

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona

JOHN CONYERS, JR., Michigan
RANKING MEMBER

HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SANCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

April 12, 2011

Ms. Janice Kephart
Director of National Security Policy
Center for Immigration Studies
1522 K Street, N.W., Suite 820
Washington, DC 20005

Dear Ms. Kephart,

On behalf of the Committee on the Judiciary, I want to express our sincere appreciation for your participation in the hearing on H.R.704, the SAFE For America Act. Your testimony was informative and will assist us in future deliberations on the important issues addressed during the hearing.

Also, please find a **verbatim** transcript of the hearing enclosed for your review. The Committee's Rule III (e) pertaining to the printing of transcripts is as follows:

The transcripts...shall be published in verbatim form, with the material requested for the record...as appropriate. Any requests to correct any errors, other than transcription, shall be appended to the record, and the appropriate place where the change is requested will be footnoted.

Please return your transcript edits to the Immigration Policy and Enforcement Subcommittee, Attention: Marian White, B-353 Rayburn House Office Building, Washington, DC, 20515. by May 5, 2011. If you have any further questions or concerns, please contact Ms. White at (202) 225-3926.

Thank you again for your testimony.

Sincerely,



Lamar Smith
Chairman

LS/mw

Enclosure

529 Mr. GALLEGLY. Ms. Kephart.

530 STATEMENT OF JANICE L. KEPHART, DIRECTOR, NATIONAL SECURITY
531 POLICY, CENTER FOR IMMIGRATION STUDIES

532 Ms. KEPHART. Thank you, Chairman Gallegly and Ranking
533 Member Lofgren and Ranking Member Conyers, for holding this
534 hearing on the DV program today. I would also like to
535 acknowledge the leadership of Representative Goodlatte for
536 the introduction of this SAFE for America Act.

537 My purpose today is to provide my analysis of the DV
538 program from my vantage point as a former 9/11 Commission
539 counsel, as well as national security policy director at the
540 Center for Immigration Studies. My underlying perspective,
541 let me make clear, is to treat our borders as they truly are,
542 as a geographic demarcation of U.S. Sovereign rights, to
543 assure that people who seek to come here are who they say
544 they are and will not pose a public safety or terrorist
545 threat to American citizens.

546 Unfortunately, the DV program is a blind spot in our
547 immigration system that assures none of these elements well.
548 Instead, it can be a terrorist gamble. A successful
549 application means an infiltration tactic with little
550 oversight, a guaranteed visa, and permanent residency for

551 | those already in the U.S. Or seeking entry from abroad; or a
552 | terrorist or other criminal can simply wait for a lottery
553 | announcement, then hire somebody to buy that win, change
554 | identities, and voila, they are within our immigration
555 | system.

556 | Whatever purpose the DV program sought to be for
557 | diversity in a pre-9/11 environment, it has been outlived.
558 | Today it is a national security vulnerability, and let me go
559 | over the six main reasons why I believe that is the case.

560 | First, the DV program draws from nations that are state
561 | sponsors of terror or are known to harbor terrorist
562 | organizations with overtly stated terrorist intentions
563 | towards the United States. Eligibility will remain for these
564 | countries in the 2012 lottery, despite 9/11 and despite
565 | serious geopolitical shifts in the Mideast today. The four
566 | state sponsors of terror--Iran Sudan, Syria, and
567 | Cuba--received a total of 2,588 visas or adjustments of
568 | status for the DV program in 2010. Nations with active
569 | terrorist populations such as Yemen and Somalia, as well as
570 | governments known to support terrorist causes and terrorist
571 | travel, such as Venezuela, also benefit from the program, as
572 | do Afghanistan and Iraq, to name a few.

573 | Again, there are no stopgaps against fraud, as Mr. Edson
574 | has pointed out, to determine qualifications or properly vet
575 | identity, or derogatory intelligence, to assure that

576 radicalized individuals applying from these nations are not
577 entering the U.S. On a DV.

578 Second, the program does not include national security
579 standards for, or reviews of, participant countries, such as
580 visa-waiver countries have to do to maintain their status in
581 that program.

582 Third, the program is susceptible to serious fraud and
583 malfeasance--admitted by the State Department most recently
584 in a press conference back in 2010 discussing the 2012
585 lottery--both in and out of the U.S. Because of its inability
586 to assure identities or qualifications of fraud, similar but
587 perhaps even worse than that we addressed on the 9/11
588 Commission regarding the processing of Saudi visas pre-9/11.

589 Fourth, the program's low applicant standards, combined
590 with a computer-generated random lottery drawing, creates an
591 invitation to those with nefarious intentions to take
592 advantage of blind picks and negligible standards.

593 Fifth, the program is known to be exploited for human
594 trafficking and the slave trade by crime syndicates, which I
595 discuss in greater length in my written testimony, and it
596 provides little to promote that straightforward diversity
597 from lower immigration countries when we have crime
598 syndicates taking advantage of it.

