority at consular posts worldwide. Taking away the visa interview function should not even be a consideration now that we are well aware of the ramifications of insufficient attention paid to visa applicants.

***The State Department's Consular Section Does Not Want to Waive Visa Interviews***

And on the value of consular interviews, Mr. Edward Ramotowski, Acting Deputy Assistant Secretary, Bureau of Consular Affairs for the U.S. Department of State said in a September 2011 hearing, "Ten Years after 9/11: Can Terrorists Still Exploit our Visa System?" before House Homeland Subcommittee on Border and Maritime Security that in-person interviews are critical in rooting out fraud. See <http://homeland.house.gov/hearing/ten-years-after-911-can-terrorists-still-exploit-our-visa-system>. The underlying presumption in his comment is that automated security checks and review of submitted documents do not catch what an interview will.

*RFP. BILIRAKIS: Thank you. For the entire panel, to what extent are some fraudulent educational institutions able to serve as visa mills and as back door into the country, what tools exist or are needed to close this loophole for the entire panel?*

...

*RAMATOWSKI: I would just like to add Congressman that, that underlines the importance of the personal interview that our officers conduct in our embassies and consulates because although someone may submit a fraudulent test paper, a highly trained consular officer can often note discrepancies in the interview that would open a line of inquiry and lead to the denial of that visa.*

In other words, interviews by a well-trained consular corps can make the difference between fraud being granted a visa, and fraud unveiled.

**Visa Interview Waiver Pilot Announced by President Obama in January 2012**

The bill specifically notes in its initial findings of fact that the President has already done some of the work of this bill by waiving visa interviews in certain categories for China, India and Brazil. Before there is a decision to consider Mr. Heck's tourism bill, we must understand what the President's visa interview waiver pilot already does for these countries. Each country is receiving different treatment for no known reason. Moreover, these waivers are likely illegal as they usurp the Immigration and Nationality Act's (INA) explicit requirements for visa interviews. Please note that an underlying outcome of this bill-- which has already failed in the Senate--would be to legalize the President's actions.

Careful consideration must also be given to what effect these new policies will have not just on shortening visa processing times and the visa interview, but also on the likely potential increase in fraud and security risk. (For a case study on Indian fraud, please see my video, "Three Years of Immigration Fraud: The Case Study of Manoj Kargudri" available here: <http://youtu.be/v3DjId4XWC8>.) The effect of the President's changes are unknown at this point, as the visa interview waiver pilot was only issued in January, so in my opinion this bill is premature on that basis alone. However, in all fairness, it is important for the record that we understand where visa policy now stands regarding these three countries.

First of all, note there are two parts to the visa interview waiver "pilot": (1) the waiver of interviews for persons renewing a visa within 4 years of expiration of an earlier visa (in the same class) and (2) the waiver of interviews for persons above 65 and below 16 years of age (the current law allows waiver only for persons 79 and older and younger than 14). The "pilot" has been implemented in a number of countries, including, principally, China, India, and Brazil. For the India announcement see <http://newdelhi.usembassy.gov/iwp.html>. For the China announcement see <http://beijing.usembassy-china.org.cn/20120209amb-visa.html>. Note that different visa categories are eligible in different countries. In India, it seems as though State is applying it only to B1/B2 visas, while the China announcement says it applies to B (temporary visitors for business/pleasure), C1 (transit), D (crew members), F (students), J (exchange visitors), M (nonacademic students), and O (visitors with extraordinary ability). It looks as though the waiver of interviews for >65 and <15 years of age has been applied only in Brazil so far. See <http://brazil.usembassy.gov/waiver2.html>.

Second, the visa interview waiver pilot can be considered nothing less than a direct undermining of section 222(h) of the Immigration and Nationality Act. State is using the "national interest" exception under section 222(h)(1)(C)(i) to effectively rewrite the specific interview exemption at section 222(h)(1)(B)(i) and the general requirement at 222(h)(1) (regarding the ages that must be interviewed). This is a clear extension of President Obama's amnesty policy.

Third, the "renew-within-4-years-of-expiration waiver" is worldwide, in those countries where State is doing this, (which the President has refused to tell the nation). Strangely, only Indians seeking B visas can get that deal, while Chinese in the listed categories can. It is not sure what the permissible categories are for Brazil; the website is silent. There seems to be no transparent standards or applicable visa categories that State is applying. The waiver for persons outside of the age range only applies to Brazil, not China or to anywhere else. Why? Because this program was implemented without Congressional oversight or proper vetting.

To be clear, waiving interviews does not mean that a person is de facto getting longer visa validity; it means that they escape the hassle of going to the consulate to be interviewed for a new visa, and that State has that much less work to do. Chinese B visa recipients are still only getting 1-year visas because that is usually what they give U.S. travelers to China. The reciprocity rule at section 221(c) of the Immigration and Nationality Act prevents the United States from giving any country visas valid for longer than what that country gives U.S. citizens. But now, visa life cycles are made significantly easier for the applicant, and State processing: if they renew their B visa within 4 years of expiration of their old visa they can just "mail it in" and escape the mandatory interview requirement of the INA.

Here's the bottom line: if State conducts the waivers aggressively, which is clearly its intent considering it was the President who made the announcement, not Secretary Clinton nor Secretary Napolitano (DHS has legal control over visa policy, while State is responsible operationally for visa policy implementation)—waivers, again, that State has designed without Congressional oversight-- *then the core problem that this bill seeks to solve, i.e. visa processing - will be solved simply by the President's program and this bill becomes unnecessary.* The President's program sets up State to reduce dramatically its interview backlog and, basically, produce visas with the only security checks being automatic queries of watchlists and other data already embedded in State's Consular Consolidated Database checks. *See 9 FAM 41.121 N2.3-1.*

I need only refer to the Christmas Day Bomber and 9/11 facts above (and there are many other examples) to reiterate the importance of visa interviews and the re-vetting of visas. Terrorist organizations or governments seeking to use their citizens for corporate, government or university espionage all recruit from those that already have U.S. issued visas. It is foolish to assume that vetted once means only automatic database re-vetting need take place.

**H.R. 3039, the "Welcoming Business Travelers and Tourists to America Act of 2011"**

Before a complete determination can be made of the relevancy of this bill, Congress needs to demand that the State Department and Department of Homeland Security (officially responsible for visa security policy) provide (1) the exact terms of the White House visa interview waiver program per country and (2) overstay rates for China, Brazil and India.

Further, the bill presents multiple other issues. First, economic security is threatened much more significantly than the happy-go-lucky tourism arguments suggest. To invite tourists from countries whose citizens for years have come to the United States to escape poverty (Brazil and India) or a repressive regime that is openly friendly to America, robustly commits espionage on American soil, and have been smuggled here illegally across both northern and southern borders for years (China), is to invite a surge in visa overstays and potentially to flood a downturned economy with more foreigners eventually seeking American jobs.

If we could be assured that all these visa applicants would abide by the terms on their stay, and abide by our laws, this bill may have value. However, these are countries not in the Visa Waiver Program because their overstay rates are traditionally high and, in the case of China, security issues are especially severe. Visa overstays for countries in the Visa Waiver Program must be

held under 3 percent of all visitors for a country to remain in the program. Legally countries must “meet certain conditions” to be considered for Visa Waiver status. In addition, DHS must first complete and certify a number of required actions aimed at enhancing the security of the program, including its ability to verify the departure of 97 percent of foreign nationals who depart through U.S. airports (referred to as an air exit system which we still do not have in place fully).

