

Before the
Subcommittee on Border, Maritime and Global Terrorism
Committee on Homeland Security
U.S. House of Representatives

Testimony of
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On the

“SAFE Port Act: Status of Implementation One Year Later

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Chairwoman Sanchez, Ranking Member Souder, and Members of the Subcommittee:

My name is Bob Blanchet, Representative for the Port Division of the International Brotherhood of Teamsters. We represent over 5,500 longshoremen, clerks, truck drivers, tugboat deck hands, tow boat captains, port authority employees, guards and warehousemen who work at our nation's ports. I have been a member of the Teamsters Union for 39 years, working in the freight industry as a driver before being elected as Vice President and then President of Local 287 in San Jose, California. I have served as a business agent and organizer as well, and currently represent the Teamsters Port Division on the West Coast – serving the ports of Oakland, LA-Long Beach, Seattle, Tacoma and Portland.

I am in and around the ports on a daily basis and have an opportunity to interact with port drivers and other port workers regularly. I have been appointed to serve on the San Francisco Bay Area Port Security Commission, where I work with Captain Harold Uribe of the Coast Guard. I have witnessed first hand the dedication and concern of this Captain of the Port in implementing security measures to protect our ports against potential terrorist attacks.

It is a daunting task to secure both the land and seaside areas of a port. Are the ports more secure one year after enactment of the SAFE Port Act? Certainly, improvements have been made in some areas, but in others, security is severely lacking. And while the Transportation Worker Identification Credential (TWIC) is a noble effort to control ingress and egress into and out of the ports, the Teamsters Union has many concerns with the structural and planning shortcomings of the TWIC and how this program will work on the ground when finally implemented. These include driver turnover; cost of the TWIC and other forms of ID required by various ports; efforts already underway to circumvent container pickup in the ports; the lack of readers allowing for potential counterfeit TWICs; the possible loss of work while drivers apply for the TWIC and wait out the waiver and appeal process if needed; and the list of disqualifying offenses themselves. We are supposed to be weeding out potential terrorists, not denying jobs to hardworking port workers who may have an irrelevant transgression in their past.

Driver Turnover Presents Security Challenges

As the Teamsters Union pointed out in our earlier testimony before the combined MARAD/Coast Guard field hearings, the assumptions of driver turnover are way out of whack! The port drivers are not a stable workforce like the dockworkers and other port employees. According to statistics provided by the American Trucking Association, these poor exploited drivers have an annual turnover rate of 120% per year. This figure dwarfs the 12% average turnover rate used by TSA to estimate the resources and cost needed to implement the TWIC. Poor and abusive working conditions have created these astronomic turnover rates for short-haul container drivers, which will make it virtually impossible for TSA to collect names, let alone conduct background checks and issue TWICs quick enough to keep commerce flowing efficiently through our ports. The Coast Guard recognized this problem last year, when it failed to include port drivers in its initial Maritime Identification Credentials notice issued on April 28, 2006. And it continues to confirm this difficulty by refusing to implement Section 125 of the Safe Port Act (PL 109-347) that required port drivers to undergo the same security protocol as every other port worker – the check against the terrorist watch list and the immigration status check.

While the TWIC is just now being implemented at the Port of Wilmington, hundreds of thousands of port truck drivers go unchecked in our nation's ports every day. Why is this happening? Unlike longshoremen and other port employees, there is no one in the ports that can account for port drivers. And I have to believe that the ports have not pushed this requirement because they fear an immediate driver shortage. There is no one who can provide names of all the port drivers operating within any given port. Indeed, many port drivers show up and are issued a day pass to circumvent permanent credentialing that some ports already have in place. The ports look the other way because moving containers trumps security.

Under the current system, most port truckers are incorrectly classified as independent contractors. The drivers' status as independent contractors has grave implications for port security. To begin with, because they are considered independent contractors, no one – not the motor carriers or brokers who utilize the drivers, nor the steamship lines nor the shippers -- take responsibility for identifying who drivers are or assuring that drivers are properly credentialed. Second, as independent contractors, drivers are at the bottom of the port's economic ladder, typically netting \$11 to \$12 per hour for a working day that often stretches to 12 hours. Drivers are not entitled to statutory benefits, such as

worker's compensation and typically do not have access to medical insurance or retirement programs. Under these conditions, it is not hard to see why the port driver turnover rate is so high.

