

Testimony of
Kathleen Campbell Walker
American Immigration Lawyers Association

Before the
Subcommittee on Immigration
Committee on the Judiciary
United States Senate

Regarding
Expanded Border Security

April 12, 2002
Washington, DC

Mr. Chairman and Distinguished Members of the Subcommittee:

My name is Kathleen Campbell Walker. I am honored to be testifying today before you on behalf of the American Immigration Lawyers Association (AILA). AILA is the national bar association of nearly 8,000 attorneys and law professors, who represent the entire spectrum of individuals subject to our immigration laws. I have been privileged to chair AILA's State Department Liaison Committee for the past three years and am a member of that organization's Border Issues Committee. I also practice immigration law in El Paso, Texas, where I have focused for over 16 years on border issues. In addition, I serve on the Texas State Comptroller's Border Advisory Council, and have served as a board member of the Border Trade Alliance as well as a member of the Executive Committee of the Texas Border Infrastructure Coalition. I worked for four years as President of the El Paso Foreign Trade Association to establish the first Dedicated Commuter Lane using Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) technology in the State of Texas.

I thus bring to the table practical and on the ground experience regarding the challenges of border security, and cross-border and cross-agency issues that I hope will be of use to the Committee as it works to develop laws to address effectively the complex issues raised by achieving effective border security without harming either our internationally based economy or our dedication to respecting individual rights preserved by the Constitution.

INTRODUCTION: THE IMPORTANCE OF THE BORDER SECURITY AND VISA REFORM BILL AND THE NEED FOR ITS SPEEDY PASSAGE

I appreciate this opportunity to present AILA's views on the Enhanced Border Security and Visa Entry Reform Act. AILA applauds this Committee's responsive and thorough work in formulating this bill and strongly supports its swift passage. This bipartisan bill takes significant steps to improve the capability of federal agencies engaged in applying our immigration laws to determine who should or should not be admitted to the U.S., and to ensure that our nation's immigration policies are in line with our common goal of effectively deterring terrorism. On behalf of AILA, I commend Senators Kennedy, Brownback, Kyl, and Feinstein for their leadership in developing this important measure. The Enhanced Border and Visa Reform Act is central to this nation's effort to implement the necessary steps that will enhance and increase the layers of security both at and away from our borders.

This nation does not have the luxury of waiting to enhance the protection of the precious jewel, which is this nation. Without the tools provided in this bill, those who protect our borders and attempt to fairly implement our laws would confront the war on terrorism with an antiquated and poorly coordinated armory. At this critical time, we must give our federal agencies the tools they need to succeed in their task, rather than handing them their marching orders without the means to achieve their objectives. And we must do so without losing sight of our country's long and proud history of due process and respect for civil liberties.

The Enhanced Border Security Bill includes real solutions to real problems. It also recognizes that we cannot achieve security without accountability. Database integration that is not combined with well-trained inspectors, investigators, and consular officers is an insufficient response to our security needs. Equally important, we cannot expect our federal agencies to be able to look into the minds of individuals with no criminal records to find a potential terrorist. Terrorists do not check off the boxes on a form to indicate that they are, or may be, terrorists. We thus need to make sure not to pose false solutions to real problems and thereby lull ourselves into a degree of security we have not achieved.

The border security bill is premised on two facts. First, enhancing our intelligence capacity is key to our increased security. The face of terrorism is not tied to one nationality, religion, or ethnic group. The horrific terrorist action in Oklahoma is an ever-present reminder to us of that painful fact. Any changes in immigration policies or procedures must allow our federal agencies timely access to valuable and reliable intelligence. Second, our most effective security strategy is to keep out those who mean to do us harm, while admitting those who come to build America and make our country stronger. Immigration is not a synonym for terrorism. The problem here is terrorists, not immigrants. We need to isolate terrorism, not America.

The Enhanced Border Security bill's provisions reflect two important understandings about our country and our needs—namely, that we are a nation of immigrants, and that we must undertake any reforms in ways that do not destroy our economy and commerce. The U.S. is an integral part of the world economy, with global business, tourism, and migration serving a pivotal role in our economic prosperity. As we take important and needed steps to enhance our security, we must seek to ensure the efficient flow of people and goods across our borders. If we do not, we risk both chaos at our borders and the destruction of our economy, and along with it, the ability to pay for our national security. “Fortress America” is an undesirable and impractical solution that repudiates our history and our economic and social needs as well as the current reality of our global economy.

Nearly 500 million entries occur annually by people who come to the U.S. as tourists, business people, students, or to visit with their families. Less than one million annually settle here as immigrants. Living in a border community underscores on a daily basis the imperatives this flow creates and the importance of this bill, and the necessity of balancing our security needs with the fact that we are a nation of immigrants and that we must continue to facilitate the free flow of people and goods.

