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*CONGRESSIONAL TESTIMONY*

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**Next Steps for  
Transportation Security**

**Testimony before  
Subcommittee on Transportation Security  
U.S. House Committee on Homeland Security  
United States House of Representatives**

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My name is James Jay Carafano. I am Deputy Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Director of 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 today to address this vital subject. It is certainly fitting that we pause to reflect on the state of transportation security on the anniversary of the terrorist attacks on New York and Washington, DC, but it is even more appropriate that this hearing is taking place during what has been a fairly unremarkable year in terms of transportation security. For it was on a quiet, unremarkable autumn morning that America was attacked. The best way to prevent more days like 9/11 is to spend our unremarkable days preparing—doing what we can to continue to keep this nation safe, free, and prosperous.

In my testimony today, I would like to focus on what I believe are the key challenges ahead for transportation security, including: 1) remaining mission-focused; 2) gaining greater efficiency in operations; and 3) managing the Transportation Security Administration workforce.

My responsibilities at The Heritage Foundation comprise supervising all of the foundation's research on public policy concerning foreign policy and national security. Homeland security has been a particular Heritage research priority as we produced the first major assessment of domestic security after 9/11.<sup>1</sup> Over the past decade, we have assembled a robust, talented, and dedicated research team and I have the honor and privilege of leading that team.

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). We collaborate 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 Army War College. Heritage analysts also serve on a variety of government advisory efforts, including the Homeland Security Advisory Council and the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities. Our research programs are nonpartisan, dedicated to developing policy proposals that will keep the nation safe, free, and prosperous.

I am particularly proud of The Heritage Foundation's long and substantive record of research on transportation security. This effort reflects the foundation's commitment to advancing public policies that enhance our security by thwarting terrorist travel; encouraging economic growth by promoting the legitimate exchange of goods, peoples, services, and ideas among free nations; and fostering a free and open civil society—all at the same time.

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<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).

## Mission Focus

In my mind, the 9/11 Commission's staff study on terrorist travel was in many ways more vital to understanding the transnational threat and how to impact its operational capabilities than the commission's best-selling report. The August 2004 staff study documented the poor state of our preparedness to prevent exploitation of U.S. transportation systems. The study pointed out that the 9/11 hijackers had known affiliation to extremist groups, broke the law, committed fraud, lied on visa applications, had at least 68 contacts with State Department and Immigration and Customs officials, and yet managed to pass through aviation and border checkpoints here and abroad. According to the study, together the group "successfully entered the United States 33 times over 21 months, through nine airports of entry."<sup>2</sup> Without that ease of movement, the 9/11 attacks would not have been possible.

There are few capabilities more essential to terrorist operations than the ability to freely move and communicate. Restricting either of these "centers of gravity" is key to containing the transnational operational threats.

After 9/11 America became a much harder target. The United States has thwarted at least 51 Islamist-inspired terror plots since the attacks on New York and Washington, DC.<sup>3</sup> Increasingly, we find that these plots are "homegrown," in part because it has been more difficult for transnational terrorist groups to organize operations overseas and dispatch operatives to the United States.

The post-9/11 efforts at thwarting terrorist travel and access to transportation systems, however, offer no cause for complacency. Transportation systems continue to rank high on the list of potential targets. For example, to the end Osama bin Laden continued to extol the virtue of aiming attacks on cities and transportation infrastructure.<sup>4</sup> Further, in recent years in two plots, preemptive efforts failed to thwart attacks. In 2009, Umar Farouk Abdulmutallab attempted to donate explosives on a Detroit-bound international flight. In 2010, Faisal Shahzad attempted to detonate explosives in an SUV that he drove into and left parked in Times Square.<sup>5</sup>

Our successes and shortfalls since 9/11 are instructive. The best way to prevent terrorists from exploiting or threatening our infrastructure is to disrupt their networks and operations before they are implemented. In this respect, effective U.S. counterterrorism programs are the first and most

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<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," National Commission on Terrorist Attacks Upon the United States, August 21, 2004, preface, at [http://www.9-11commission.gov/staff\\_statements/911\\_TerrTrav\\_Monograph.pdf](http://www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf).