We need to stop illegal immigration activity and enforce current immigration law before we consider broadening our immigration policies by what I will term “Executive Policy” (as opposed to laws or Executive Orders). Now is not the time to increase the workload of the State Department in the manner conceived in the bill; the work of consular officers-- already often just shy of a rubber stamping process due to scant resources and closed embassies-- will indeed become one. The whistleblowers issue that has arisen with U.S. Citizenship and Immigration Services (USCIS) to which I have testified in prior years could easily re-arise with the implementation of this bill. In recurrent USCIS management policies, citizenship applications are adjudicated on a “timed” basis. Performance is based on numbers of applications vetted, and are not based on security or full merit evaluation. This situation could be projected into an already stressed State Department consular function where no authorization for appropriations is included for any of the changes sought in the bill.

#### *Section Analysis*

The bill's solution to get more tourists here more quickly for China, India and Brazil is to (1) hire more consular officers using nonimmigrant visa fees and (2) video-conferencing of interviewees, including the State Department's ability to unilaterally modify visa validity periods for any country once video-conferencing is proven as a fast and effective solution to interviews.

#### *SEC. 3. VISA PROCESSING*

*Notwithstanding any other provision of law, the Secretary of State shall set a visa processing standard of 12 or fewer calendar days at United States diplomatic and consular missions in China, Brazil, and India, and use machine readable nonimmigrant visa fees to hire a sufficient number of Foreign Service officers and limited non-career appointment consular officers to meet and maintain such standard throughout the year.*

Potential spies and tremendous amounts of fraud can be turned away with proper visa interviewing and document review. *To be clear, fraud employed does not change depending on where a person is from or what the intent is upon coming to the United States. Fraud is fraud whether employed by a terrorist, spy, criminal or simple economic migrant. The commonality is that it all breaks the law, and it is all detectable.* A mandatory 12 day visa processing time frame will necessarily reduce consular officer ability to catch fraud whether that fraud is perpetrated in terrorist havens like Yemen, Somalia, or spies in China or fraud in Brazil, India or any other country in the world. Performance reviews will be based on numbers processed, not fraud caught or terrorists or spies referred for further scrutiny. Without visa interviewing done systematically and on terms fairly based on terms provided our citizens, our nation will have conveniently forgotten the learned the lessons of 9/11 for the greed of an immediate dollar.

*SEC. 4. VISA VIDEO-CONFERENCING*

*(a) Pilot Program - The Secretary of State shall conduct a two-year pilot program for the processing of nonimmigrant visas using secure remote video-conferencing technology as a method for conducting visa interviews of applicants, and shall work with other Federal agencies that use such secure communications to help ensure security of the video-conferencing transmission and encryption.*

First, Section 4 is unduly vague. What video-conferencing for what countries, under what circumstances, and with what personnel? Who will run the program? How will it be funded?

Second, video conferencing necessarily does limit an in-person review of documents, assessment of behavior, and most importantly, in-country follow-up when necessary.

Third, the issue with video-conferencing is also technical. How do we take biometrics from someone 8,000 miles away at the other end of a video screen in India? How do we ensure the biometrics that somehow are taken actually belong to the person who was interviewed? And how do we assure that video-conferencing does not become a slippery slope whereby Washington D.C. becomes the interview hub for the entire world? There is a potential that video-conferencing will produce a false sense of security, and diminish INA law and policy requiring an in-person interview for proven reasons.

Fourth, there remains an issue for the security of personnel. Where would the video-conferencing locations be? Presumably, in remote areas where there is no embassy thus enabling an in-person visa interview where there otherwise is no opportunity for one. That is good in theory, but once implemented, that would require a State Department employee must man that remote office, with expensive equipment, without security. That sets up a potential for attacks, kidnappings, or simple burglaries.

*SEC. 7. VISA VALIDITY PERIOD*

*If the Secretary of State can demonstrate no adversarial effects to the United States, the Secretary may modify or enter into agreements with certain countries on a non-reciprocal basis to allow for longer visa validity periods than the periods with such countries that are in existence as of the date of the enactment of this Act.*

Granting longer visa validity without reciprocity is the natural complement to waiving interviews for those seeking to simply dismantle the visa regime and let foreign visitors pour into the country without care for security or growing illegal population statistics. That may be the Obama administration position to support amnesty. Yet the State Department has a long history of using visa reciprocity in diplomatic negotiations, and INA 221(c) gives State the ability to use law to back up negotiations. Trumping the reciprocity requirement at INA 221(c) with a provision like this so Chinese can be granted 10-year visas, even though they only give U.S. citizens 1-year visas, makes it easy on consular officers but State realizes, unofficially, that the ramifications in the long run for their diplomatic missions, and consular functions where security is important, are not good. State knows the rest of the country pays the price if their officers are not doing their job. It is much easier, and efficient, to spend the time and energy to keep out nefarious purposes, then dispose of it once in the country. The purpose of vetting is to bring

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Mr. GALLEGLY. Thank you very much, Ms. Kephart. Our next witness is Ms. Jessica Zuckerman. She is a Research Associate at the Heritage Foundation House and Center for Policy Studies. She researches and writes on issues such as border security, counterterrorism, immigration policy, among others. Ms. Zuckerman received her Master's Degree from George Washington University and holds

a Bachelor's Degree from Ohio State University. Welcome, Ms. Zuckerman.

**TESTIMONY OF JESSICA ZUCKERMAN, RESEARCH ASSOCIATE,  
ALLISON CENTER FOR FOREIGN POLICY STUDIES, THE HER-  
ITAGE FOUNDATION**

Ms. ZUCKERMAN. Thank you for the opportunity to be here today. I believe very strongly in the need to tackle the challenges of facilitating legitimate travel by reducing unnecessary barriers to issuing visas.

The policies contained in H.R. 3039 are a commendable step in reducing visa backlog and derive two significant benefits in my opinion. The first advantage is job creation as was discussed. Currently inbound travel to the U.S. Supports almost 2 million American jobs and the value of global travel is expected to double to more than 2 trillion over the next 10 years. Unfortunately, the U.S. Share of long distance travel is shrinking. According to the U.S. Travel Association, this decline is said to have resulted in the loss of approximately 78 million visitors and over half a trillion in lost spending. If America recaptures its fair share of international travel by some estimates more than 1 million jobs could be created over the next decade.

The second advantage is public diplomacy. As the Ranking Member has pointed out, surveys of international visitors to the U.S. Have shown that foreigners who travel to the country are over 74 percent more likely to view the U.S. favorably and 61 percent more likely to support the U.S. And its policies.

These are just a few of the many reasons the United States should work to regain its rightful share of long distance travelers. And it is my view that this can be done without disadvantaging homeland security. With these advantages in mind, I would like to briefly explore some of the background issues.

Currently one of the most vexing burdens for foreign visitors wishing to obtain a visa is long wait times for applicants to be interviewed at overseas consular offices. In May of 2010 the Department of Commerce and State indicated the visa wait times in high volume countries such as Brazil and China were anywhere between 1 to 5 months. While the State Department has done much to improve wait times in these nations more remains to be done.

H.R. 3039 would set a reasonable visa processing standard of no more than 12 days for citizens in the high-volume nations of China, Brazil and India. These standards would serve to codify many of the changes made by the Department of State over the past year and help to combat extensive visa wait times.