The Ports of Los Angeles and Long Beach are considering enacting a concession model for port trucking which could solve many security problems related to port trucking. The two ports are considering requiring all motor carriers providing drayage services at both ports to utilize employee drivers to operate newer, environmentally "clean" trucks. The requirement that companies utilize employee drivers means that motor carriers will be responsible for assuring that their drivers are properly screened and qualify for TWIC. The Teamsters applaud the Ports' efforts to improve security and urge the Committee to support this program.

Lack of Card Readers Allow Security Gaps

Today, security checks for most port drivers consist of merely flashing a license – a license that could be forged or fraudulent. Let me tell you – that is exactly the case in the Port of Oakland. There is no main port gate at Oakland. Each terminal has its own entrance. I watch drivers every day being waved into the port/terminal entrance by flashing their Commercial Drivers License (CDL) to the security guard. In most cases, these current forms of identification are not even looked at. If a guard recognizes the driver, he waves the driver onto port property. And, that security guard has no way of knowing that the driver he just let through the gate has a forged CDL.

I am not making up a story. I will take any Member of this Committee to an area near the Port of Oakland. That's where a little white van often appears as a convenient drive-in counterfeit center. You pay \$200 up front and the friendly entrepreneur opens up his side door, pulls out a blue curtain for a backdrop and takes your picture. You return a few hours later, pay a second \$200 and pick up your almost instant license.

I would maintain that when TWIC is implemented in the Port of Oakland, until card readers are installed, nothing will change. Nothing will change because the TWIC will be forged within 48 hours. It won't have a fancy chip or biometric identifier in it, but on its face, it will be good enough to fool the security guard, especially the ones who don't even bother to closely examine it. And it won't present itself as any layer of security if guards continue to wave drivers through without even looking at the credential.

Off-Port Facilities Create Security Gaps

Already, before the TWIC is implemented, there are ways that drivers without proper credentials are circumventing the system. There's a cottage industry in existence now where drivers, who have credentials, bring containers out of the port and hand them off to other drivers who may not have a port credential, a hazmat endorsement, or even a CDL. These containers are dropped right on the street outside the port terminal gate and picked up by these other drivers. The same thing happens when the containers come back to the port. With very few empty containers checked on return, we don't know who has brought that container from where and what he has put in it.

In previous testimony before the Senate Committee on Homeland Security and Government Affairs, the Teamsters Union testified about the issue of containers sitting in the ports for days without being screened for radiation. Radiation detection equipment should be positioned so that containers coming off the ships are screened immediately. In many instances, containers are moved to on-site rail yards and other holding yards and may sit for days before they are screened – and only when they eventually leave the port.

This raises further questions about security as containers move through the entire chain of custody from the port and are returned to the port. While all local port truck drivers who actually perform work inside the port terminal will be background checked to obtain the TWIC, what about those drivers who fail to secure the proper TWIC or who avoid the background checks altogether because of known legal problems or worse. They can continue to take part in the off-port drayage business by either rail, distribution work, or trans-load facility work or by batching boxes with someone who has TWIC credentials and can do the interchange in or out of the port gates

Every day, hundreds of intermodal boxes turn up missing, loaded with everything from tennis shoes to hazardous material. Sometimes these loads are not missed for days or even longer because of a broken system that invites disaster. What about rail workers, off-port lift operators, cross dock employees, marine chassis, box, or refer maintenance mechanics who have full access to every part of critical intermodal equipment outside the port gates, or intermodal trucking company employees who handle the assignment of container loading and unloading? Also, containers sit on rail sidings for hours and days without any security at all, or on vacant lots, at shopping malls, or on neighborhood streets or at fuel stops. "Batching" takes place outside along side streets near the port or at rail gates. This

practice involves taking care of paper work during normal hours of port operation and then moving loads or empties outside the gate and dropping containers along the street or in unsecured vacant lots for later delivery by others or possibly by the same trucker. This is done to move as many boxes as possible during normal port business hours into or just out of the port gates. It is also used by drivers who don't want to come into the port because of congestion, waiting times, or who may have legal issues keeping them from taking a chance of being checked by security. Some of these drivers have no hazmat credentials stamped on their CDL license to haul this type of material or are possibly driving under revocation or suspension, maybe without insurance, current tags, or maybe even worse.