After September 11, border communities experienced first hand the need for federal agencies to work together. These communities dealt with repeated inspections of same-day crossers without any modification of procedures to reflect the waste of resources that occurred whenever the same individuals were repeatedly put through the same enhanced inspection processes. Pedestrians and passenger vehicles waited more than 5 to 6 hours to enter the United States, a delay that overtaxed our border agencies and reduced the effectiveness of our inspectors. While patriotism and a concern for our country's security led these communities to tolerate these disruptions, many asked if these procedures really were making us safer. I fear that the answer is “no.” In the meantime, at a time of economic downturn, border communities faced further suffering as a result of our economic interdependence on our neighboring countries. From the perspective of this nation's border communities, the Border Security bill presents a reasoned and timely

approach to this challenge of balancing our security with our economic realities.

In summary, AILA urges the bill's swift passage because it reflects the following:

- We must enhance our security as a nation of immigrants. Our immigrant heritage remains central to our national identity and helps explain our nation's vitality and success.
- We must enhance our security in ways that will not destroy our commerce or economy or inhibit the efficient and secure flow of people and commerce at our borders and ports of entry. Our economic security is essential to our national well-being and contributes to our ability to enhance our national security while improving our nation's global competitiveness.
- The key to enhancing our national security is increased intelligence provided on a timely basis to the appropriate federal agencies.
- Our best protection is to focus our security resources where they are most needed. We must be able to identify and separate low risk travelers and facilitate their entry. Such measures are more effective and more easily implemented than measures that focus on persons after they enter the U.S. In all cases, we need to make sure that we use our resources in the most effective way possible to keep out those who seek to do us harm, not those seeking to come to our country for the reasons that people have always come here, including escaping persecution, desiring to be reunited with their families, working legally in the U.S., investing or conducting business in the U.S., or visiting this country as tourists.

As Congress addresses the need to enhance our national security and the many important as well as complex issues raised in this discussion, it is important to recognize that:

- **The Senate Needs to Pass the Enhanced Border Security and Visa Reform Bill as a Package:** All the various parts of the border security measure are needed to enhance our security. The different provisions in the bill fit together to create an effective border security and visa security-related reform initiative. Selectively passing only some of this bill's many important provisions will leave dangerous gaps that threaten our security and decrease the effectiveness of our federal agencies. The bill's provisions reflect the reality of the federal synergies inherent in our current immigration system, and recognize that enhancing our security will require the combined efforts of many federal agencies and the support of Congress and the Administration. The bill also recognizes that our security is further enhanced by defined cooperative efforts with our Canadian and Mexican neighbors. We cannot achieve security-related goals in an international vacuum.
- **The Bill Needs to be Quickly Passed:** It is vitally important that this measure be passed and signed into law with all due haste. Delay threatens our safety and well-being and flies in the face of the gravity of the situation created by the incomprehensible events of September 11. The bill's provisions include changes in the policies, practices, and procedures of several federal agencies including, but not limited to, the Immigration and

Naturalization Service (INS). While reorganization of that agency is a top congressional priority, we cannot afford to wait until that task is undertaken to implement the necessary changes advanced by the border security bill. We need to move forward now to implement the important reforms included in the bill. How can we say “wait” to those lost on September 11 or to their surviving families and friends?

Our urgent need to move forward on this bill is underlined by the fact that our border security concerns go beyond the INS and its reorganization. Intra-agency coordination, which is a primary goal of the bill, needs to be addressed immediately, as vividly illustrated in Inspector General Fine’s February 28, 2002 testimony on the Visa Waiver Program. In his testimony before the Subcommittee on Immigration and Claims of the House Judiciary Committee, Inspector Fine notes that in July 2000, the INS submitted 22 projects to the U.S. Customs Service requesting modifications to the Interagency Border Inspection System (IBIS), which the Customs Service manages. One of these changes mandated via IBIS was the entry of an alien’s passport number upon primary inspection in order to enhance the interdiction of fraudulent passport users. The Customs Service would not pay for the revisions from its own budget, and INS did not receive funding for this effort until FY 2002. Perhaps timely funding would have been appropriated if there had been more intra-agency coordination.

