



**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL
COUNTERTERRORISM
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Thank you Chairwoman Sanchez and Members of the Subcommittee for inviting the International Longshore and Warehouse Union (ILWU) to testify on the status of the Security and Accountability For Every (SAFE) Port Act.

As you know, the ILWU represents longshore workers in the states of Washington, Oregon, California, Hawaii, and Alaska. We have long advocated the development and implementation of practices to limit the risk of terrorism at our work sites and to keep our ports from becoming conduits for unconventional weapons. To that end, it is imperative that the ILWU workforce be utilized as the first line of defense against maritime terrorist activities; law enforcement and other first responders should recognize us as a natural ally.

Within each jurisdiction, key union officers are members of the Area Maritime Security Committee. Our relationship with the Coast Guard has never been better; we applaud that agency for its cooperation and for performing its job admirably — often with limited resources.

There are a number of important provisions of the SAFE Port Act that deserve immediate attention and action from the relevant agencies. First, the SAFE Port Act requires the Department of Homeland Security, in coordination with the Coast Guard, to establish a port security training program to enhance the capability of each facility to prevent, prepare for, respond to, mitigate, and recover from acts of terrorism or natural disasters. Additionally, the Act requires each high-risk facility to conduct live or full scale exercises not less frequently than once every two years.

The Act calls for training involving evacuation procedures in the event of an incident. Most longshore workers have no idea how to orderly evacuate facilities. To date, longshore workers have not been trained, with the exception of union-conducted initiatives. Our employers resist live exercises because it may temporarily disrupt commerce. However, without live exercises, any plan cannot be tested and improved in the event of unforeseen problems. The disruption to commerce in the event of any large-scale incident would certainly be much more significant with an unprepared workforce.

Recently, ILWU officers met with Coast Guard Rear Admiral Bone in San Francisco for a wide-ranging discussion of port security. The ILWU emphasized our high priority placed on training. It is critical for our nation's economy that our members get back to work as soon as is practical and safe following an incident. Someone will have to move containers out of the way; commerce will have to resume. Our union needs to be integrated into the emergency command structures. We have discussed with our employers forming a voluntary cadre of longshore workers to train for and be prepared to work in potentially hazardous environments. While discussions are helpful, we must begin implementation as soon as possible.

The Transportation Security Administration (TSA) began enrolling individuals for a Transportation Worker Identification Credential (TWIC) at the Port of Wilmington, Delaware on October 16. On the West Coast, TWIC will initially be rolled-out at the Ports of Honolulu, Oakland, and Tacoma in mid-November. Workers will be charged \$132.50 for a card lasting 5 years. Our membership has raised many concerns with TWIC, including the loss of privacy involved in submitting to a background check. The fee for the card is a burden for lower paid workers such as security guards. Our members are also concerned that the card will be used for purposes other than simple access control. There is a fear amongst longshoremen that truckers and other individuals who must gain access to the port will not have to be compliant given the industry's fear that there may be a trucker shortage. Longshore workers see this issue as a matter of fairness that every individual on the docks, regardless of occupation—management and labor alike—should have to go through the same process. Finally, it may be years before card readers are installed at our nation's ports. It makes little sense to issue cards to people for the purpose of access control without having readers for the cards.

The ILWU leadership has urged our Locals and ILWU members to cooperate with TSA and Lockheed Martin to enroll our members in an orderly fashion. Discussions are occurring with these entities to establish a mobile unit at the union halls or in the vicinity of the union halls to accommodate our workforce.

It is instructive to look at the experience of Hazardous Material truck drivers obtaining their security clearance pursuant to the USA PATRIOT Act. TSA claims that they processed 700,000 applications resulting in the disqualification of 5,500 individuals. Ninety percent of the disqualified individuals did not respond to the initial letters explaining their rights to appeals and waivers. The ILWU is concerned with this statistic for a number of reasons. We are concerned that thousands of individuals may not have understood the communication to them because of literacy issues or perhaps because English is the individual's second language. It is imperative that a worker be able to understand his or her rights during this process if initially denied a card. This means that TSA must make materials available in multiple languages, not merely English and Spanish, and must make interpreters available to ensure that the non-English-speaking members of our workforce are able to continue their work in the industry. It is equally important that all written materials be drafted using plain language that can be easily understood.

Truck drivers have a choice whether to transport hazardous materials or not; longshore workers do not have a choice. Longshore workers must have a card to work unless an escort procedure is worked out with the terminal and approved by the Department of Homeland Security. Given the importance of this card to our members' livelihoods, we urge the TSA to revise their regulations to allow some initial waivers to be granted to an individual without having to apply for the waiver.