Standards, however, are nothing without the resources to meet them. Recognizing this fact, H.R. 3039 also calls for the use of fees collected from issuing machine readable nonimmigrant visas to hire additional consular personnel. The processing standards contained within H.R. 3039 offer a strong first step in reducing overly burdensome visa wait times.

The legislation also calls on the Secretary of State to conduct a 2-year pilot program for the processing of nonimmigrant visas via secure videoconferencing. In many large countries such as Brazil and India citizens may have to travel for hours or even days at

great personal expense in order to reach a U.S. consulate to conduct their visa interview. The use of secure videoconferencing would help to ease this burden, allowing for remote interviews for individuals living far from the U.S. consulate. It also offers the potential to expand the Department of Homeland Security's visa security program where consular facilities do not have the space or resources to house visa security officers.

Finally, H.R. 3039 would also require the State Department to publish data on wait times for visa interview appointments and visa application processing as well as provide performance assessments of how the department is responding to increased demand for visas. Such data would be crucial in helping the Department of State to understand bottlenecks in visa application rates. Publishing this data would also serve to encourage individuals to apply for visas at times of lower demand. I would urge the Congress to seriously consider such initiatives aimed at facilitating greater travel to the U.S. without compromising security.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Zuckerman follows:]



*CONGRESSIONAL TESTIMONY*

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**H.R. 3039: Reducing Unnecessary  
Barriers to Visa Issuance**

**Testimony before the  
Subcommittee on Immigration Policy  
and Enforcement  
Committee on the Judiciary  
United States House of Representatives**

**May 17, 2012**

**Jessica Zuckerman  
Research Associate, Homeland Security and Latin America  
The Douglas and Sarah Allison Center  
for Foreign Policy Studies  
The Heritage Foundation**

My name is Jessica Zuckerman. I am a research associate for Homeland Security and Latin America in the Douglas and Sarah Allison Center for Foreign Policy Studies, at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Thank you for the opportunity to appear before the committee and address this vital subject. In my testimony today, I would like to concentrate on the policy changes proposed by H.R. 3039, the Welcoming Business Travelers and Tourists to America Act of 2011.

My responsibilities at The Heritage Foundation involve research and analysis for the foundation's public policy work concerning homeland security and Latin American affairs. Homeland security has been a particular Heritage research priority. The foundation produced the first major assessment of domestic security after 9/11.<sup>1</sup> Over the past decade, Heritage assembled a robust, talented, and dedicated research team of which I have the honor and privilege of being a part.

Heritage analysts have studied and written authoritatively on virtually every aspect of homeland security and homeland defense. The results of all our research are publicly available on the Heritage website at [www.heritage.org](http://www.heritage.org). Heritage collaborates frequently with the homeland security research community, including the Center for Strategic and International Studies (CSIS), the Aspen Institute, the Center for National Policy, the Hudson Institute, the George Washington University Homeland Security Policy Institute, and the Strategic Studies Institute and Center for Strategic Leadership at the U.S. Army War College. Heritage analysts also serve on a variety of government advisory task forces, including the Homeland Security Advisory Council and the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities. Heritage research programs are nonpartisan, dedicated to developing policy proposals that will keep the nation safe, free, and prosperous.

Among its research, The Heritage Foundation has developed a long-standing record on the issues of visa management, security, and reform. This body of research reflects the foundation's commitment to public policies that promote legal immigration and travel, while also enhancing national security and encouraging economic growth.

#### **U.S. Share of Global Travel**

Inbound travel to the U.S. supports almost 2 million American jobs. The value of global travel is expected to double over the next 10 years to more than \$2 trillion. Right now, however the U.S. share of that business is shrinking. Reportedly, the U.S. share of long-distance travel has declined over the past decade—from 17 percent in 2000 to 12 percent in 2010.<sup>2</sup> According to the

<sup>1</sup>L. Paul Bremer III and Edwin Meese III, *Defending the American Homeland: A Report of the Heritage Foundation Homeland Security Task Force* (Washington, D.C.: The Heritage Foundation, 2002).

<sup>2</sup>Roger J. Down, "America's Lost Decade of Tourism," *The Wall Street Journal*, November 21, 2011, [http://www.ustravel.org/sites/default/files/WSJ\\_11.21.11\\_AmericasLostDecadeofTourism\\_4.pdf](http://www.ustravel.org/sites/default/files/WSJ_11.21.11_AmericasLostDecadeofTourism_4.pdf) (accessed May 11, 2012).

U.S. Travel Association, this decline has resulted in the loss of approximately 78 million visitors and \$606 billion in lost spending.<sup>3</sup>

If the trend line continues, the U.S. could be shedding jobs in this sector of the economy rather than adding them. On the other hand, if America recaptures its fair share of international travel, by some estimates, more than an additional 1 million jobs could be created over the next decade.

At the same time, regaining America's share of international visitors offers more than economic benefits alone. Visitors to the United States tend to come away with a much improved view of the country. These visitors return home bringing with them positive experiences and memories from the United States, serving to enhance U.S. public diplomacy. In fact, surveys of international visitors to the U.S. have shown that foreigners who travel to the U.S. are over 74 percent more likely to view it favorably and 61 percent more likely to support the U.S. and its policies than those who have never had first-hand experience of America and Americans.<sup>4</sup>

### **Reducing Unnecessary Barriers**

Regaining the United States' share of long-distance travel requires the nation to tackle the challenges of facilitating legitimate travel by reducing unnecessary barriers to issuing visas. One key issue is the vexing problem of long wait times for applicants to be interviewed at overseas consular offices, a step mandated by Congress during the visa approval process in the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004.

The State Department currently has a stated goal of delivering visas in no more than 30 days from the time of application.<sup>5</sup> In May 2011, however, visa wait times in high-volume countries, such as Brazil and China, were anywhere between one to five months.<sup>6</sup> To meet this high demand, the Department of State has since deployed additional personnel, along with expanded visa sections and enhanced systems and technology in these nations.<sup>7</sup> As of May 8, 2012, the average wait time had been reduced to one day in Rio de Janeiro and two days in Beijing. Overall, in Brazil, visa processing increased by 63 percent in the first quarter of FY 2012 compared to FY 2011, and 48 percent in China.<sup>8</sup>

H.R. 3039 seeks to codify these changes and combat extensive visa wait times in such high-volume nations by setting a reasonable visa processing standard of no more than 12 days for citizens of China, Brazil, and India. Recognizing that this standard cannot be met without a

<sup>3</sup>Ibid.

<sup>4</sup>Discover America Partnership/RT Strategies, "Survey of International Travelers."

[http://www.naider.com/upload/International\\_Travel\\_Survey\\_Summary.pdf](http://www.naider.com/upload/International_Travel_Survey_Summary.pdf) (accessed May 11, 2012).

<sup>5</sup>U.S. Department of State, "U.S. Visa Policy," [http://travel.state.gov/visa/questions/policy/policy\\_4433.html](http://travel.state.gov/visa/questions/policy/policy_4433.html) (accessed May 11, 2012).

<sup>6</sup>U.S. Department of Commerce, International Trade Administration, "Visa Interview Wait Time: Brazil," <http://trade.gov/travelindicators/visa-wait-brazil.asp> (May 11, 2010); and U.S. Department of Commerce, International Trade Administration, "Visa Interview Wait Time: China," <http://trade.gov/travelindicators/visa-wait-china.asp> (accessed May 11, 2010).