- **The Administration and Congress Must Support Adequate Funding for the Bill’s Initiatives:** Given the bill’s very ambitious deadlines, the Administration and Congress need to step up to the plate and provide the federal agencies with the staffing and funding levels necessary to implement this measure’s provisions. The Bush Administration’s proposed FY 2003 budget is a good first step, but we must be prepared to fund this effort generously, with Congress and the Administration reviewing how the agencies use these funds. The functions targeted in this bill have been neglected for decades, and it will take much patience, time, congressional attention, and sufficient appropriations to achieve the goals of this legislation.
- **The Administration and Congress Need to be Prepared to Respond to Potential Problems with Mandated Deadlines:** Some of the bill’s provisions, particularly several of the mandated implementation deadlines, may impact negatively on cross border commerce and travel. Certainly, the goal of exit and entry control at our land ports needs to be carefully reviewed. The investment in infrastructure alone could prove to be significant (for example, certain land ports will have to add lanes for exit control inspection). And these costs do not take into account the necessary staffing increases. The Administration and Congress need to be open to effective alternatives, alert to the consequences of short time frames, and willing to modify these deadlines as merited, and, in some cases, provide alternatives and/or appropriate expedited funding.
- **Federal Agencies Need to Step Up to the Plate:** The federal agencies, especially the INS, the Department of State (DOS), and the U.S. Customs Service, play critical integrated roles in enhancing our nation’s security. With sufficient funding, the provisions in the Border Security Bill will give federal agencies the wherewithal to achieve their goals. For their part, the agencies need to be up to the task of implementing major reforms that address our security needs and, at the same time, recognize the continued importance of immigration to our nation: people will continue to seek entrance

to the U.S. to visit, reunite with their families, contribute to the American economy, and seek safe haven. The efficient flow of cross-border and international commerce must continue to fuel our economic recovery and growth. We also cannot tolerate inter-agency or intra-agency disagreements that threaten to derail the goals of the bill, for we do so at our collective peril.

The Enhanced Border Security and Visa Reform Bill highlights the urgent need for the following:

- **A U.S./Mexico Immigration Agreement to Help the U.S. Address National Security Concerns:** These discussions offer the United States the opportunity to align our immigration policies with our national security needs, market forces, and family reunification goals. Bilateral cooperation in enforcement efforts regarding illegal immigration, an alternative for hardworking immigrants already here filling legitimate labor needs to earn legal status, a new temporary program for essential workers to fill identified labor needs, and more visas for workers and family members are initiatives that will contribute to our security. Because the Border Security bill creates the additional impetus for Mexico and the U.S. to coordinate and cooperate, it follows that by encouraging and facilitating legal immigration, both countries will be able to focus their resources on terrorists and people engaged in smuggling, trafficking, and other criminal activities.
- **An Effective Reorganization of the INS and Border Functions:** A reorganization of the INS tops the congressional agenda and must take place. However, as noted earlier, such restructuring must not delay the passage of the Border Security Act. Reforming the INS has dramatic implications for the border and, hence, border security. Any reforms of the INS must recognize that the inspections function, by its very essence, represents the competing missions of the INS. Inspectors both process thousands of applicants for entry documents while simultaneously trying to identify and interdict criminals or potential criminals. The enforcement and adjudication aspects of inspections need to be closely coordinated, as do INS and U.S. Customs, the two primary agencies staffing our ports of entry.

Such inter- and intra-agency coordination will be harmed by any proposal that would split off INS inspections and other aspects of INS enforcement from the rest of the agency, as has been contemplated by reports about a proposed border security agency. That type of splitting merely adds another cook in an already over-crowded kitchen. Rather, some form of unified port management may provide the needed solution, and merits further investigation. Unified port management does not require the reinvention of the proverbial wheel by forming a new single federal agency. Instead, port efficiencies are achieved through community and agency involvement to create a port authority reporting to a governing body comprised of agency and Administration members. Such a body would clearly and decisively react to port of entry security, staffing, infrastructure, and policy needs. All of these needs must be coordinated to achieve the goal of enhanced border, and hence, national, security.

THE ENHANCED BORDER SECURITY AND VISA REFORM BILL INCLUDES NEW

AND NECESSARY DETERRENCE MEASURES

Among other provisions, the Enhanced Border Security bill includes increased funding for the DOS and INS, increased access to lookout lists, reforms at our consulates, the use of new technologies, direct government funding of these technologies, more pre-inspections abroad, a study of the creation of a North American Perimeter Safety Zone, reforms to the foreign student program, and a workable entry-exit control system. These and other provisions in this measure will help enhance and create layers of protection that stand between us and any potential terrorist adversaries from abroad. The bill's provisions interrelate with each other to create a more effective security net and the foundation necessary to enhance our security, and include the following.

1. Increased Staffing and Funding for DOS and INS and Interagency Data Sharing

The Border Security bill authorizes increased personnel, technology funding and data access for the DOS and INS, and also provides additional training for INS and DOS staff. These provisions provide an important first step. Clearly, both agencies need increased staffing levels and funding to appropriately handle their heightened security-related responsibilities post September 11. Staffing shortages already were prevalent in INS inspections and investigations prior to September 11. In addition, the consular corps for years has been overtaxed and under-resourced.

