HEARING BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

"H.R. 3039, The Welcoming Business Travelers and Tourists to America Act of 2011"

MAY 17, 2011 at 1:00 pm

TESTIMONY OF JANICE L. KEPHART

Former Counsel, 9/11 Commission

National Security Policy Director, Center for Immigration Studies

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Introduction

I want to thank Committee Chairman Smith, Subcommittee Chairman Gallagly, Vice-Chairman King, and Ranking Member Lofgren for the invitation to testify on the importance of the visa security apparatus to curtail terrorist (and other nefarious) travel to the United States. My testimony is based on the following work, plus additional research specific to today's hearing:

• As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information prior to 9/11 where I drafted two bills which became law under President Clinton;
• As a counsel on the 9/11 Commission "border security team," which produced the *9/11 Final Report* draft recommendations and analysis;
• As an author of the 9/11 staff report, *9/11 and Terrorist Travel;*
• As the National Security Policy Director for the Center for Immigration Studies for nearly four years where I have investigated and reported border and identity security; and
• As the radio host of "The Homeland Security Show with Janice Kephart" on vipinternetradio.com where I engage experts on a wide variety of related homeland security topics.

At the Commission, I was responsible for the investigation and analysis of the Immigration and Naturalization Service and current Department of Homeland Security (DHS) border functions as pertaining to counterterrorism, including the 9/11 hijackers' entry and acquisition of identifications that are mostly contained in our staff report, *9/11 and Terrorist Travel*. My team also produced the terrorist travel portions of the *9/11 Final Report* that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Rep. Lee Hamilton.

I have spent the years since the publication of our 9/11 work ensuring, in part, that our border findings, lessons learned, and recommendations be properly understood and implemented as both policy and law. I also work to ensure that other types of terrorist travel not specifically covered in the 9/11 investigation be considered under the tenets and intentions of the 9/11 Commission findings, lessons learned, and recommendations in light of ever-changing times. To be clear, the views I represent are as the National Security Policy Director at the Center for Immigration Studies, and not official positions of 9/11 Commission leadership.

I am glad this Committee takes to heart the policy put forth in the *9/11 Final Report* that securing our borders is in our national security interest. Ensuring that we implement, and not roll back, key 9/11 Commission recommendations piece by piece, by strengthening appropriate authorities judiciously where necessary, helps build a stronger and more flexible border framework able to adjust to changes in terrorist travel and fraudulent methods as we move forward. From this vantage point I testify on the value of the visa interview and its relationship to national security, and unfortunately, against H.R. 3039, "*Welcoming Business Travelers and Tourists to America Act of 2011.*" As National Security Policy Director at the Center for Immigration Studies, I will also discuss the relationship of the visa interview and visa term to border control and overstays.

Findings of Fact

The following facts lead me to conclude that the "Welcoming Business Travelers and Tourists to America Act of 2011" is (1) unnecessary, (2) untimely, (3) (perhaps unknowingly) supports the administration's amnesty policy, (4) will likely increase the illegal populations from China, India and Brazil currently residing in the United States, (5) could seriously impinge 9/11 Commission recommendation implementation pertaining to visa interviews, and thus national security; and (6) support China's espionage efforts against us. More specifically:

- The Obama administration has articulated numerous policies that make clear enforcing immigration law is not a priority on the border, on the interior, in visa issuance, in immigration courts, in change of status applications. Nor will the administration work in concert with states to enforce immigration laws or support state immigration laws.
- The Obama administration's amnesty policies extend beyond the population currently within the United States, and includes opening up visa categories and cutting back on visa interviews overseas, despite the visa interview problems made clear by the 9/11 hijackers and Christmas Day bomber, as I trace in detail on the evolution of Obama's amnesty policies at http://www.cis.org/amnesty-by-any-means-memos.
- Despite the Obama administration's focus on high deportation numbers, the amnesty policy in place has now ensured that the deportation numbers are down. As of April 2012, http://trac.syr.edu/immigration/reports/281/ "(ICE) is identifying fewer individuals as deportable owing to alleged criminal activity, according to the latest Immigration Court data on new deportation proceedings. During the most recent quarter (January - March 2012), ICE sought to deport a total of 5,450 individuals on criminal grounds. While this number is preliminary and is likely to increase once late reports are in, it represents a drastic decrease compared with 10,732 individuals against whom ICE sought deportation orders just two years ago (during the period January - March 2010)".
- In fact, immigration enforcement is so lacking that House appropriators are limiting funding for Immigration and Customs Enforcement if their work extends to and includes all immigration-related mission categories (*see* http://cis.org/kephart/house-appropriators-nix-obama-request-less-enforcement-funding).
- Even with leadership to enforce the law, according to a GAO 2011 report (*see* http://www.gao.gov/products/GAO-11-910T), ICE only actively pursues 3 percent of the overstay population due to resource constraints.
- According to DHS reporting, the illegal population from *China, India and Brazil*-- the two nations (China and India) with the largest populations in the world-- have *increased* their

illegal status in the U.S. *by over 70 percent collectively in the last decade* and rank at the top of illegal alien production to the United States.

• *For 2011, the three countries together represented 6 percent of the estimated total illegal population of 11.5 million with 700,000 illegal aliens.*

• Overstay rates for these three countries is more directly attributable to visa issuance than illegal entry, as nationals from none of these countries account for a significant share of currently reported illegal entries over physical borders. Even without overstay rates (Secretary Napolitano states will not be released until June 2012), for reasons listed above the illegal alien rates from China, Brazil and India logically represent a very large overstay rate which likely will not be reduced by current administration policies nor by the current high rate of illegal immigration.

• Terrorists exploit every vulnerability to get to the United States including using the easiest visa processing they can find, as explained fully in the *9/11 Final Report* and staff monograph *9/11 and Terrorist Travel.*

• China is one of the most serious violators of our espionage laws from within the United States at universities and corporations, and consistently seeks our weapons research.

• The effect of President Obama's January 2012 announcement easing visa interview requirements specifically for China, India and Brazil are still unknown in terms of reducing the application processing which Mr. Heck's tourism bill seeks to reduce for these countries.

• Requiring a quick turnaround for visa application adjudication without standards in place opens up a potential for rubber stamping visas at an increasing rate.

• While secure, encrypted video conferencing could provide much support to visa interviewing in theory, it is likely unable to be secured nor a true replacement for an interview which is very different than a meeting.

China, India and Brazil are Poor Choices

China, India and Brazil's Illegal Population Has Increased an Average of 70 Percent since 2000, with China and India in the Top 10 of Illegal Alien Populations in the United States

One of the most negative aspects of Mr. Heck's bill is the countries chosen: China, India and Brazil produce some of the highest illegal population numbers we have in America. As stated, most of these numbers must necessarily come from overstays as none of these countries are adjacent to or near the United States. (Overstay numbers are critical in determining the value of this bill, but are not available and according to Secretary Napolitano, will not be until June 2012.) This bill is set up to produce more overstays by hastening visa processing in order to produce more tourists to the United States. Tourism per se may be wonderful, but when tourism becomes an illegal overstay and the now illegal alien must go underground in order to stay in the United States, the tourist-now-illegal-alien becomes a liability in terms of our economy, security, and rule of law.

Even without the direct overstay numbers, the fact that illegal populations from these countries have nearly doubled in the last decade is enough to set this bill aside and focus instead on what must be done to enforce existing laws regarding such populations, so not to encourage more entry. All three countries top the list of illegal alien "country of origin" statistics. According to the DHS' reports for 2010 and 2011 "Estimates of the Unauthorized Immigrant Population

Residing in the United States" Brazil, China and India combined increased their illegal alien population collectively from 410,000 in 2000 to at least 700,000 in 2011 (for Brazil, only the 2010, not 2011 statistic is available). This is a 71 percent increase in illegal alien population from Brazil, China and India combined. For 2011, the three countries together represent 6 percent of the total 11.5 million illegal population.