<sup>7</sup>U.S. Department of State, "Year-on-Year Visa Demand Up in China and Brazil: State Department Continues to Reduce Visa Interview Wait Times," January 12, 2012, <http://www.state.gov/r/pa/prs/ps/2012/01/180628.htm> (accessed May 11, 2012).

<sup>8</sup>Ibid.

concurrent increase in resources, H.R. 3039 also calls for using the fees collected from issuing machine-readable nonimmigrant visas to hire additional consular personnel to maintain visa processing standards year around. While care should be taken in considering any benefits that would aid China and Chinese travel, particularly given the refusal of the nation to accept their visa overstays, the visa processing standards contained within H.R. 3039 offer a strong first step in reducing overly burdensome visa wait times.

Additionally, the Welcoming Business Travelers and Tourists to America Act of 2011 calls on the Secretary of State to conduct a two-year pilot program for the processing of nonimmigrant visas via secure video-conferencing. In many large countries, such as Brazil and India, citizens may have to travel for hours or even days at great personal expense—travel costs, hotels, and lost salary—to a U.S. consulate to conduct their visa interview. These expenses and burdens only multiply if an individual is traveling with his spouse or family. The use of secure video-conferencing would not only allow individuals who live far from a U.S. consulate to meet the visa interview requirement with greater ease, but would also allow for the United States to more easily increase the volume of interviews conducted without the need to augment the number of personnel at any one consulate. Further, video-conferencing offers the potential to enhance and expand the Department of Homeland Security's Visa Security Program—which places homeland security officers at U.S. consulate offices to assist in reviewing and vetting potential high-risk visa applicants—where consular facilities do not have the space or resources to house Visa Security officers.

H.R. 3039 would also require the State Department to publish data on wait times for visa-interview appointments and visa-application processing and provide performance assessments of how the department is responding to increased demand for visas. This data could be crucial in understanding bottlenecks and visa application rates for countries like India, where the numbers of individuals denied a visa or subsequently refused entry to the United States have been skyrocketing. Such data could help reduce bottlenecks and wait times, by encouraging individuals to apply for visas at times of lower demand.

Thank you for the opportunity to speak today on this important issue. I encourage the Congress to seriously consider the need for visa reform and the policies changes contained in H.R. 3039, the Welcoming Business Travelers and Tourists to America Act of 2011.

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Mr. GALLEGLY. Thank you, Ms. Zuckerman. Our next witness, Mr. Edward Alden, is the Bernard L.

Schwartz, Senior Fellow at the Council on Foreign Relations. Prior to joining the Council Mr. Alden was the Washington Bureau Chief for the Financial Times and also served as the project director for the independent task force on immigration policy. Mr. Alden

holds a Master's Degree in international relations from the University of California Berkeley.

Welcome, Mr. Alden.

**TESTIMONY OF EDWARD ALDEN, BERNARD L. SCHWARTZ  
SENIOR FELLOW, COUNCIL ON FOREIGN RELATIONS**

Mr. ALDEN. Thank you very much, Chairman Gallegly and Ranking Member—

Ms. LOFGREN. Could you turn your microphone on?

Mr. ALDEN. There we go. Thank you very much to both of you for inviting me to testify today.

I have studied U.S. Visa policy for a number of years. My 2008 book, *The Closing of the American Border*, detailed the mistakes in visa processing that were made before the 9/11 attacks, but also examined the negative economic and diplomatic consequences of the decline in travel to the United States after 2001.

More recently I coauthored with Liam Schwartz, an American Israeli immigration lawyer who is one of the world's foremost experts on visa processing, a Council on Foreign Relations report recommending improvements to the U.S. visa system to speed processing without sacrificing security. I agree with Ms. Zuckerman that the record of progress in recent years shows that efficiency and security can go hand in hand and that the United States does not need to harm its economy to safeguard its borders.

While it is far from comprehensive and not without some problems, the legislation before you today deserves support. It would promote job creation by addressing inefficiencies in the visa system. In particular, it takes on one of the chronic problems that we have seen over the past decade which is that improvements in visa processing times have not durable. The State Department has periodically reduced the waiting times by surging staff when the backlogs have grown unacceptably long, only later to relocate staff or fail to anticipate demand increases and have the wait times balloon again. The exchange between Mr. King and Congressman Heck is very much about this. You go back a year ago and the wait times in many places were 2, three, 4 months. The State Department has put resources into these countries and the wait times have been reduced dramatically.

This legislation would set a new visa processing standard of 12 days or fewer in the biggest markets that have been subject to the longest delays.

H.R. 3039 should, however, be approved as part of a broader package of legislation that includes reforms to the criteria for expanding the visa waiver program and encourages more efficient visa security screening.

Since 9/11, the United States has made considerable progress in improving the security and integrity of the visa system. But this was not accompanied for many years either by either staffing increases or by technological improvements to maintain efficient visa processing. The result has too often been long delays for visa applicants. The falling U.S. Share of world travel, which is in part the consequence of visa issues, certainly not all by any means, has hurt the United States economically by discouraging tourists and business travelers.

Tourism is the largest service export in this country and expanding travel is an easy way to create hundreds of thousands of jobs. The good news is that the State Department has recently made improved visa processing a high priority and has increased staff and significantly reduced waiting times in key markets like China and Brazil. These improvements are being made without additional expenditures of taxpayer dollars, which is important given budget constraints. The fees charged to foreign travelers fully cover the cost of additional staffing and improved technology. There was just an increase in the tourist fee by \$20 to \$160 last month, for instance.

H.R. 3039 would build on this recent progress. Establishment of the 12-day standard is a reasonable target. The Department of Commerce's U.S. Travel and Tourism Advisory Board has recommended a more ambitious 5-day target. Virtually all U.S. Missions in these countries, Sao Paulo is one of the few exceptions, are currently meeting the standard. But as I elaborate in my written testimony, the legislation should make clear that this is a goal, not a deadline. Flexibility in implementation is essential.

The bill also promises better transparency. The Department of State maintains current wait times but doesn't show us historically whether wait times have gone up or down in different locations. And the legislation would also require an annual visa demand forecast to help manage workload.

H.R. 3039 is only one element of the changes needed to make sure the United States has the most secure and efficient travel system in the world. Increasingly improvements in screening technology and information sharing are making it possible to enhance security even as processing speeds improve. This approach should be wherever possible to focus consular resources on higher risk travelers.

I just want to make one quick point on the 9/11 Commission before I sum up. The 9/11 Commission looked at the whole realm of problems prior to 9/11 and interviews clearly were an issue, especially in Saudi Arabia, but the biggest failures were failures of information sharing. Two of the hijackers identified by the CIA as al Qaeda operatives, that information not shared with the State Department, those individuals not watch listed. The 9/11 Commission rightly focused on information sharing as the key element to protecting our borders against terrorist travel. They even acknowledged that had the interviews been done in Saudi Arabia, consular officers at the time were looking for people who might overstay and the Saudis didn't do that. Very few if any of the hijackers would likely have been turned back by interviews. So the 9/11 Commission, if you read their recommendations, says it is critical that border screening systems check people efficiently and welcome friends, that admitting large numbers of students, scholars, business people, and tourists fuels our economy, cultural vitality and political reach, and they call for the design of these security measures to be updated and adapted to meet that goal and the goals of security.

Thank you very much.

