Ms. Janice Kephart  
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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
Mr. GALLEGLY. Ms. Kephart.

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

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

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

Unfortunately, the DV program is a blind spot in our immigration system that assures none of these elements well. Instead, it can be a terrorist gamble. A successful application means an infiltration tactic with little oversight, a guaranteed visa, and permanent residency for
those already in the U.S. Or seeking entry from abroad; or a terrorist or other criminal can simply wait for a lottery announcement, then hire somebody to buy that win, change identities, and voila, they are within our immigration system.

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

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

Again, there are no stopgaps against fraud, as Mr. Edson has pointed out, to determine qualifications or properly vet identity, or derogatory intelligence, to assure that
radicalized individuals applying from these nations are not entering the U.S. On a DV.

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

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

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

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

And lastly, sixth, the program enables those already here to stay while their change of status is under
consideration, as known terrorist Hesham Hedayet did, thus increasing the vulnerabilities inherent in the DV program by enabling potential criminals and terrorists to embed longer and legally in the U.S.

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

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

My conclusion is that the DV program has, unfortunately, outlived its usefulness in a post-9/11 world. If this Nation seeks more diversity in our immigration population, that is
for you all to decide, but the DV program is not the route to do so.

Thank you, and I look forward to your questions.

Mr. GALLEGLY. I thank the gentlelady.

[The statement of Ms. Kephart follows:]

****** INSERT 1-3 ******
that slot to somebody who resembles the photograph closely
enough that they can then steal the identity of that other
person and complete the application process, and there is no
preexisting data that is going to rule out that individual.

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

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

There are other pieces of this, though, as well. If you
are dealing with fraudulent documents--this is something we
dealt with extensively on the 9/11 Commission--the idea of
fraud, the idea of looking clean when you are not really clean. And when you are dealing with a program like this that does not require a lot of identity information on the front end, you can switch out identities very easily, as Mr. Edson has done, based on fraudulent birth certificates, fraudulent driver's license, fraudulent passports on the U.S. Side.

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

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

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

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

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

It is telling, though, if I can get off the track just slightly, the bulk of the money spent on this program is to fight fraud in this way instead of to administer the program. And that is unlike any other visa work that we do, or we did at State, where the bulk of the resources were spent helping applicants get through the process. In this case it is almost all fraud-related but it has been done.

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

Ms. KEPHART. Yes, Ranking Member Conyers, yes,
absolutely, you are right.

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

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

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

However, it is not enough to really assure that people are who they say they are. And when we are embracing state
sponsors of terror, when we are embracing those nations where
we know there are radicalized populations, that puts I think
this on a cusp of--an unfortunate cusp of not being a program
that assures our national security and really gets at the
issue that this program is supposed to, which is diversity
and welcome mat to those who otherwise would not have the
opportunity to come here.

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

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

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

Mr. GALLEGLY. Thank you.

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

Ms. KEPHART. Actually, no. I think that the
immigration system, as problematic as it is, has a lot of
potential for improvement, and that is how I look at it. You
know, I look at the southwest border and I see potential that
we can actually secure that border now. And I look at all
the work that has been done since 9/11 and the seriousness
with which you all took our recommendations and that gives me
a lot of hope. I think if I had thrown in the towel, I wouldn’t be sitting here right now.

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

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

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

Ms. KEPHART. I understand, sir.

Mr. CONYERS. Thank you, sir.

Mr. GALLEGLY. Mr. Pierluisi.

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

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