<sup>3</sup> Steven Bucci and Jessica Zuckerman, "51st Terrorist Plot Against the United States: Continued Threat of al-Qaeda and Affiliates," Heritage Foundation *Issue Brief* No. 3598, May 8, 2012, at <http://www.heritage.org/research/reports/2012/05/51st-bomb-terror-plot-proves-continued-threat-of-al-qaeda>. See also James Jay Carafano, et al., "Fifty Terror Plots Foiled Since 9/11: The Homegrown Threat and the Long War on Terrorism," Heritage Foundation *Background* No. 2682, April 25, 2012, at <http://www.heritage.org/research/reports/2012/04/fifty-terror-plots-foiled-since-9-11-the-homegrown-threat-and-the-long-war-on-terrorism>. This report provides a summary of each thwarted attack and subsequent investigation and prosecution.

<sup>4</sup> Peter L. Bergen, *Manhunt: The Ten-Year Search for Bin Laden from 9/11 to Abbottabad* (New York: Crown, 2012), pp. 140-141.

<sup>5</sup> Carafano, "Fifty Terror Plots Foiled Since 9/11."

critical component of our defenses. Without question, overseas operations to identify and dismantle the leadership of al-Qaeda and its affiliates have degraded their operational capabilities.

Yet, the current U.S. strategy is inadequate to prevent a resurgence of al-Qaeda.<sup>6</sup> Indeed, there are already signs that al-Qaeda and its affiliates are attempting to improve their operational security so that their operatives are less vulnerable to direct attack.<sup>7</sup> Therefore, the U.S. must remain vigilant.

The most indispensable role for transportation security is to remain integrated with U.S. counterterrorism operations so that their security measures, oversight responsibilities, and capacity to act against active threats are synchronized in the most effective manner. No example of what must be done is more illustrative than the apprehension of Faisal Shahzad, the Times Square bomber, who was placed on a terrorist watch list, identified, and arrested attempting to flee the country on an international flight less than two days after the aborted attack. Programs that link directly to the larger counterterrorism effort, such as the Secure Flight initiative, must be the TSA's top priority.<sup>8</sup> I would be greatly skeptical of any allocation of resources that did not fully fund these priorities first to the exclusion of anti-terrorism measures or other agency responsibilities.

### **Making Efficiency a Priority**

One of the key findings of the 9/11 Commission emphasized a risk-based approach to managing transportation security. The commission concluded, “[h]ard choices must be made in allocating limited resources. The U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort. The plan should assign roles and missions to the relevant authorities (federal, state, regional, and local) and to private stakeholders.”<sup>9</sup> The commission recommendation offered the

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<sup>6</sup> The Administration's strategy is primarily limited to attacking the leadership of al-Qaeda and its affiliates. It does not pay sufficient attention to global insurgency threat presented by the group, which makes the terrorist network more resilient than the U.S. Strategy appreciates. See, The Heritage Foundation Counterterrorism Task Force, “A Counterterrorism Strategy for the “Next Wave,” Heritage Foundation *Special Report* No. 98, August 24, 2011, at <http://www.heritage.org/research/reports/2011/08/a-counterterrorism-strategy-for-the-next-wave>.

<sup>7</sup> Aaron Y. Zelin, “Dodging the Drones: How Militants Have Responded to the Covert US Campaign,” *Foreign Policy*, August 31, 2012 at [http://afpak.foreignpolicy.com/posts/2012/08/31/dodging\\_the\\_drones\\_how\\_militants\\_have\\_responded\\_to\\_the\\_cover\\_t\\_us\\_campaign](http://afpak.foreignpolicy.com/posts/2012/08/31/dodging_the_drones_how_militants_have_responded_to_the_cover_t_us_campaign).

<sup>8</sup> The Transportation Security Administration website describes Secure Flight as a “behind-the-scenes program that enhances the security of domestic and international commercial air travel through the use of improved watch list matching. By collecting additional passenger data, it improves the travel experience for all airline passengers, including those who have been misidentified in the past....The airline submits this information to Secure Flight, which uses it to perform watch list matching. This serves to prevent individuals on the No Fly List from boarding an aircraft and to identify individuals on the Selectee List for enhanced screening.” See, [http://www.tsa.gov/what\\_we\\_do/layers/secureflight](http://www.tsa.gov/what_we_do/layers/secureflight).

<sup>9</sup> “What to Do? A Global Strategy,” Chapter 12 in National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, at [http://govinfo.library.unt.edu/911/report/911Report\\_Ch12.htm](http://govinfo.library.unt.edu/911/report/911Report_Ch12.htm).

best strategy—appropriate for the threat and the vast, complex, and interrelated transportation infrastructure that TSA must oversee.