[The prepared statement of Mr. Alden follows:]

## Moving Forward on Visa Policy

Prepared statement by

**Edward Alden**

*Bernard L. Schwartz Senior Fellow  
Council on Foreign Relations*

Before the

Subcommittee on Immigration Policy and Enforcement

Committee on the Judiciary

*United States House of Representatives  
Second Session, 112th Congress*

Hearing on the “Welcoming Business Travelers and Tourists to America Act of 2011”

I want to thank Chairman Smith, Chairman Gallegly, Ranking Member Lofgren, and the distinguished members of the subcommittee for inviting me to testify today on H.R. 3039, the “Welcoming Business Travelers and Tourists to America Act of 2011.”

I have studied U.S. visa policy for many years. My 2008 book, *The Closing of the American Border: Terrorism, Immigration and Security Since 9/11*, detailed the mistakes made in visa processing before the 9/11 attacks, but also examined the negative economic and diplomatic consequences of the decline in travel to the United States after 2001, in part because of visa delays that resulted from efforts to tighten security. More recently, I co-authored with Liam Schwartz, an American-Israeli immigration lawyer who is one of the world’s foremost legal experts on visa processing, a Council on Foreign Relations Policy Innovation Memorandum recommending improvements to the U.S. visa system to speed processing without sacrificing security.<sup>1</sup> It is clear from the record of progress in recent years that efficiency and security can go hand-in-hand, and that the United States does not need to harm its economy to safeguard its borders.

While it is far from comprehensive, and not without some problems, the legislation before you today deserves support. It would promote job creation by addressing inefficiencies in the visa processing system. In particular, it takes on one of the chronic problems in the visa system over the past decade, which is that

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<sup>1</sup> Edward Alden and Liam Schwartz, “Faster, Safer and Smarter: A Modern Visa System for the United States,” Council on Foreign Relations Policy Innovation Memorandum No. 12, at <http://www.cfr.org/immigration/faster-safer-smarter-modern-visa-system-united-states/p27055>.

improvements in visa processing times have not been durable. The State Department has periodically reduced wait times by surging staff when the backlogs have grown unacceptably long, only later to relocate staff or fail to anticipate demand increases and have the wait times balloon again. This legislation would set a new visa processing standard of twelve days or fewer in the biggest markets which have been subject to the longest delays, namely China, Brazil, and India. It would increase transparency, including making publicly accessible historical data on wait times, and require reporting to Congress that includes visa demand forecasts and the consular strategy for meeting that demand.

H.R. 3039 should, however, be approved as part of a broader package of legislation that includes reforms to the criteria for expanding the Visa Waiver Program, and encourages more efficient visa security screening.

### Background

The United States has four compelling interests in the proper functioning of visa policy. The first is security, ensuring that citizens of foreign nations who could do harm to the United States, whether terrorists or serious criminals, are not permitted to enter the country. The second is the integrity of the immigration system, which means ensuring that temporary visa holders do not overstay and remain illegally in the United States. The third is economic, ensuring that tourists and business travelers are able to come and spend money or invest in the United States. And the fourth is broadly diplomatic, which means ensuring that would-be travelers to the United States are treated in a fair and dignified fashion that reflects the values of this country.

In the pre-9/11 era, as was explored in detail by the 9/11 Commission investigation, security and immigration integrity did not receive appropriate attention.<sup>2</sup> While the State Department made serious efforts to screen visa applicants against lists of known terrorists, the security and immigration review process was riddled with holes. Some mistakes were the consequence of poor technology and inadequate information sharing. Others were simply the result of the volume of visa applications and other demands overwhelming the capacity of the consular system. From 1993 to 2001, the number of non-immigrant visas adjudicated increased from 7 million to more than 10 million annually, and the number of U.S. passport applications doubled to more than 7 million. But consular service staffing actually declined over that period, and in too many cases the scrutiny of visa applicants was cursory.

In the wake of 9/11, a number of steps were taken to strengthen the security aspects of the visa system. The State Department implemented, and then Congress later legislated as part of the Intelligence Reform and Terrorism Prevention Act of 2004, a requirement that nearly all visa applicants be interviewed in person by consular officers. Consular officers themselves receive additional training in security/counter-terrorism and in detecting visa fraud. New security reviews for visa applicants from certain countries were established, and reviews for individuals with scientific and technical skills were expanded.<sup>3</sup> Information sharing within the U.S. government was significantly improved. Enhancements in passport security and biometric requirements for visas and for entry into the United States have made it extremely difficult for individuals to travel on fraudulent documents. Watch lists for terrorists and serious criminals have been expanded and made available across the relevant agencies. And, most recently, the U.S. government has greatly enhanced its capacity to identify visa overstayers.

While most of these security improvements are welcome, they were not accompanied for many years either by staffing increases or by technological improvements to maintain efficient visa processing. The result has too often been long delays for visa applicants, both for interviews and for final visa processing.

<sup>2</sup> Thomas R. Eldridge et. al, "9/11 and Terrorist Travel," Staff Report of the National Commission on Terrorist Attacks Upon the United States. [http://govinfo.library.unt.edu/911/staff\\_statements/911\\_TerrTrav\\_Monograph.pdf](http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf).

<sup>3</sup> Stephen Yale Loehr, Demetrios G. Papademetriou, and Betsy Cooper, "Secure Borders, Open Doors: Visa Procedures in the Post-9/11 Era", Migration Policy Institute, 2005. [http://www.migrationpolicy.org/pubs/visa\\_report.pdf](http://www.migrationpolicy.org/pubs/visa_report.pdf).

Visa delays have been one significant factor in the decline in overseas travel to the United States. As the bill under consideration today notes in its findings, worldwide long-haul travel grew by 40 percent over the past decade, but the United States gained almost none of that increase. Instead the U.S. global share of such travel fell from 17 percent in 2000 to 12 percent in 2010. Visa delays have also discouraged business travelers, foreign students and others who contribute to the U.S. economy, though the State Department has rightly given priority to timely processing of these applications.

There are certainly many reasons for the falling U.S. share of global travel, and the difficulty that some foreign travelers face in obtaining a visa is only one. But visas clearly matter. A detailed study by the Department of Homeland Security that looked at the period from 2001 through 2007 found that, while travel to the United States from visa waiver countries had recovered to pre-9/11 levels by 2006, travel from visa countries remained significantly depressed.<sup>4</sup> Indeed, it was not until the most recent fiscal year, FY2011, that the number of non-immigrant visas issued for travel to the United States, just over 7.5 million, finally approached the record 7.6 million issued in 2001.<sup>5</sup>

### Recent Developments

The State Department in recent years has made improved visa processing a high priority. The Obama administration's January 2012 Executive Order on Travel and Tourism, which sets ambitious targets for increasing the number of visas issued, largely served to give high-level support for efforts already well under way in the State Department to increase capacity to adjudicate visas in the biggest sending countries such as China and Brazil.<sup>6</sup>

In China, for example, the U.S. Consular Mission considered more than one million visa applications in FY2011, a 35 percent increase over the previous year. The State Department recently authorized another fifty consular officers to adjudicate NIV visa applications, which would be a nearly 50 percent increase on the current 105 officers.<sup>7</sup> Wait times for interviews at the five visa granting missions in China have fallen from as long as 100 days in 2010 to current wait times that are typically two days or less. In the first four months of FY2012, the number of visa processed in China grew by 33 percent.<sup>8</sup>

In Brazil, which had been plagued with some of the longest interview wait times in the world, waits for U.S. tourist visa interviews currently range from just two days in Brasilia and Recife to twenty-five days in Sao Paulo. As recently as January 2012, the wait times were seventy-eight and seventy-five days in Sao Paulo and Recife respectively. In the first four months of FY2012, the number of visas processed from Brazil grew by 62 percent.