The March 2012 report noted that China was in the top five leading country contributors to illegal immigration to the United States, with all the rest in this hemisphere:

Mexico continued to be the leading source country of unauthorized immigration to the United States (see Table 3). There were 6.8 million unauthorized immigrants from Mexico in 2011, representing 59 percent of the unauthorized population. From 2000 to 2011, the Mexican-born unauthorized population increased by 2.1 million or an annual average of 190,000. The next leading source countries were El Salvador (660,000), Guatemala (520,000), Honduras (380,000), and **China (280,000)**. *The ten leading countries of origin represented 85 percent of the unauthorized immigrant population in 2011.*

China's illegal population has increased 43 percent from 190,000 in 2000 to 280,000 in 2011. It is the largest illegal population from outside this hemisphere and it represents more than 2 percent of the illegal alien population in the United States. India ranked the seventh source country (out of 180 countries), with a 94 percent increase in illegal population: from 120,000 in 2000, to 240,000 illegal Indians in 2011. It too represents about 2 percent of the illegal population. Brazil's illegal alien numbers are high as well, with an increase from 100,000 in 2000 to 180,000 in 2010. They represent about 1.5 percent of the illegal population.

China's Espionage against the United States

As the administration and Mr. Heck's bill focus on the growing need for friendship with China, experts closely monitoring our security landscape are increasingly concerned with the economic and national security implications of the breadth of Chinese activity in the United States. The Chinese are increasingly singled out for their cyber intrusions, university spying (*see* http://www.examiner.com/article/american-universities-and-colleges-infected-by-army-of-student-spies), and corporate espionage as described by former senior lawyers for the National Security Agency, Joel Brenner in his Foreign Policy article "The Calm Before the Storm", and Stewart Baker (who was also the first Assistant Secretary for Policy at the Department of Homeland Security) in his book Skating on Stilts. Further reducing vetting for the Chinese in relying on an unproven pilot of video conferencing when economic and national security is clearly at stake is foolish.

9/11 Lessons (the Nation Had) Learned

In the aftermath of 9/11, one of the things about which the 9/11 Commission did not have to bludgeon the State Department (State) was the absolute importance of visa interviews that enable Foreign Service officers to ask more direct questions determining an applicant's true intent in seeking a U.S. visa. Until January of this past year when President Obama announced his new visa interview waiver policy, State had been conducting interviews much more thoroughly, and

hundreds of terrorists and other criminals were identified and prevented from entering the United States. *Visa processing was rightly viewed as a turnkey for immigration security.*

While the 9/11 Commission made abundantly clear that at least some of the more flagrant fraud employed by Al Qaeda would require review by specially trained and cleared personnel to determine a terrorist nexus, it was also clear that the visa interview itself would likely have discerned lies on the applications and in some cases, would have determined behavior warranting further investigation. Just as important to note, an affiliation with terrorism (or espionage or criminal activity), may develop after — or because of — an already existing U.S. visa, as was the case with the Christmas Day bomber. Osama bin Ladin and Khalid Sheikh Muhammad specifically sought out individuals with existing U.S. visas. Additionally, any country known for active espionage against our corporations, universities and government such as China may await visa issuance to approach a visa holder to do the government's bidding. In these situations, a review of visa validity upon renewal becomes paramount.

Our key 9/11 Commission findings of fact show that: (1) visa acquisition was critical to the success of the 9/11 travel operation and execution of the plot; (2) fraud was an essential component of the visa applications submitted by Al Qaeda; and (3) terrorist passports contained indicators of extremism to which only the intelligence and law enforcement personnel would be privy. Anti-crime, anti-fraud and anti-terror investigations can be intricately tied to each other, and the visa interview, buttressed in some consulates by Visa Security Units (which I testified to before this committee on May 11, 2011 at http://judiciary.house.gov/hearings/pdf/Kephart05112011.pdf) are providing a critical function in working alongside other law enforcement overseas in supporting a broad array of national security-related investigations.