A risk-based approach requires evaluating risk, threat, and criticality and adopting the most judicious means to reduce risk to an acceptable level at an acceptable cost.<sup>10</sup> It is not clear that the agency consistently applies that approach in managing its programs and initiatives.

From the onset, TSA has had difficulty truly adopting a risk-based approach. “TSA’s original strategies were largely grafted from the Federal Aviation Administration’s pre-9/11 aviation security measures,” noted the former administrator of TSA, Kip Hawley. “Since the FAA’s primary role is ensuring aviation safety, which has unbending parameters based on the laws of physics, its regulatory nature makes sense. But using regulation as the primary tool to stop adaptive terrorists does not.”<sup>11</sup> TSA still struggles with finding the right balance of regulation, but it has struggled even more implementing the right balance of operational capabilities to put real obstacles rather than just rules in the path of terrorist travel and exploitation of transportation infrastructure. Two examples—the Federal Flight Deck Officer (FFDO) and the Surface Transportation Inspector Program—are illustrative.

**The Federal Flight Deck Officer Program.**<sup>12</sup> In his fiscal year (FY) 2013 budget proposal for the Department of Homeland Security, President Obama called for a 50 percent cut in funding for the FFDO program. This decision made no sense. The FFDO program costs very little (FY 2012 enacted: \$25.5 million). To put total program costs in perspective: The FFDO costs approximately \$15 per officer per flight; the Federal Air Marshal program, although also an important added layer of security, in comparison costs an estimated \$3,300 per air marshal per flight. Further, at present, FFDOs are estimated to be able to cover five times as many flights as Federal Air Marshals, providing a strong added layer of defense and deterrence against the threat of terrorism and air piracy. Since the FFDO program’s inception in 2003, its budget has not changed, despite an estimated 100-fold increase in members.<sup>13</sup>

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<sup>10</sup> For discussion of the role of risk management in homeland security, see James Jay Carafano, Testimony before the Sub-Committee on Transportation Security and Infrastructure Protection, Committee on Homeland Security, United States House of Representatives, June 25, 2008, at <http://www.heritage.org/research/testimony/risk-and-resiliency-developing-the-right-homeland-security-public-policies-for-the-post-bush-era>.

<sup>11</sup> Kip Hawley and Nathan Means, *Permanent Emergency: Inside the TSA and the Fight for the Future of American Security* (New York: Palgrave Macmillan, 2012), p. 228.

<sup>12</sup> The Transportation Security Administration website describes the Federal Flight Deck Officer Program where “eligible flight crewmembers are authorized by the Transportation Security Administration Office of Law Enforcement/Federal Air Marshal Service to use firearms to defend against an act of criminal violence or air piracy attempting to gain control of an aircraft. A flight crew member may be a pilot, flight engineer or navigator assigned to the flight.” See, <http://www.tsa.gov/lawenforcement/programs/ffdo.shtm>.

<sup>13</sup> See, Jessica Zuckerman, “Federal Flight Deck Officer Program: First Line of Deterrence, Last Line of Defense,” Heritage Foundation *Issue Brief* No. 3544, March 20, 2012, at <http://www.heritage.org/research/reports/2012/03/impact-of-cutting-the-budget-of-the-federal-flight-deck-officer-program>.

**Surface Transportation Inspector Program.**<sup>14</sup> In contrast to the FFDO initiative, the Surface Transportation Inspector program costs nearly four times as much (FY 2012 enacted: \$96.2 million) but appears to lack significant utility. The program has been criticized for lacking clear and consistent standards and focusing on regulatory requirements that are only marginally relevant to diminishing terrorist threats.<sup>15</sup> Given the massive size, scope, and diversity of surface transportation within the United States, in contrast to aviation security it is difficult to see how any federal program of this scope could have significant impact on reducing national vulnerabilities.

Attention should also be given to the programs that provide the context for transportation security, particularly as it affects international travel. Contrasting examples are the federal requirement for biometric exit and the Visa Waiver Program (VWP).

**Biometric Exit.** The directive for implementing biometric exit—recording of a uniquely identifiable intrinsic physical characteristic (most often fingerprints) at the point of departure from the United States at land, sea, or airport point of entry—predates 9/11. After almost two decades, the federal government has failed to implement this congressional mandate. Regardless of what benefits the framers of the requirement believed biometric exit would bring, either as an immigration management tool, a criminal enforcement measure, or a counterterrorism initiative, the need for this program needs to be reassessed in light of current requirements. From a counterterrorism perspective, it is difficult to justify the expense of biometric exit. When this program was originally conceived, there were few effective tools for tracking terrorist travel. Even where we have seen the requirement for tracking suspects trying to exit the United States in “real time,” we have seen where these tasks can be conducted effectively using existing enforcement tools.