<sup>4</sup> Derek Cornwell and Bryan Roberts, "The 9/11 Terrorist Attack and Overseas Travel to the United States: Initial Impacts and Longer Run Recovery," Office of Immigration Statistics, Policy Directorate Working Paper, March 2010. [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ni\\_911\\_wp.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ni_911_wp.pdf).

<sup>5</sup> The 7.6 million visas issued in FY2001 included nine countries that are now part of the Visa Waiver Program – (Czech Republic, Estonia, Greece, Latvia, Lithuania, Hungary, Malta, Slovakia and South Korea) – though two, Argentina and Uruguay, were removed from the VWP since 2001.

<sup>6</sup> The White House, "Executive Order – Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness," January 19, 2012. <http://www.whitehouse.gov/the-press-office/2012/01/19/executive-order-establishing-visa-and-foreign-visitor-processing-goals-a>.

<sup>7</sup> American Chamber of Commerce in China, *American Business in China White Paper*, April 25, 2012. <http://www.amchamchina.org/whitepaper2012>.

<sup>8</sup> Written statement of David T. Donahue, Assistant Secretary for Visa Services, Department of State, before the Senate Appropriations Committee, subcommittee on Homeland Security, March 21, 2012.

In response to the President's Executive Order, the State Department has promised further steps that will increase processing capacity in China and Brazil by 40 percent. These steps include expanding consulate hours, remodeling consular facilities to increase the number of interview windows, and adding staff.

Since the January 19 Executive Order, the State Department and the Department of Homeland Security have also initiated a two-year pilot program to waive interviews for certain low-risk visa applicants who are renewing a non-immigrant visa in the same category within forty-eight months of the expiry of their previous visa. The pilot program has been implemented in China and will be extended to Brazil, Mexico, India, and Russia.

It is critical to keep in mind that these improvements are being made without additional expenditures of taxpayer dollars, which is important given U.S. budget constraints. The fees charged to foreign travelers for visa processing fully cover the costs of additional staffing and improved technology. Just last month, the State Department raised the fee for a tourist visa to \$160 per person in order to support processing costs and pay for expanded overseas facilities.

This reduction in wait times has come even as the Obama administration has continued to make improvements in terms of security and immigration integrity. The most significant recent development is the progress in identifying visa overstayers. Since April, 2011, the State Department has used airline departure data (known as ADIS) to help check whether visa applicants may have previously overstayed their visas in the United States and therefore may be ineligible for a new visas.<sup>9</sup>

### **The Contributions of H.R. 3039**

H.R. 3039 would build on this recent progress. The establishment of a processing standard of twelve or fewer calendar days in China, Brazil, and India is a reasonable target. The Department of Commerce's U.S. Travel and Tourism Advisory Board has recommended a more ambitious five-day target for visa processing to compete with European countries.<sup>10</sup> Virtually all U.S. missions in these countries are currently meeting the twelve-day target, and indeed State has its own internal target of keeping visitor visa wait times below twenty days.

The State Department has opposed this new standard, however, suggesting it would limit the department's flexibility to re-deploy consular resources as needed – whether to meet unexpected spikes in demand in other locations, or to provide services to American citizens abroad. But it is important to recognize that a processing standard is not a deadline. It in no way directs consular officers to resolve any particular case within a specific time frame. It in no way directs consular officers to approve or deny any visa application. It does not forbid the department from missing that goal at certain times and in certain places, though Congress would expect, and should receive, an explanation. It is instead a standard that expresses the desire of Congress that the administration budget and plan to reach that goal. Legislative language to clarify this intent may be warranted.

<sup>9</sup> Written statement of David T. Donahue, Assistant Secretary for Visa Services, Department of State, before the U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Border and Maritime Security, March 6, 2012.

<sup>10</sup> Final Report, U.S. Travel and Tourism Advisory Board, U.S. Department of Commerce, [http://tinet.ita.doc.gov/ttab/docs/TrvlTourAdvisyBord\\_Thumb\\_NEWSMALL.pdf](http://tinet.ita.doc.gov/ttab/docs/TrvlTourAdvisyBord_Thumb_NEWSMALL.pdf).

There also may be other issues to be resolved. It is not clear, for instance, whether the 12-day processing goal includes cases that are referred for scrutiny under the Security Advisory Opinion (SAO) review process, which I will discuss in more detail below.

The bill also promises better transparency. The Department of State currently maintains on its web site current information about the visa wait times at all its consulates worldwide. But it does not publish historical data on whether wait times have been growing or shrinking at particular locations. The bill would require rolling monthly reporting on the web site of the median wait times for interviews and visa processing at each diplomatic and consular mission. The legislation would also require the State Department to produce an annual visa demand forecast in key high-growth markets and to report on how the missions are managing the nonimmigrant visa workload. While Congress should be careful not to increase unnecessarily reporting burdens on the agencies, these measures would make clear that Congress places a high priority on efficient visa processing.

The State Department is also opposed to the provision that would require more extensive pilot testing of remote video-conferencing for consular interviews. In large countries such as Brazil and China, the expense and burden associated with travelling for personal interviews at one of the small number of U.S. consulates is considerable for those living outside the main cities. Video conferencing seems to offer one way around this issue, but State has said that pilot testing to date has demonstrated that video interviews are less efficient, use more consular resources, and may raise security issues in some countries. I cannot speak directly to these issues, except to suggest they probably could be resolved. But I would note that the fundamental problem remains the legislative requirement that virtually all visa applicants be interviewed. If the department were allowed to waive interviews for more routine cases, the issue of finding alternatives to in-person interviews would be less urgent.

Finally, the bill would make clear that the Secretary of State has the authority to extend the validity of visas even in cases where a foreign country refuses to reciprocate. This is an issue primarily with respect to China, which has repeatedly refused U.S. requests to increase the visa validity period for U.S. citizens to more than one year. The U.S. therefore does not offer Chinese citizens a longer visa period. There are a number of issues at stake in these negotiations, and the issue should be seen in the broader context of U.S.-China relations. But extending the validity of visas issued to Chinese citizens would clearly be in the U.S. interest, both in encouraging Chinese visitors and in reducing the enormous burden on consular staff to process visa applications.

### **What Else is Needed?**

H.R. 3039 is only one element of the changes needed to make sure that the United States has the most secure and efficient travel system in the world. Increasingly, improvements in screening technology and information-sharing are making it possible to enhance security even as processing speeds improve. The approach should be, wherever possible, to use those enhancement to focus consular resources on higher-risk travelers

This is why expanding the Visa Waiver Program makes sense. As I wrote recently in *Foreign Affairs*, the new VWP system “in many ways provides greater security against terrorist or criminal travelers than the regular visa system.”<sup>11</sup> Applicant governments are required to share criminal and intelligence information, which greatly enhances the Department of Homeland Security's ability to identify and stop travelers who pose a threat. New VWP countries that join must implement better passenger and baggage screening; adopt secure, forgery-proof passports; and agree to timely reporting of stolen passports. Further, countries must allow

<sup>11</sup> Edward Alden, “If You Extend the Visa Waiver Program, They Will Come,” *Foreign Affairs*, April 9, 2012.