Inadequate funding has left these agencies with technologically obsolete and incompatible computer systems. Some offices, especially those overseas, do not have adequate computer capacity, much less sufficient access to Internet resources. In order to effectively fight terrorism by enhancing our intelligence capabilities and improving our border security, both the DOS and the INS need this increased funding to upgrade their technological infrastructures. However, Congress' active oversight will be necessary to ensure that funding is used wisely and our goals are achieved.

The Bush Administration's FY 2003 budget includes \$11 billion for border security. This funding is a critically important down payment and a significant first step in providing the money needed for long-overdue changes. However, the reforms this measure contemplates will demand large, multi-year commitments from Congress and the Administration. It is necessary and appropriate that such funding come from direct federal appropriations. Technological capacities at our federal agencies cannot be fully supported through user fees.

2. The Use of New Technologies

The Border Security Bill recognizes that in order to gather and make accessible a great range of information about individuals and their identities, it is critical to make use of existing and emerging technologies to achieve the most reliable means of verifying identity. The bill seeks to upgrade the technological capacities of the government so that federal agency personnel are better trained and equipped to use new technologies to effectively screen out potential terrorists. The bill also includes provisions for the issuance of machine-readable, tamper-resistant, travel documents with biometric identifiers that would promote the use of secure passports and visas resistant to counterfeiting. The federal government needs to fund the development and use of these new technologies and ensure that the various federal agencies coordinate compatible efforts

in this area. Given the importance and complexity of these efforts relative to the short time frames provided in the bill, Congress needs to be willing to modify these deadlines as needed.

It also is important to recognize that as we attempt to strategically balance our security concerns with our economic needs, we need to test these new technologies and staff them appropriately. And the need is acute. After September 11, people in the border pedestrian lines waited 4 to 6 hours to enter the U.S., due to the mandate that all applicants for entry be subjected to an Interagency Border Inspection System (IBIS) security check. Because of a lack of scanners, other equipment, and staffing, the ports were backlogged and incapable of initiating any inspection efficiencies.

3. Interoperable Data System, Lookout Lists, and Protections

The Enhanced Security Bill includes a provision requiring the development and implementation of an interoperable data system to provide current and immediate access to information contained in the databases of federal law enforcement agencies and the intelligence community that is relevant to visa issuance determinations and determinations of an alien's admissibility or removability. U.S. federal agencies, as well as international law enforcement officials, need real time, direct access to certain information from the different agencies' databases. The "lookout lists" created by these databases include the names of people who should not be admitted to the U.S. or who should be pulled aside for questioning should the authorities come into contact with them. Increased funding would allow the agencies to build up their technological capacities so that DOS and INS could directly access the FBI's and other agencies' databases. Direct and timely access to this data would enable law enforcement agencies to act immediately to identify those high-risk individuals who seek to enter the U.S. or receive other immigration benefits. Names and relevant identifying information could assist agencies in interdicting individuals.

The bill also includes important safeguards against potential abuse of this data by: limiting the dissemination of information; ensuring that such information is used solely to determine whether to issue a visa or to determine admissibility or removability; ensuring the accuracy, security, and confidentiality of information; protecting any privacy rights of individuals who are the subject of such information; providing for the timely removal and destruction of obsolete or inaccurate information; and doing so in a manner that protects the sources and methods used to acquire intelligence information. The bill also addresses the need for algorithms to account for various name and language transliterations.

Such safeguards will become even more necessary as the lists increase in size and unfamiliar names from various regions of the world may be incorrectly keyed in to a database. We must make every effort to ensure the accuracy and timeliness of the names on these lists so that the right, not wrong, individual is targeted.

4. Needed Reforms at U.S. Consulates

The Enhanced Security Bill recognizes that our intelligence gathering can be further improved

by increasing funding for the DOS, improving training for consular officers, reforming the Visa Waiver Program, tracking stolen passports, establishing a Terrorist Lookout Committee, restricting visa issuance procedures for those from designated states sponsoring terrorism, and enhancing the access of the DOS to information relevant to screening visa applicants who pose a potential threat to the safety and security of the U.S. Consular staff cannot be expected to interdict potential terrorists without timely access to relevant intelligence and agency database information, access to the Internet, and relevant training. In addition, to properly address security concerns, DOS needs additional consular staff as well as the attendant support staff and facilities.

Given the importance of this work, AILA would support upgrading the status of the consular officer who interviews visa applicants to determine visa eligibility and assess potential fraud allegations. Currently, more junior personnel with less hands-on visa application interviewing experience perform this function. AILA supports the placement and rotation, if necessary, at consular posts of a core of highly trained and specialized civil service visa processing specialists, fully trained in the complicated area of U.S. immigration law, who would be required to take a certain number of continuing consular education courses to be considered for promotion or pay increases.