Relevant Findings of Fact from Staff Monograph, "9/11 and Terrorist Travel"

- The success of the September 11 plot depended on the ability of the hijackers to obtain visas and pass an immigration and customs inspection in order to enter the United States. If they had failed, the plot could not have been executed.
- A review of visa and border processing and interviews were an integral part of our investigation on the 9/11 Commission.
- Only two of 19 hijackers were interviewed for their visas.
- 15 of the 19 hijackers received 18 visas in Saudi Arabia. Saudi Arabia became the country of choice for a hijacker's visas, as these applicants were not interviewed in person.
- The 9/11 hijackers submitted 23 visa applications during the course of the plot, and 22 of these applications were approved. During the course of the plot, these visas resulted in 45 contacts with immigration and customs officials.
- The hijackers applied for visas at five U.S. consulates or embassies overseas; two of them were interviewed. One consular officer issued visas to 11 of the 19 hijackers.
- Fourteen of the 19 September 11 hijackers obtained new passports within three weeks of their application for U.S. visas, possibly to hide travel to Afghanistan recorded in their old ones or to hide indicators of extremism that showed ties to Al Qaeda. The new passports caused no heightened scrutiny of their visa applications as consular officers were not trained, and would not have been privy to, such intelligence.

- Two hijackers lied on their visa applications in detectable ways, but were not further questioned.
- Three of the hijackers, Khalid al Mihdhar, Nawaf al Hazmi, and Salem al Hazmi, presented with their visa applications passports that contained an indicator of possible terrorist affiliation. We know now that Mihdhar and Salem al Hazmi both possessed at least two passports, all with this indicator.
- There is strong evidence that two of the hijackers, Satam al Suqami and Abdul Aziz al Omari, presented passports that contained fraudulent travel stamps that have been associated with al Qaeda when they applied for their visas. There is reason to believe that three of the remaining hijackers presented such altered or manipulated passports as well.
- Hijackers Nawaf al Hazmi and Khalid al Mihdhar were the first to submit visa applications because they were originally slated to be pilots. The four hijackers who did become pilots applied for visas in 2000. The remaining "muscle" hijackers applied in the fall of 2000 through the spring and summer of 2001, three applying twice.
- Eight other conspirators in the plot attempted to acquire U.S. visas during the course of the plot; three of them succeeded. The remaining five could not obtain visas, although none were denied for national security reasons. One, al-Kahtani, was stopped at Orlando Airport by an astute immigration officer. One dropped out. The other was Khalid Sheikh Mohammed, the mastermind of the 9/11 plot, who obtained a visa in Jeddah, Saudi Arabia, in July 2001 under an alias.
- There were opportunities to stop both World Trade Center pilots in secondary interviews at the border. That did not happen. We know what happened to the World Trade Centers.
- We also know that not having a fifth man on the Pennsylvania flight mattered as well. Al-Kahtani's turn around at Orlando International Airport after an extensive secondary interview meant there were only four hijackers on the flight that was headed for either the White House or the Capitol on that fateful day in 2001. That plane was overrun by the passengers who knew their plane was headed for disaster, and gave their lives to stop the hijackers. This one secondary interview prompted by two astute border inspectors in Orlando did determine how many hijackers the passengers had to fight on Flight 93.
- *Few, if any, of the problems in visa issuance with the 9/11 hijackers had to do with technology or databases vetting the applicants; rather, the issue was that interviews that could have detected fraud and lies were either not done, or done incompletely. In the one instance where there was an extensive interview at a border secondary inspection al Kahtani was prevented from taking his place on Flight 93.*

9/11 Commission Recommendations Relevant to Visa Interviews and Issuance

The 9/11 Commission recommendations emphasize that terrorists are best stopped when "they move through defined channels." The first, and best, opportunity to stop terrorist travel is in the visa adjudication process. It is best to stop at issuance, where there are triggers for further investigation. These can range from a recently obtained new passport, suspicious (fraudulent) travel stamps, incomplete visa applications to indicators of extremism, as was the case with the 9/11 hijackers. Interviews are essential if any of these conditions arise, or to notice them in the first instance.