<http://www.foreignaffairs.com/articles/137390/edward-alden/if-you-extend-the-visa-waiver-program-they-will-come>.

regular U.S. government auditing of their travel-related security programs. And finally, they must enroll in the Electronic System for Travel Authorization (ESTA), which requires U.S. screening of all travelers against U.S. terrorist and criminal watch lists. James Carafano of the Heritage Foundation recently testified to this committee that the Visa Waiver program is "arguably the nation's most important visa program."<sup>12</sup> With the recent gains in identifying and tracking overstayers, Congress should support expansion of the VWP. A number of bills have been introduced that would make this possible.

I would also urge the Congress to increase its oversight of the Security Advisory Opinion process. The SAO system, which is intended to allow for more in-depth reviews of certain visa applicants, has grown enormously. In FY2011, consular officers submitted more than 366,000 SAO requests.<sup>13</sup>

As I noted in my testimony to this committee last year, the SAO reviews are often very long, forcing some visa applicants to wait for months or even years for a decision.<sup>14</sup> In the vast majority of cases, these visa applications are eventually approved. But the delays are hugely inconvenient for foreign students, business travellers, skilled employees, and others who need visas issued in a timely fashion. And the SAO criteria are such that many of those captured by the system are precisely the sort of individuals we want to come to the United States. The American Chamber of Commerce in China said in its White Paper published last month that:

"While the overall percentage of visa applicants subject to [these] checks may be in the low single digits, the delays are a serious problem for US high-tech companies in China, including those in the aerospace and semiconductor industries. Fifty percent or more of the employees, customers, and partners of many such companies are subject to security checks. Delays mean that customer and project meetings and training sessions often have to be postponed or cancelled. Chinese customers' travel delays to the US are serious enough to jeopardize US companies' competitiveness with European rivals."<sup>15</sup>

As I noted last year, the State Department and the Department of Homeland Security have been working on improved screening systems to permit far more accurate targeting of those applicants who genuinely raise security concerns, so that the lengthy SAO reviews could be reserved for perhaps tens of thousands rather than hundreds of thousands of visa applicants annually. I would urge Congress to make streamlining visa security procedures a high priority.

Thank you for considering my testimony, and I am happy to respond to any questions.

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<sup>12</sup> James J. Carafano, "next Steps for the Visa Waiver Program," written testimony before the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Dec. 7, 2011.

<sup>13</sup> Written statement of David T. Donahue, Assistant Secretary for Visa Services, Department of State, before the U.S. House of Representatives, Committee on Homeland Security, Subcommittee on Border and Maritime Security, March 6, 2012

<sup>14</sup> Prepared Statement of Edward Alden, Council on Foreign Relations, before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, May 11, 2011.

<sup>15</sup> American Chamber of Commerce in China, *American Business in China White Paper*, April 25, 2012. <http://www.amchamchina.org/whitepaper2012>.

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Mr. GALLEGLY. Thank you very, Mr. Alden. I am going to try to make my questions a little expedited because we are scheduled for votes momentarily and I don't want to hold you here for an hour or so because there are a series of votes.

Very briefly, Ms. Kephart, would you be kind enough to respond as the counsel on 9/11 Commission, you may or may not have had a little different perception as to the statement that Mr. Alden presented, could you respond to that?

Ms. KEPHART. Sure. I was a counsel on the 9/11 Commission assigned to the border team, I did all the immigration work for the 9/11 Commission for how the hijackers got in and stayed in. And I also conducted all the interviews of all the border inspectors who had let the hijackers in as well. So I come at this from a perspective, having been also an author of the 9/11 and Terrorist Travel monograph, with a very, very strong sense of what our border recommendations were and why we insisted on the in-person interview. I was also the one who found out and discovered Mohammed al-Qahtani as the potential 20th hijacker who did not get in. It was based on the behavioral interview that we had done of him at Orlando International Airport, August 2001, that our commissioners decided to include the paragraph in the 9/11 Commission final report, in the recommendations, about the importance of the interview and the importance of determining behavior. It was critical to us, and so I do take a little bit of an issue at the interpretation of the 9/11 Commission report.

Thank you for letting me respond.

Mr. GALLEGLY. Thank you, Ms. Kephart. In the interest of time I would yield to the gentlelady from California, the Ranking Member, Ms. Lofgren.

Ms. LOFGREN. Thank you. In the 9/11 Commission report on page 389, it indicates that we should have efficiency and that admitting large numbers of student scholars and business people and tourists is basically good for the country. But the last sentence in that paragraph says, training and design of security measures should be continuously adjusted.

Now in the footnote to that paragraph it says this, one post-9/11 screening process known as Condor has conducted over 130,000 extra name checks. The checks have caused significant delays in some cases but have never resulted in visas being denied on terrorism grounds.

That makes me wonder whether we should examine the utility of that particular—I mean, we want to be protected but if we are doing something that doesn't yield value except for delay maybe we ought to be doing something else in terms of security. So, I am wondering, Mr. Alden, you have studied this considerably. We put about 366,000 people through the SAO process every year. Is there a more efficient way of dealing with our security concerns than what we are doing now.

Mr. ALDEN. I strongly believe there is. I know it is not directly the topic of this legislation, but it arises out of the concern you expressed in your question to Mr. Heck, which is if interviews are moving at a more rapid pace you were worried by the danger of arbitrary denials. I think more likely what we will see is more individuals being put into what they call the security advisory opinion system, which is a very lengthy background check. And there is no question in some cases these are appropriate. The problem is that the numbers have grown extraordinarily.

So there were, you mentioned, 366,000 visa applicants put into these reviews last year. They take a long time, an average about 4 weeks, in some cases much longer, months and even years. The troubling thing about this, a lot of these individuals are highly

skilled individuals so we do it for people with technology backgrounds.

Ms. LOFGREN. Believe me, I hear about it from Silicon Valley all the time.

Mr. ALDEN. Aerospace companies, semiconductor companies, these are people with skills who automatically get put into these background checks. You have it happening in India a lot. The State Department has been working for some time, and I am puzzled as to why they haven't rolled it out, systems that would more efficiently narrow down the number of people who are determined to need these long background checks. The technology is much better than it used to be in raising red flags that this is someone that we really need to take a careful look at, and these numbers should be much smaller, nothing like 366,000.

Ms. LOFGREN. Let me ask you this. Whenever I go overseas I always try and go into the embassy or consulate and talk to the people that are actually doing the processing to get a sense from them directly how it is going and what their suggestions are. One of the issues is that our State Department employees can't actually access the database, they have to hand it over to Homeland and that is inherently delayed, and having served for 10 years on the Homeland Security Committee, I regret to say that the Department of Homeland Security is not a model of efficiency, and that would be bipartisan inefficiency. Under both Administrations it hasn't been that great.

Would it help expedite—I mean, these State Department employees have background checks, they are as reliable as other American employees—to let them access the databases that Homeland never gets around to checking, would that help?

Mr. ALDEN. This has broadly speaking been a constant problem over the last decade. There has been a tremendous challenge in integrating the different databases that contain information about individuals who raise concern on terrorism or criminal grounds. There has been real progress. This is an enforcement example rather than terrorism example, but the State Department consular officers now have data on overstays. So if you have flown into an airport in United States and you flew back to your country after the period of your visa expiration, if you go to apply for another visa that will come up on the screen of the State Department consular official and they are at least going to want a pretty good explanation of why you didn't go home on time the last time.