599 And lastly, sixth, the program enables those already
600 here to stay while their change of status is under

601 | consideration, as known terrorist Hesham Hedayet did, thus
602 | increasing the vulnerabilities inherent in the DV program by
603 | enabling potential criminals and terrorists to embed longer
604 | and legally in the U.S.

605 | I would like to spend my remaining time focusing on the
606 | national security challenges of the DV program, particularly
607 | Iran. The high numbers of DVs issued to Iranians is perhaps
608 | the best indication that the DV program is operating in a
609 | vacuum with little concern for national security. For
610 | example, Iran is known for its security forces actively
611 | seeking infiltration from abroad, and creates another
612 | opportunity for such infiltration. It is hard for us to know
613 | who is who when we have such little penetration into Iran
614 | with our own intelligence system. Iran, we know, supported
615 | 9/11 hijackers' travel. We know they support Hezbollah and
616 | currently harbor al Qaeda, and this is only the tip of the
617 | iceberg.

618 | Yet the DV program embraces Iran. Looking closely at
619 | the 2010 worldwide distribution of visa lottery winners, Iran
620 | received 1,854 visas or adjustments of status. Iran ranked
621 | ninth in the world of the 173 nations eligible to receive
622 | these visas, up four places from 2009 where it ranked 13th.

623 | My conclusion is that the DV program has, unfortunately,
624 | outlived its usefulness in a post-9/11 world. If this Nation
625 | seeks more diversity in our immigration population, that is

626 | for you all to decide, but the DV program is not the route to
627 | do so.

628 | Thank you, and I look forward to your questions.

629 | Mr. GALLEGLY. I thank the gentlelady.

630 | [The statement of Ms. Kephart follows:]

631 | ***** INSERT 1-3 *****

786 | that slot to somebody who resembles the photograph closely
787 | enough that they can then steal the identity of that other
788 | person and complete the application process, and there is no
789 | preexisting data that is going to rule out that individual.

790 | Mr. GALLEGLY. Thanks. Ms. Kephart, in your testimony
791 | on page 6, you discussed how organized crime rings exploit
792 | the visa lottery program. This is becoming a huge problem in
793 | my area, in the greater Los Angeles area, having to do with
794 | Medicare fraud and health care issues, with setting up phony
795 | clinics and so on and so forth. Does this have any
796 | relationship to what you are relating to in your testimony,
797 | or specifically what did your testimony relate to?

798 | Ms. KEPHART. Well, I think you are referring to the use
799 | of fraudulent and counterfeit documents to support
800 | applications in general. If that is your reference, yes; we
801 | have had Federal prosecution have to deal with a number of
802 | cases that are extremely serious dealing with fraud on the
803 | U.S. Side with the diversity visa program. One case involved
804 | slave trade being created out of Africa where young female
805 | winners between 10 and 19 were brought over. They were
806 | forced to give up their identities and passports and brought
807 | over here and had to take on new identities.

808 | There are other pieces of this, though, as well. If you
809 | are dealing with fraudulent documents--this is something we
810 | dealt with extensively on the 9/11 Commission--the idea of

811 fraud, the idea of looking clean when you are not really
812 clean. And when you are dealing with a program like this
813 that does not require a lot of identity information on the
814 front end, you can switch out identities very easily, as Mr.
815 Edson has done, based on fraudulent birth certificates,
816 fraudulent driver's license, fraudulent passports on the U.S.
817 Side.

818 Abroad, there is no way for a consular officer to make a
819 determination as to the legitimacy of the high school
820 education certificate that you are presenting, the birth
821 certificate, or any of the identity information that you are
822 providing. You can easily switch that out. Once you do that
823 you are creating--once you have that in place you have a huge
824 vulnerability that is much wider than what you even had with
825 the 9/11 situation.

826 Mr. GALLEGLY. Thanks. Thank you very much, Ms.
827 Kephart. Ms. Lofgren.

828 Ms. LOFGREN. Thank you, Mr. Chairman. I think it is
829 important to note that nobody on the committee is in favor of
830 fraud, but the issue is how to preserve diversity in a way
831 that works for the country. That is the way I see this
832 question anyhow.

833 Without this diversity visa, African immigrants would
834 only be 3 percent of the immigrants to the United States, I
835 mean statistically, and I don't think that is good for the

936 | them out.

937 | The State Department was able to move to an electronic
938 | application process at a time when people thought that
939 | Internet penetration wasn't enough. That helped. The facial
940 | recognition has helped. It was I think one of the earliest
941 | uses of facial recognition technology in the government to
942 | look for duplicate entries in the application process, and
943 | then some changes in rules like the requirement to submit
944 | photographs with the--and not the application but the lottery
945 | entry, the first stage, they were required to submit a
946 | photograph. That limits some identity fraud opportunities.