Furthermore, decisions on visa issuance need to be reviewable. In these times of heightened scrutiny when it is much easier than ever to just say, “no,” such review is vital to ensure the integrity of the visa application process. Certainly, when comparing the level of accountability to which INS is held versus the DOS, the DOS is insulated from core precepts of administrative and judicial review to which INS is subject. AILA members know that many INS headquarters policies or regulations have been enhanced and improved through our judicial process, and in many cases have been strengthened through judicial scrutiny. We believe that such a review process is necessary so that DOS consular decisions mirror the checks and balances that are central to our democracy and our judicial system. Along with an avenue for review of the denial, we recommend providing any visa applicant or applicant for entry who is denied a visa or entry with the reasons for the denial. In those cases where the adverse decision is affirmed, a visa applicant should at least be provided with a means of appeal to the U.S. District Court for the District of Columbia.

In addition, consular authority to deny the presence of legal counsel at consular interviews should be rescinded since such authority enhances the ability of certain consular officers (certainly not all) not well-versed in the law or unwilling to provide a modicum of due process to deny applications not based on fact and/or law.

5. North American Perimeter Safety Zone

The Enhanced Border Security Bill calls for greater cooperation between the U.S., Mexico, and Canada through the study of the feasibility of creating a North American National Security Program. This program would facilitate the creation and implementation of a North American perimeter security zone to increase the collective security of all three nations. Such a North American perimeter would bolster security through law enforcement coordination, intelligence sharing, and better joint use of enforcement resources. Such efforts would reduce the chance that someone wishing to do harm to the U.S. would travel to one of our neighboring countries and

then cross by land into the U.S.

Any cooperation among the three governments in immigration enforcement should include a plan to ensure that asylum seekers have meaningful access to protection. While Mexico has recently acceded to the refugee convention, access to asylum remains problematic, particularly for migrants intercepted at Mexico's southern border. On the other hand, Canada should not be pressured into diminishing protections for refugees. All countries in the region can and should strengthen security measures. None should be required, however, to lower their protections for refugees to the "lowest common denominator."

As North American security cooperation also addresses the issues of smuggling and trafficking, the European experience is particularly relevant regarding protection for asylum seekers. The United Nations High Commissioner for Refugees (UNHCR) commissioned a report that concluded that the majority of asylum seekers arriving in the European Union have been smuggled or trafficked. The report also states that in the European Union, "the effects of blanket enforcement measures, such as common visa policies, readmission treaties, carrier sanctions, and airline liaison officers (pre-inspection personnel) act to deny refugees the possibility of illegal exit from the regions of their persecution." The report recommends that European nations review their migration and asylum policies to open other channels to people fleeing persecution in their native countries. This recommendation includes incorporating the right to seek asylum and the responsibility of *non-refoulement* into anti-trafficking and anti-smuggling policy, recognizing that trafficking and smuggling are both "inherently abusive" and that both trafficked and smuggled persons can be refugees, thus improving reception conditions, and increasing family reunification.

6. Preinspection and Preclearance

As part of the study of the feasibility of a North American Perimeter National Security Program, the bill provides for a study of preinspection and preclearance programs. U.S. preinspection programs currently are in effect in only five countries: Canada, Ireland, Bermuda, the Bahamas, and Aruba. In these locations, passengers are in effect "preinspected" for admission to the U.S. before ever boarding a plane—passports are checked and names are run against the applicable lookout lists. This preinspection process allows more time for inspection and increases the likelihood of a more thorough check. It also would move our system from one that focuses on determining a person's eligibility for admission into the U.S. at a port of entry to one that focuses on determining that person's eligibility at the point of origination. This process also would decrease the volume of applications for entry at our air ports of entry. (The land ports of entry would receive less of a realized benefit from this procedure, but the preclearance program described below available in a frequent traveler program would enhance efficiency and security at our land ports of entry.)

INS and DOS will need to jointly recommend where such additional preinspections facilities should be located, as it would be impractical to undertake this procedure at every airport in the world. It also will be critical to clarify in advance with host countries any sovereignty issues that might arise when someone is to be arrested by U.S. officials working cooperatively with local authorities at the preinspection site who have the power to arrest and detain. Such cooperation should include assurances that suspected terrorists are not released because the host country

authorities do not view the threat posed by the individual as seriously as do U.S. authorities. These programs also will raise numerous international law concerns in which the laws of the host country do not recognize certain laws and procedures followed under U.S. law. When a country cooperates in such preinspection programs, those inspected should benefit from expedited admission upon arrival to the U.S.