Just as important is post-issuance information that indicates a terrorism (or espionage or criminal activity) affiliation. This requires the same vigilance as prior to issuance. Visa interviews with a purpose to reassess visa issuance upon renewal, or prior to U.S. travel, are an excellent tool for denial of entry or removal of those already in the United States. It is the in-person consular officer or Visa Security Unit's special agent expertise and access to information that can be the critical element to denying terrorist entry in such cases. The same is the case with any kind of criminal activity or illegal purpose.

The point is that the visa process does not end with initial issuance. The visa process continues during the life of the visa. Indeed, visa life cycles (term life of the visa) and types of visas (single or multiple entry) are negotiated with countries by the State Department on a case-by-case basis with countries (United Arab Emirates had 10-year visas at the time of 9/11, for example), and the ability to review the visa for security-related reasons remains throughout its life span. Yet again, it is not all about issuance. Those with existing U.S. visas will be sought after by those with nefarious purposes, and thus review of existing visas prior to travel and re-interviews should be a priority at consular posts worldwide. Taking away the visa interview function should not even be a consideration now that we are well aware of the ramifications of insufficient attention paid to visa applicants.

The State Department's Consular Section Does Not Want to Waive Visa Interviews

And on the value of consular interviews, Mr. Edward Ramotowski, Acting Deputy Assistant Secretary, Bureau of Consular Affairs for the U.S. Department of State said in a September 2011 hearing, "Ten Years after 9/11: Can Terrorists Still Exploit our Visa System?" before House Homeland Subcommittee on Border and Maritime Security that in-person interviews are critical in rooting out fraud. *See* http://homeland.house.gov/hearing/ten-years-after-911-can-terrorists-still-exploit-our-visa-system. The underlying presumption in his comment is that automated security checks and review of submitted documents do not catch what an interview will.

> *REP. BILIRAKIS: Thank you. For the entire panel, to what extent are some fraudulent educational institutions able to serve as visa mills and as back door into the country, what tools exist or are needed to close this loophole for the entire panel?*
>
> *…*
>
> *RAMATOWSKI: I would just like to add Congressman that, that underlines the importance of the personal interview that our officers conduct in our embassies and consulates because although someone may submit a fraudulent test paper, a highly trained consular officer can often note discrepancies in the interview that would open a line of inquiry and lead to the denial of that visa.*

In other words, interviews by a well-trained consular corps can make the difference between fraud being granted a visa, and fraud unveiled.

Visa Interview Waiver Pilot Announced by President Obama in January 2012

The bill specifically notes in its initial findings of fact that the President has already done some of the work of this bill by waiving visa interviews in certain categories for China, India and Brazil. Before there is a decision to consider Mr. Heck's tourism bill, we must understand what the President's visa interview waiver pilot already does for these countries. Each country is receiving different treatment for no known reason. Moreover, these waivers are likely illegal as they usurp the Immigration and Nationality Act's (INA) explicit requirements for visa interviews. Please note that an underlying outcome of this bill-- which has already failed in the Senate—would be to legalize the President's actions.

Careful consideration must also be given to what effect these new policies will have not just on shortening visa processing times and the visa interview, but also on the likely potential increase in fraud and security risk. (For a case study on Indian fraud, please see my video, "Three Years of Immigration Fraud: The Case Study of Manoj Kargudri" available here: http://youtu.be/v3DJjd4XWC8.) The effect of the President's changes are unknown at this point, as the visa interview waiver pilot was only issued in January, so in my opinion this bill is premature on that basis alone. However, in all fairness, it is important for the record that we understand where visa policy now stands regarding these three countries.