947 | It is telling, though, if I can get off the track just
948 | slightly, the bulk of the money spent on this program is to
949 | fight fraud in this way instead of to administer the program.

950 | And that is unlike any other visa work that we do, or we did
951 | at State, where the bulk of the resources were spent helping
952 | applicants get through the process. In this case it is
953 | almost all fraud-related but it has been done.

954 | Mr. CONYERS. I want to thank you for your helpfulness
955 | and I wanted to turn to attorney Kephart because, you know,
956 | immigration as a field is a big problem in all of its
957 | branches, don't you think? I mean, there is a lot of work to
958 | be done in all the areas and there continues to be more work
959 | done in this area.

960 | Ms. KEPHART. Yes, Ranking Member Conyers, yes,

961 | absolutely, you are right.

962 | Across border security apparatuses, Mr. Edson was one of
963 | the people I interviewed when I was on the 9/11 Commission,
964 | and we went across the board, as you know, making lots of
965 | recommendations and criticisms on border security. Our staff
966 | monograph "9/11 and Terrorist Travel" is a long history of
967 | problems with the immigration system, and there have been
968 | some improvements in some areas for sure.

969 | It is unusual for me, I have to say, to actually be in
970 | agreement on eliminating something completely. And in this
971 | particular case, when you run it through the rubric of our
972 | sort of tiered-analysis 9/11 Commission, we said two things
973 | that people up here know very well: Terrorist travel
974 | documents are as important as their weapons are; and that we
975 | must assure that people are who they say they are.

976 | When you look at this, this is not just a nonimmigrant
977 | visa. This is an immigrant visa. This allows permanent
978 | residency. This allows you to go freely in and out of the
979 | United States. So the vulnerability here is high. So for
980 | me, the security aspect of it on the front end has to be very
981 | high. Because that is not there, I think that is a
982 | vulnerability and because we really can't--there are
983 | improvements in the system for sure in the DV program.

984 | However, it is not enough to really assure that people
985 | are who they say they are. And when we are embracing state

986 | sponsors of terror, when we are embracing those nations where
987 | we know there are radicalized populations, that puts I think
988 | this on a cusp of--an unfortunate cusp of not being a program
989 | that assures our national security and really gets at the
990 | issue that this program is supposed to, which is diversity
991 | and welcome mat to those who otherwise would not have the
992 | opportunity to come here.

993 | Mr. CONYERS. Chairman, could I get one additional--

994 | Mr. GALLEGLY. With the help of you and Mr. Pierluisi, I
995 | made a commitment we would finish by 330. So I will be happy
996 | to do that. Maybe you could help me, Mr. Pierluisi, to yield
997 | to Mr. Conyers.

998 | Mr. PIERLUISI. I will yield a minute to the ranking.

999 | Mr. GALLEGLY. Thank you.

1000 | Mr. CONYERS. On a personal--I know you are representing
1001 | here today. But, personally, has your vast experience with
1002 | immigration issues led you to be skeptical, if not negative,
1003 | about the whole immigration system itself?

1004 | Ms. KEPHART. Actually, no. I think that the
1005 | immigration system, as problematic as it is, has a lot of
1006 | potential for improvement, and that is how I look at it. You
1007 | know, I look at the southwest border and I see potential that
1008 | we can actually secure that border now. And I look at all
1009 | the work that has been done since 9/11 and the seriousness
1010 | with which you all took our recommendations and that gives me

1011 a lot of hope. I think if I had thrown in the towel, I
1012 wouldn't be sitting here right now.

1013 Mr. CONYERS. But you have given up on this one.

1014 Ms. KEPHART. On this particular one, yes, because I
1015 think it will--

1016 Mr. CONYERS. We want to encourage you. We want to give
1017 you hope and encouragement. We want to keep hope alive.

1018 Ms. KEPHART. I understand, sir.

1019 Mr. CONYERS. Thank you, sir.

1020 Mr. GALLEGLY. Mr. Pierluisi.

1021 Mr. PIERLUISI. Thank you, Chairman. I will just make a
1022 comment and then wait for your reactions. I just believe
1023 that messages we send to the rest of the world are very
1024 important. And by having this program, we are sending a
1025 message that we continue to welcome immigrants from a
1026 diversity of backgrounds and nations of origins, and that is
1027 an important message. We have always been viewed as the land
1028 of opportunity and lots of people would like to join us; and
1029 what is wrong with that?

1030 I do agree that we have to make every effort to make
1031 sure no terrorists take advantage of a program like this. We
1032 don't want any of them here, but I see--and the stats do not
1033 support this issue we are raising, because when I see the
1034 stats, close to 800,000 people have come in using this
1035 program to our country, and I can only see four cases of