The Border Security bill also contemplates creating programs that would enable foreign national travelers to the U.S. to submit voluntarily to preclearance procedures that the DOS and INS would establish to determine whether a traveler is admissible to the U.S. Such preclearance programs also would allow more time to review travelers' information and compare such information with information contained in the databases of federal law enforcement agencies and the intelligence community. The INS already has established precursors to these programs. For example, the SENTRI program, which is utilized in the Dedicated Commuter Lanes on the southern border, require applicants to undergo a ten print FBI fingerprint check and various customs and INS clearances as well as a seven point inspection of the car enrolled in the program. These programs allow the federal agencies involved in inspections to winnow the wheat from the chaff and focus their security reviews on higher risk applicants for entry. In addition, the NEXUS program (which is similar to, but less costly than SENTRI), is moving forward rapidly toward implementation on the northern border. The U.S. Customs Service also is testing a PASS program for commercial drivers that requires preinspections and provides for expedited clearance of cargo to enrollees.

What is critical for these programs to succeed is that they be integrated. Enrolled frequent travelers should be able to use their issued preclearance documents at any port of entry. Otherwise, we duplicate efforts, costs, and staffing with no improved security benefits. In addition, the benefits to this enrollment should extend to entry into Mexico and Canada to improve effective border crossings and entries at air and seaports.

Congress needs to be prepared to fund such preinspection and preclearance programs. As with other programs to increase security and deterrence, the federal government's role is key because of the significant costs in setting up and maintaining these programs. As to preclearance programs, the benefits of a high volume of enrollees must be weighed when contemplating against pass through costs to the user. In this instance, it is in our national interest and will reduce overall costs through preventative planning to waive the fees to enroll in these preclearance programs.

Finally, any preinspections/preclearance system must provide for mechanisms, including specially trained personnel, to assure that legitimate asylum seekers are afforded a meaningful opportunity to seek protection.

7. Passenger Manifest Lists

The Border Security bill requires that all commercial vessels or aircraft coming to the U.S. from any place outside the country provide manifest information about each passenger, crew member, and other occupant of the vessel or aircraft to an immigration officer prior to arrival in the U.S. In addition, each vessel or aircraft departing from the U.S. for any destination outside the U.S. must provide manifest information before departure. The information that must be provided for

each individual listed on the manifest is extensive and includes: complete name of the applicant, date of birth, citizenship, sex, passport number and country of issuance, country of residence, U.S. visa number, date, and place of issuance, when applicable, alien registration number, when applicable, U.S. address while in the U.S., and “such other information the Attorney General...determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.” The manifests must be transmitted electronically by January 1, 2003. The bill also requires the President to conduct a study, within two years of enactment, on the feasibility of extending the new manifest requirements to land carriers transporting persons to the U.S.

Mandating at the time of take-off that all airlines transmit passengers’ names to the destination airport be checked against the look out list is an important security tool. Through their reservation systems, airlines know in advance who will be flying to the U.S. Transmitting the list in advance would give U.S. authorities the opportunity to compare the passenger list to the lookout lists, thereby preventing the entry of and/or apprehending those who should not be permitted to enter the U.S. Currently, about 75 percent of airlines transmit these lists. In addition, such lists would assist in the review of applicants for entry under the Visa Waiver Program prior to their departure from the point of origin, which would enhance the level of security related to program participants.

AILA has concerns about the impact of the manifest requirement, if not efficiently implemented. The effectiveness of such a system depends on the INS having adequate technology and personnel to make swift and efficient use of the information. Preinspection and preclearance programs should facilitate the process for incoming travelers and reduce some of this burden, but appropriate staffing and procedures will be critical to success. In addition, if preinspections are conducted with meaningful safeguards to guarantee protection for asylum seekers, then the transmission of passenger lists should not compromise the safety of asylum seekers who may be en route to the U.S.

AILA also believes that the requirement to submit manifest information prior to departure from the U.S. will be more problematic and will cause delays in departures and possible chaos at our nation’s airports. It will be critical to exempt our frequent travelers enrolled in pre-clearance programs from this process. In addition, we must be prepared to develop workable alternatives that meet both security and transportation concerns. If we are ever to effectuate exit control, it will be easier to test the principle at air and seaports.

8. Entry-Exit Controls

Congress needs to ensure adequate personnel and technological improvements at and between our ports of entry. The August 2001 GAO Report, “INS Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years,” clearly identifies that security risks exist at both our northern and southern borders. The Border Security bill implements an integrated entry and exit data system included in the INS Data Management and Improvement Act of 2000 (Pub. L. No. 106-215) which provided for the system first contemplated by Section 110 of the 1996

immigration law, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) (Pub. L. No. 104-208).