Another concern of the ILWU is the inaccuracy and incompleteness of the FBI "rap sheets" that will be used to determine whether our members pass the background check. The experience of workers in the Hazardous Materials certification process demonstrates this problem. TSA has reported that more than 3,000 people were initially found to have failed the criminal background check even though they actually had no disqualifying convictions and otherwise met the requirements for issuance of a TWIC. These incorrect initial determinations were caused by rap

sheets that were inaccurate or incomplete or that failed to distinguish between felonies and misdemeanors. These approximately 3,000 workers were able to successfully utilize the appeals process to correct the erroneous initial determination. However, it is almost certain that an untold number of other workers who were erroneously denied certification did not appeal, perhaps because they did not understand their rights or could not read the information provided to them. Thus, in addition to these 3,000 workers who successfully appealed, there are almost certainly countless others who met the requirements for a Hazardous Materials certification, but are now barred from hauling Hazardous Materials because of inaccurate or incomplete records.

In the ports, where workers will have to have TWICs in order to keep their jobs, the impact of the faulty records has the potential to be far more damaging. Workers who are denied a TWIC will lose their ability to work in the industry altogether. And even those workers who appeal an incorrect initial determination and ultimately prevail will be unable to work until the appeals process is complete. This means that a worker erroneously denied a TWIC, will be off work for *at best* several months while he or she appeals the incorrect determination. Given the wide-scale inaccuracy and incompleteness of the FBI rap sheets, TSA must be required to conduct a further investigation before making an initial determination to deny someone a TWIC and workers must be allowed to continue doing their jobs until the appeals process is exhausted.

We would be very surprised if any members of the ILWU are terrorism security risks. Last year, the Coast Guard asked the union to cooperate in checking our members' names against the Terrorist Watch List; they presumably found no matches. We remain adamant that felony convictions for past crimes are not necessarily an indication of a terrorism security risk. We urge TSA to utilize the waiver procedures included in the Act. The Coast Guard must adequately staff independent Administrative Law Judges to hear appeals from individuals denied a waiver. And as with the appeals process, workers should be permitted to keep their jobs while they are exhausting the waiver process.

At the Senate Commerce Committee hearing on port security on October 4, 2007, Senator Cantwell asked the TSA how they would accommodate longshore workers who travel to work across various port zones. We are concerned that the response from TSA is ambiguous. Each

Captain of the Port will determine when their zone is ready for TWIC compliance. The ILWU has an established travel system whereby workers regularly move between ports. Workers at small ports where work is scarce may not yet require a TWIC card but seek work in the ports where the TWIC cards are indeed required. Thus, the compliance date for implementation of TWIC must be uniform on the West Coast.

The federal government is spending millions of dollars on a system to control access to port facilities for perhaps a million American workers. Yet the Department of Homeland Security continues to ignore a gaping hole in the maritime security system. Empty containers are a real risk as a means to transport weapons or people. Few terminals on the West Coast are visually inspecting containers to ensure that they are indeed empty. Given that empty containers are unsealed, it is easy for an individual to climb into a container and gain access to secure areas of a port facility. The SAFE Port Act requires a pilot program that includes the use of visual inspections of empty containers. We are not aware that any pilot program has begun. We recommend that the Committee go much further and simply require that facilities visually inspect the empty containers, given the expensive investment we are making to control access through the TWIC program.

There have been legitimate concerns raised by our counterpart on the East Coast, the International Longshoremen's Association, and the sea-going maritime unions over states and localities such as Florida implementing their own version of TWIC. Workers should only go through one TWIC process and the due process protections embodied in federal port security law must apply to all states and localities.

On March 14, 2004, ten dock workers were killed in the Israeli Port of Ashdod by suicide bombers; these terrorists were able to enter the port facilities undetected by hiding inside a cargo container. We must not experience a similar tragedy before we get serious about the cargo and empty containers that enter our port by sea or by land.

Existing port security regulations require that container seals be inspected to detect and deter any tampering when entering a port facility and upon storage on the docks. This is simply not being

done at most facilities; unbelievably, some facility operators have discontinued this practice since September 11, 2001 in order to further enrich themselves. Is there some reason that these important regulations are not being implemented 5 years after the Maritime Transportation Security Act was signed into law?

The Act requires the National Institute for Occupational Safety and Health and OSHA to evaluate the environmental and safety impacts of non-intrusive imaging technology and to develop and put into place a radiation risk reduction plan to minimize the risks to workers and the public. Such evaluation needs to proceed. We are alarmed at the lack of independent study of the long-term effects of this technology on the human body. The ILWU will continue to place the safety of our members' lives first.

In conclusion, the ILWU urges that port security training and exercises move from discussion to action. Longshore workers should be trained to assist in the recovery efforts in the event of an incident. We urge the Committee to go beyond the pilot program on empty containers and mandate the visual inspection of empties, especially given the focus on access control at our ports. We urge that current regulations requiring seal inspection actually be implemented and enforced. An independent study on the safe use of radiation devices must go forward. Finally, the TWIC implementation must not jeopardize the livelihoods of workers who do not pose a terrorism security risk.

Thank you for this opportunity to testify.