From the enforcement perspective, biometric exit would be a very limited tool. Federal authorities lack the resources to investigate every lead such a system might produce. Furthermore, by itself, a report that an individual had failed to register an exit and potentially was unlawfully present in the United States would have scant utility in prioritizing law enforcement resources. Such a report might simply be a false positive—the individual’s status might have changed. The report alone would provide no assessment of risk.

Biographical data (name, date of birth, and country of origin) provide suitable data for most enforcement activities. Given the costs of implementing comprehensive biometric exit, the fiscal constraints that will likely be imposed on the Department of Homeland Security in the years ahead, and the department’s many priorities, the biometric exit mandate can no longer be justified. It is past time to repeal the requirement.<sup>16</sup>

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<sup>14</sup> Surface Transportation Security Inspectors “assist surface transportation carriers, operators, owners, entities, and facilities to enhance their security against terrorist attack and other security threats and to assist the Secretary in enforcing applicable surface transportation security regulations and directives.” See, 6 USC 1113.

<sup>15</sup> See, for example, Howard R. Elliot, Testimony before the Subcommittee on Transportation Security and Infrastructure Protection, Committee on Homeland Security, United States House of Representatives, May 31, 2012, at <http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Elliot.pdf>.

<sup>16</sup> James Jay Carafano, Testimony before Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary United States House of Representatives, December 7, 2011, at <http://judiciary.house.gov/hearings/pdf/Carafano%2012072011.pdf>.

**Visa Waiver Program.** In contrast to biometric exit, the Visa Waiver Program provides a cost-effective and efficient means to capture more useful data on travelers in real time.<sup>17</sup> Thirty-six countries participate in VWP (in contrast, U.S. citizens can travel to over eight times as many countries visa-free or obtain a visa on arrival). Only one country has been added to the VWP under the current Administration.

The principal obstacles to adding more countries are the unrealistic legislative requirement to implement biometric exit and the manner in which current legislation requires calculating visa overstay rates. Revising the legislative limitations and pressing the Administration to add more qualifying countries would be a very cost-effective means to both facilitate international travel and strengthen the U.S. capacity to identify terrorist travel and high-risk passengers.<sup>18</sup>

### **Managing the Workforce**

The Administration's decision to engage in limited collective bargaining with airline security screeners could well reduce the agency's effectiveness over time. Collective bargaining impairs the agency's ability to reward merit and raises the likelihood of illegal labor disputes, finds The Heritage Foundation's labor expert, James Sherk, who has followed closely the shift in Administration policy.<sup>19</sup>

There have already been other instances within the Department of Homeland Security of union interference with operational activities. For example, the National Treasury Employees Union (NTEU) brought the Customs and Border Protection (CBP) before an arbitrator after the CBP changed policies. The arbitrator found that the CBP should have provided the NTEU with notice and the opportunity to bargain before the CBP made its changes, such as the Port of Houston reassigning officers to Bush International Airport and the Port of New Orleans. In short, CBP was cited for making decisions necessary to ensure the effective continuity of its operations.<sup>20</sup>

The United States should have also learned a lesson from Canada. In 2006, union baggage screeners undertook an intentional work slowdown during the Thanksgiving Day travel rush. In response, managers allowed 250,000 passengers to board without screening. In the words of one Canadian security expert, "If terrorists had known that in those three days that their baggage wasn't going to be searched, that would have been bad."<sup>21</sup>

**Screening Partnership Program.**<sup>22</sup> Privatization of screening makes sense from both an economic and security perspective. As transportation security expert Robert Poole notes, "in

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<sup>17</sup> The Visa Waiver Program allows for visa-free travel—for leisure or business—for up to 90 days among member states. See, Department of State, at [http://travel.state.gov/visa/temp/without/without\\_1990.html](http://travel.state.gov/visa/temp/without/without_1990.html).

<sup>18</sup> Carafano, Testimony before Subcommittee on Immigration Policy and Enforcement.

<sup>19</sup> James Sherk, "Unionizing Airline Screeners Endangers National Security," Heritage Foundation *WebMemo* No. 3142,, February 9, 2011 at [http://thf\\_media.s3.amazonaws.com/2011/pdf/wm3142.pdf](http://thf_media.s3.amazonaws.com/2011/pdf/wm3142.pdf).