In developing this entry-exit system at points of entry into the U.S., it is important to recognize the implementation challenges and possible disruptions to our commerce likely to be caused by such a system. For instance, implementing Section 110 at land ports is extremely problematic from infrastructure, staffing, and cost perspectives. In fact, many of our land ports have no place to expand to encompass outbound inspections. Furthermore, significant numbers of people would be involved. More than 400 million (about 80% of all inspections) are done annually at our land borders. About 800,000 border crossings are made daily between the U.S. and Mexico, and about 260,000 cross each day between the U.S. and Canada. A June 1998 report from the Senate Judiciary Committee, then chaired by Senator Orrin Hatch (R-UT), noted the catastrophic delays that would accompany the implementation of a Section 110 entry-exit system at land borders. For example, the report cited testimony from an earlier hearing by a witness who estimated that “assuming the most efficient and remarkable entry and exit procedures in the world that will take only 30 seconds per vehicle, and making the equally optimistic assumption that only half the vehicles have to go through the procedures, that would amount to an extra 3,750 minutes of additional processing time each day” at the Ambassador Bridge in Detroit. The witness then pointed out that there are only 1,440 minutes to a day, which means that implementing a Section 110 entry-exit system at that land border port of entry would lead to a delay of more than 2 1/2 days.

We also must recognize the limitations of such a system if we do not also enhance our intelligence capacity. The Senate report also noted that it is highly questionable if implementing Section 110 would ultimately provide limited, if any, assistance in prosecuting individual visa overstayers, and would have nothing to do with stopping terrorists or traffickers. An automated entry-exit control system’s database will in no way provide information as to which individuals might be engaging in terrorism or other unlawful activities. It would however have the potential of identifying suspicious travel patterns, if the individual utilized the same identity. We believe that the use of this system to track or locate terrorists or potential terrorists is not a realistic goal, and that our precious resources would be better spent on other aspects of this bill.

9. Reforms to the Foreign Student Program

The Border Security bill strengthens the monitoring aspects of the foreign student program provisions contained in the 1996 immigration laws, mandates the collection of additional information related to students, and requires the INS to periodically review schools authorized to admit foreign students to ensure that the schools are complying with record keeping and reporting requirements. If an institution or program fails to comply, its authorization to accept foreign students may be revoked.

Specifically, the bill requires the Attorney General, in consultation with the Secretary of State, to establish an electronic means to monitor and verify the various steps involved in admitting foreign students to the U.S. such as: the issuance of documentation of acceptance of a foreign student by an educational institution or exchange visitor program; the transmittal of such documentation to the Department of State’s Bureau of Consular Affairs; visa issuance; the student’s admission to the U.S.; the registration and enrollment of the student in his or her

institution or program; and any other relevant act such as changing schools or termination of studies or program participation. The bill also requires schools to notify the INS if a student has not reported for school more than 30 days after the deadline for registering for classes.

Additional data that must be collected under the bill includes: the student's date of entry, port of entry, date of school enrollment, date the student leaves school (e.g., graduates, quits), and the degree program or field of study. Student visa applicants also must provide additional information to the consular officer including their address, names and addresses of relatives, names of contacts in the country of residence who can verify information about the student visa applicant and previous work history, if any, including the names and addresses of employers.

The Border Security bill also establishes an interim system to be used until the program included in the 1996 law is fully implemented. Under this temporary system, the State Department is prohibited from issuing student visas unless the agency has received electronic evidence of acceptance documentation from an approved academic or other institution and the consular officer has adequately reviewed the applicant's visa record. Once a visa is issued, the Secretary of State must transmit to the INS notice that the visa has been issued, the INS must notify the academic institution that the alien has been admitted to the U.S., and the institution must notify the INS not later than 30 days after the class registration deadline should the alien fail to enroll. In addition, within 30 days of enactment, the INS must provide the State Department with a list of approved institutions authorized to receive nonimmigrants.

Although AILA believes that foreign students are not the equivalent of terrorists, we support the efforts of the INS to ascertain a student's compliance with their terms of entry to the U.S. We do not support the use of a student visa to enter the U.S. to achieve a non-education-related objective. We are concerned, however, that students not be subject to unmerited scrutiny in the application for visas. Our institutions of education are enhanced by the participation of foreign students and such institutions allow the U.S. to spread its message to other countries of the benefits of democracy and tolerance of ethnic and religious diversity. That message must continue to be delivered not only through such valuable efforts as the Peace Corps, but also through our educational institutions and foreign student programs.

10. Other Important Provisions in S. 1749

The Enhanced Border Security Bill includes many other important provisions that merit bipartisan support. Of particular relevance to the southern border is this measure's extension by one year of the deadline for border-crossers to acquire machine-readable laser visas from DOS. Although, the DOS started issuing laser visas in 1998 as a replacement for border crossing cards issued by the INS, prior to September 11, DOS was requesting an extension of the October 1, 2001 deadline for such replacements due to volume and processing delays. On October 1, the economic downturn caused by enhanced border inspections was further exacerbated by the inability of border crossing cardholders to enter border communities to shop. In addition, the INS gave no quarter to these border crossing cardholders by providing waivers for the laser visa requirement for such visitors.