Here's a perfect example. The Port of Savannah in conjunction with the county & state of Georgia supported a surprise action of checking workers for outstanding warrants. This led to dozens being arrested on child support violations among other issues. However, in a matter of a few days the majority of trucking companies managed to get their boxes into & out of the port by increasing the batching. Other trucking companies, worried about a shortage of drivers, were willing to go into the port to make special arrangements for those drivers who refused to pass their boxes off to a clean local driver. These drivers pick up a container at a rail yard, distribution center, or customer warehouse and bring it not to a port terminal but to an "outside drop location" or container yard. Workers at that off-dock container yard do not undergo background checks or have to obtain the TWIC. For that matter, the managers and owners of those yards are not checked either. A closer examination of off-port storage yards, rail yards, near dock container yards and warehouses is necessary to ensure that security is not compromised in an effort to avoid the TWIC and other security credentialing.

Credentialing Fees Create a Financial Hardship

The Teamsters Union has testified in the past about its concern for port drivers making \$10-12 per hour having to pay \$132.50 for the TWIC. We are also concerned about the lost time truckers may experience in visiting the enrollment center and waiting for their TWIC, especially where waivers or appeals may be involved. If drivers are forced to pay this fee, they should not have to pay additional fees at every port they enter or, as in the Port of Miami, each time a driver switches companies, he must pay for a new credential.

There should be one federal credential – the TWIC. It should allow access to all U.S. terminals, and there should not be an additional terminal ID card issued for each maritime operator with an extra fee for port truck drivers and other maritime

workers. The card should follow the worker and not be able to be removed by the employer, the terminal operator, nor the terminal operator's private police force. Only official federal government agencies such as the TSA or the U.S. Coast Guard should have the authority to revoke the TWIC. The port terminal operator should not have the right to discriminate or ban union workers, organizers or any individual on any basis other than being a security threat to the terminal as determined under the TWIC program. To vest authority to revoke the card to employers, port authorities and others, gives extraordinary power to intimidate, harass, and threaten workers into possibly ignoring safety and health rules, work rules and other protections for workers. Imagine having the power to decide unilaterally if a driver can work in a port. Taking away his TWIC denies him his livelihood. That should remain the function of the TSA and the Coast Guard.

The Florida Uniform Access Credential

The Teamsters Union strongly questions the need for the State of Florida's FUPAC – the Florida Uniform Port Access Credential, once the TWIC is implemented. While every port has the right to determine who can enter its facility on official business, each state should not be able to layer additional security requirements on its maritime workers. To do so will defeat the purpose of the TWIC – that is allowing workers to move from port to port, and will essentially create 50 different requirements for entrance to a state's ports. It is our understanding that the State of Florida wants to vet workers who have been granted a waiver under the TWIC, to separately determine their suitability for working in the Florida ports. It is inconceivable that a worker who has been background checked under the TSA protocol and then undergoes further examination by TSA through the waiver process, which in itself is a multi-layer review process, would pose a security threat that the state of Florida must further examine. This is not an acceptable practice and TSA should not enter into any agreement or Memorandum of Understanding with the state of Florida to allow this to move forward.

Disqualifying Offenses

Despite recent actions by Congress to codify disqualifying felony convictions, the Teamsters Union still strongly believes that the list of disqualifying offenses, in several instances, is not indicative of crimes that would make one a terrorist threat. We encourage the TSA to continue to outreach and communicate with potential applicants for the TWIC to make sure that those applicants understand the ability to request a waiver or appeal. More importantly, we encourage the TSA to act judiciously in reviewing waivers and appeals, understanding that they alone may

determine the ability of these applicants to continue to make a living and provide for their families. Security is of utmost concern to everyone. No one wants to see another terrorist attack in this country, but we also must be cognizant of the rights and privacies of our citizens.

Security at the ports has improved somewhat as a result of enactment of the SAFE Port Act. But much more needs to be done to address the gaps that still exist. We look forward to working with the Committee to achieve this objective. I look forward to answering any questions the Subcommittee Members may have.