<sup>20</sup> Decision of M. David Vaughn in federal arbitration between the Bureau of Customs and Border Protection and National Treasury Employees Union, November 15, 2006.

<sup>21</sup> CBC News, "Luggage Security Lax During Pearson Labour Dispute: Report," December 20, 2006.

<sup>22</sup> According to the Transportation Security Administration website "[i]n accordance with the Aviation Transportation Security Act (ATSA) of 2001, TSA conducted a pilot program to evaluate the performance of a

nearly all of Europe, screening is the responsibility of the airport, under national government oversight and regulation, and in most cases airports can either provide the screening themselves or outsource it to approved security firms.”<sup>23</sup> The benefits of privatization also go beyond issues of security and cost-effectiveness—including providing a workforce that not only meets appropriate standards but can respond to the needs of the airport’s customers, improving the travel experience.

Moving toward a mixed, non-union federal workforce and greater reliance on private-sector screening companies would likely provide the United States in the near term with a balanced and responsive workforce at a responsible cost. Despite the utility of this approach, in January 2011, the Administration announced that it would no longer allow airports that wanted to privatize their TSA screening workforce to do so, claiming that privatization was not cost-effective.<sup>24</sup> This was contradictory to statutory law, specifically the Aviation and Transportation Security Act of 2001, which grants airports the ability to “opt out” of having federal TSA screeners as long as their private workforce submits to TSA oversight. In March, the Government Accountability Office noted that the TSA method of determining that privatization of screening was not cost-effective was flawed.<sup>25</sup> In recent months, however, additional airports have applied and been given tentative approval to join the SPP.

The Administration’s whipsaw and over-centralized approach to SPP serves neither the agency’s workforce, nor the airports, nor their customers well. Clear, consistent, and dependable processes should be established to govern SPP so airports and the agency can undertake thoughtful human capital strategies. In particular, airports should be given the authority to select their own contractors based on best value from a list of TSA-certified screeners and the airport should have full authority to manage the contract within the guidelines established by TSA regulatory policies.

## Next Steps

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private contract screening workforce under federal oversight. The pilot was conducted from 2002 to 2004 with five airports. ATSA required contract screeners to meet all the requirements applicable to federally employed screeners. At the conclusion of the pilot, TSA created the Screening Partnership Program (SPP). The five pilot airports transitioned to SPP. Currently, 11 additional airports are participating in the program, for a total of 16.” See, [http://www.tsa.gov/what\\_we\\_do/optout/index.shtm](http://www.tsa.gov/what_we_do/optout/index.shtm).

<sup>23</sup> Robert Poole, Testimony to the **House** Committee on Homeland Security, Subcommittee on Transportation Security, July 10, 2012, <http://reason.org/news/show/improving-airport-security-testimon>.

<sup>24</sup> Mark Rockwell, “TSA Halts Secure Partnership Program for Airports,” *Government Security News*, January 31, 2011, at [http://www.gsnmagazine.com/node/22349?c=airport\\_aviation\\_security](http://www.gsnmagazine.com/node/22349?c=airport_aviation_security); Jena Baker McNeil, “Aviation Security: Policy Responses to Address Terrorism Threats,” testimony before the Pennsylvania House of Representatives Committee on State Government, March 30, 2011, at <http://www.heritage.org/research/testimony/2011/03/aviation-security-policy-responses-to-address-terrorism-threats>.

<sup>25</sup> Government Accountability Office, letter, Subject: Aviation Security: TSA’s Revised Cost Comparison Provides a More Reasonable Basis for Comparing the Costs of Private-Sector and TSA Screeners, dated March 4, 2011 at [http://republicans.transportation.house.gov/Media/file/112th/Aviation/2011-03-04-GAO\\_Letter\\_Screening\\_Costs.pdf](http://republicans.transportation.house.gov/Media/file/112th/Aviation/2011-03-04-GAO_Letter_Screening_Costs.pdf).

Thank you for the opportunity to speak today on this important issue. I urge this committee and the Congress to: press TSA to sharpen its mission focus on fully integrating with other national counterterrorism efforts to thwart terrorist travel and exploitation of transportation infrastructure; concentrate its resources more on the most cost-effective operational initiatives; and rethink the management of its workforce, establishing a more judicious mix of federal and private-sector screeners. I look forward to your questions.

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