This treatment was applied to one of our most favored trading partners and to applicants who had gone through at least one prior document application with the U.S. government. In comparison,

nonimmigrant applicants from Canada are visa exempt except in the E visa category. Some DOS officials now are stating that it should not be a problem if laser visa applicants, who have waited three to five months to get a laser visa appointment at a consulate, would have to wait a few more months. Border communities have responded loudly and clearly to this position: It will be a huge problem. Such a position ignores the realities of border society and economy in which each day's events impact on the viability of the border. Border communities are symbiotic. Coming from a southern border community, I can state unequivocally that any relief that would give Mexicans who are low security risks and hold old border crossing cards the ability, based on their prior cards, to cross into a border community and be inspected at land ports of entry before their laser appointments would provide an economic life boat to border businesses. In the interim, old border crossing cardholders could be mandated to undergo a security check prior to entry to address any security-related concerns.

WHAT HAS BEEN ACHIEVED SINCE SEPTEMBER 11

Since September 11, the status quo has undergone much change, with federal agencies (INS, Customs, Coast Guard and the other border agencies) coordinating and cooperating at unprecedented levels to make more effective the processes at the border both to protect our homeland and efficiently process legitimate trade and travel. In addition, our nation's agreements with Canada and Mexico already are helping us to increase the security of all three countries.

These initial efforts underscore the importance of coordination and cooperation among our federal agencies in the U.S. as well as in other countries and reinforce the need for the Border Security bill to reinforce, invigorate, and expand on these preliminary efforts. Some of these efforts are:

- **Additional Personnel at our Ports of Entry:** The INS detailed hundreds of inspectors and Border Patrol agents to the northern border and other ports of entry to enhance the inspection process and guard against unauthorized entries. Customs inspectors were sent to northern border ports of entry to make sure that they were staffed at all times by at least two agents. The Coast Guard sent additional patrols to the ports. Unfortunately, the INS and the U.S. Customs Service had difficulties implementing coordinated policies at ports of entry as to inspections issues, creating certain inefficiencies and agency disconnects.
- **Enhanced Data Sharing by the Federal Agencies:** On January 15, 2002, the INS was able to utilize the Consular Consolidated Database maintained by the DOS Bureau of Consular Affairs to help assess admissibility of applicants for entry to the U.S. In addition, the Customs Service enhanced the access of the INS and DOS to the Advance Passenger Information System, a database that includes information on arriving commercial air passengers.
- **Creation of the Foreign Terrorist Tracking Task Force:** President Bush, in October 2001, created the Foreign Terrorist Tracking Task Force. Comprised of representatives from the FBI, INS, DOS, Customs Service, Secret Service, and the intelligence community, this taskforce shares information previously unavailable to the federal

agencies and is charged with enhancing security by denying entry to terrorists and pursuing those already in the country.

- **“Smart Border” Agreement with Canada:** In December 2001, the U.S. and Canada signed the “Smart Border Declaration,” which outlines a 30-point action plan through which both countries will collaborate to identify and address security risks “while efficiently and effectively addressing the legitimate flow of people and goods back and forth across the Canada-U.S. border.” The declaration focuses on the secure flow of people, goods, and infrastructure, and on coordination and information sharing.
- **“Smart Border” Agreement with Mexico:** During his recent trip to Mexico, President Bush and Mexican President Fox finalized a 22-point “U.S.-Mexico Border Partnership Action Plan.” This plan is a comprehensive attempt to reconcile post-September 11 security concerns with the need to keep commerce moving freely between the U.S. and its second largest trading partner. The “smart border” deal aims to facilitate the legitimate flow of people and commerce across our borders while screening out those who would threaten us. Among other things, the plan calls for the U.S. to pre-certify certain Mexican companies that would electronically seal their containers in Mexico and receive express processing treatment at the border. The plan also calls for a study of the possibility of creating express immigration lines at airports for people from the three NAFTA nations, and for Mexico and the U.S. to share information on those applying for visas to travel to either country.

The two countries also are discussing: improved sharing of intelligence in order to thwart terrorists using Mexico to facilitate illegal entry into the U.S.; border crossing practices that facilitate and streamline the passage of legitimate people and cargo while identifying those that require more extensive screening; and intensified joint efforts to crack down on human trafficking.

CONCLUSION

AILA strongly supports the speedy passage of the Enhanced Border Security and Visa Reform bill to allow the government agencies charged with addressing the critical needs of border and visa reform to be successful in efforts to enhance this nation’s security. We must proceed swiftly with the entire bill, or else drastically hamper our response to one of the most insidious challenges this country has faced.