Ms. LOFGREN. No delay would count but otherwise—

Mr. ALDEN. Yeah, quite a reasonable set of questions. So there have been improvements on that front, but I agree still real issues with information not being shared freely across the agencies. Really if you look at it, DHS and State have the same mission here.

Ms. LOFGREN. Right.

Mr. ALDEN. This is what they call a layered screening system to try to be sure that there are multiple points in which it is possible to identify people that we want to keep out of the country.

One of the ironies of the Christmas Day bombing story is that CBP officials, once he was on the airplane, ran their checks and they said this is a guy, as soon as he gets to Detroit we are going to pull him aside and question him and probably send him on the

next plane back home. That turned out to be too late, and there have been a number of efforts since. But it is a layered system—

Ms. LOFGREN. The sooner we get that information, the better off.

Mr. ALDEN. Yes.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. GALLEGLY. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. Ms. Zuckerman, you heard the discussion I had with Mr. Heck regarding the economics of travel and I would point out, do you agree with that \$1.9 trillion in economic activities as a consensus number that we heard here. And then his testimony says 1 out of \$7 are of foreign travel dollars. That mapped out to be \$271 billion in economic activity here. And I notice that in your written testimony you had that number set at \$606 billion but your oral testimony was more than a half trillion. Both of those definitions do fit but those numbers don't match. Can you tell me why?

Ms. ZUCKERMAN. I can't but I can double-check that and submit it for the record.

[The information referred to follows:]

Information for the Record:

From my understanding, Congressman Heck's written testimony cites \$1.9 trillion in total economic input generated by the travel and tourism industry in the United States. The figure of \$606 billion cited in my written testimony refers to the lost spending caused by the decline in the U.S. share of long distance travel as estimated by the U.S. Travel Association.

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Mr. KING. I would be interested in that. I hear a lot of economic discussions. So I would like it if we could agree on the numbers we are discussing here. You had 2 million American jobs that were used on tourism and travel. I remember testimony in this Committee that we needed to bring more immigrants in to do that work. Would have you an idea of what percentage of those 2 million American jobs would be jobs that we are actually seeking to fill or have filled by legal or illegal immigrants?

Ms. ZUCKERMAN. I don't have that offhand, no.

Mr. KING. Just my curiosity, as I read through your testimony, Ms. Zuckerman. And I also notice note that you point out in May of 2011 is the time that you have here when you identified that there are wait times in countries such as Brazil and China anywhere between 1 to 5 months. Do you agree with Mr. Heck that that wait time has diminished significantly over the last, say, 6 months or the last year would be appropriate. This is 1-year old data, correct?

Ms. ZUCKERMAN. Yes, this is the height.

Mr. KING. Then to take you back to the data that I quoted to Mr. Heck on the 2 and 4-day wait periods with various cities in places like China and Brazil and in Asia. The Beijing 2 days, Shanghai 4 days, and Brazilia 2 days, Sao Paulo was the anomaly in this whole list at 25 days. I wanted to make sure that I understand this correctly, the process that one uses to apply for a visa can now be—the application can be online and that is available to everyone now,

isn't it, online application? And at that point can't they also schedule an interview online?

Ms. ZUCKERMAN. I am not positive, but I believe so.

Mr. KING. I am confident that that is the case. As I review the material that I am looking at from the State Department, that one can go online and apply for a visa and schedule the online interview and these dates that I have given here are State Department numbers, 2 to 4 days for almost every one of these major cities within the countries in question with the exception of Sao Paulo.

So if it is a 2-day waiting period to schedule the interview, when they finish the interview can you tell me will they then receive the visa, if it is going to be issued on the spot?

Ms. ZUCKERMAN. It would have to go through possibly a background process if they are flagged as was mentioned by—

Mr. KING. Let me ask Ms. Kephart who has dealt with this. Can you illuminate that subject a little bit for me?

Ms. KEPHART. Can you repeat the question one more time? We have gone on a long string of—I am sorry.

Mr. KING. Of course. I have had that happen to me before too. The question is when one applies for a visa one can do so online and then schedule the interview online.

Ms. KEPHART. Yes.

Mr. KING. If the interview time, according to the State Department, now in most of these cities is 2 to 4 days, then when one schedules the interview say within say 48 hours or perhaps more, when they arrive for that interview, the in-person interview that you advocated, do they receive the visa normally at that meeting?

Ms. KEPHART. Well, according to the information that you provided, I don't know if they are providing it at the meeting, at the actual meet itself. My memory of it was it was not always at the meetings. Sometimes there is a few days lag time. But if you are talking about 2 to 4 days that is not a big deal, especially when you need to re-visit.

If you have an officer in front of you and that officer begins to note fraud in your interview, they are going to want to check out more. That is why you need more time. Sometimes you can't do that within 2 to 4 days. Sometimes you can't even do it within 12 days if it looks like you have a large fraud scheme in front of you.

Mr. KING. Thank you. I turn the question to Mr. Alden. Can you identify anything in this bill that enhances security?

Mr. ALDEN. That enhances security.

Well, I think by setting—most of the bills are about facilitation. I think you are right about that. The question is does it detract from security. My argument would be no, it in no way detracts from security. I think the issue is can you be efficient and secure at the same time.

Mr. KING. I heard that testimony. Ms. Zuckerman, do you agree with Mr. Alden?

Ms. ZUCKERMAN. Yes.

Mr. KING. And Ms. Kephart, do you?

Ms. KEPHART. No, I think this is a facilitation bill and the security is dumbed down and numbed down by it.

Mr. KING. Thank you. I yield back.

Mr. GALLEGLY. I thank the gentleman, and I want to thank our witnesses. I would like to have had a little more time today, but the bells are about to go off. I want to thank each of the witnesses today for your testimony.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses which we will forward and ask the witnesses to respond as promptly as they can do so and that the answers may be made a part of the record of the hearing.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, I again thank the witnesses and this hearing is adjourned.

[Whereupon, at 2:03 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

#### **Prepared Statement of the Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary**

Thank you Mr. Chairman.

Since September 11th, each proposed change to U.S. immigration policy must be thoroughly considered with an eye toward national security. Unfortunately, we learned by experience that those who wish to do us harm will exploit any weakness in immigration policy to enter the United States.

However, U.S. immigration policy should not be so restrictive that it denies access to foreign nationals who want to enter the country for legitimate business or travel purposes.

H.R. 3039 makes several changes to current U.S. visa policy. It requires the State Department to issue visas within a span of 12 days or less. The bill requires the State Department to conduct a two year pilot program that uses video-conferencing in place of the required in-person interview for a non-immigrant visa.

H.R. 3039 also requires the State Department to post on their website the median wait times for interviews and visa processing. And the bill alters the current standard for visa validity so that the time period for which a visa is valid is no longer tied to the time period of visa validity set by the foreign national's home country.

These changes have major consequences for U.S. immigration policy and national security. We have to be careful not to encourage rubber-stamping of applications in order to meet a deadline.

In addition, the use of video-conferencing in place of in-person interviews changes current law, which was enacted because the State Department did not exercise its authority to interview in-person the majority of the 9/11 hijackers.

The State Department has informally expressed concerns about some of H.R. 3039's provisions. So I look forward to hearing the testimony of the Gentleman from Nevada and of all of the witnesses today to assess the risks and benefits of H.R. 3039.

Thank you Mr. Chairman and I yield back the balance of my time.