First of all, note there are two parts to the visa interview waiver "pilot": (1) the waiver of interviews for persons renewing a visa within 4 years of expiration of an earlier visa (in the same class) and (2) the waiver of interviews for persons above 65 and below 16 years of age (the current law allows waiver only for persons 79 and older and younger than 14). The "pilot" has been implemented in a number of countries, including, principally, China, India, and Brazil. For the India announcement see http://newdelhi.usembassy.gov/iwp.html. For the China announcement see http://beijing.usembassy-china.org.cn/20120209amb-visa.html. Note that different visa categories are eligible in different countries. In India, it seems as though State is applying it only to B1/B2 visas, while the China announcement says it applies to B (temporary visitors for business/pleasure), C1 (transit), D (crew members), F (students), J (exchange visitors), M (nonacademic students), and O (visitors with extraordinary ability). It looks as though the waiver of interviews for >65 and <15 years of age has been applied only in Brazil so far. See http://brazil.usembassy.gov/waiver2.html.

Second, the visa interview waiver pilot can be considered nothing less than a direct undermining of section 222(h) of the Immigration and Nationality Act. State is using the "national interest" exception under section 222(h)(1)(C)(i) to effectively rewrite the specific interview exemption at section 222(h)(1)(B)(i) and the general requirement at 222(h)(1) (regarding the ages that must be interviewed). This is a clear extension of President Obama's amnesty policy.

Third, the "renew-within-4-years-of-expiration waiver" is worldwide, in those countries where State is doing this, (which the President has refused to tell the nation). Strangely, only Indians seeking B visas can get that deal, while Chinese in the listed categories can. It is not sure what the permissible categories are for Brazil; the website is silent. There seems to be no transparent standards or applicable visa categories that State is applying. The waiver for persons outside of the age range only applies to Brazil, not China or to anywhere else. Why? Because this program was implemented without Congressional oversight or proper vetting.

To be clear, waiving interviews does not mean that a person is de facto getting longer visa validity; it means that they escape the hassle of going to the consulate to be interviewed for a new visa, and that State has that much less work to do. Chinese B visa recipients are still only getting 1-year visas because that is usually what they give U.S. travelers to China. The reciprocity rule at section 221(c) of the Immigration and Nationality Act prevents the United States from giving any country visas valid for longer than what that country gives U.S. citizens. But now, visa life cycles are made significantly easier for the applicant, and State processing: if they renew their B visa within 4 years of expiration of their old visa they can just "mail it in" and escape the mandatory interview requirement of the INA.

Here's the bottom line: if State conducts the waivers aggressively, which is clearly its intent considering it was the President who made the announcement, not Secretary Clinton nor Secretary Napolitano (DHS has legal control over visa policy, while State is responsible operationally for visa policy implementation)—waivers, again, that State has designed without Congressional oversight-- *then the core problem that this bill seeks to solve, i.e. visa processing-- will be solved simply by the President's program and this bill becomes unnecessary*. The President's program sets up State to reduce dramatically its interview backlog and, basically, produce visas with the only security checks being automatic queries of watchlists and other data already embedded in State's Consular Consolidated Database checks. *See* 9 FAM 41.121 N2.3-1.

I need only refer to the Christmas Day Bomber and 9/11 facts above (and there are many other examples) to reiterate the importance of visa interviews and the re-vetting of visas. Terrorist organizations or governments seeking to use their citizens for corporate, government or university espionage all recruit from those that already have U.S. issued visas. It is foolish to assume that vetted once means only automatic database re-vetting need take place.

[H.R. 3039](#), the "Welcoming Business Travelers and Tourists to America Act of 2011"

Before a complete determination can be made of the relevancy of this bill, Congress needs to demand that the State Department and Department of Homeland Security (officially responsible for visa security policy) provide (1) the exact terms of the White House visa interview waiver program per country and (2) overstay rates for China, Brazil and India.

Further, the bill presents multiple other issues. First, economic security is threatened much more significantly than the happy-go-lucky tourism arguments suggest. To invite tourists from countries whose citizens for years have come to the United States to escape poverty (Brazil and India) or a repressive regime that is openly friendly to America, robustly commits espionage on American soil, and have been smuggled here illegally across both northern and southern borders for years (China), is to invite a surge in visa overstays and potentially to flood a downturned economy with more foreigners eventually seeking American jobs.

If we could be assured that all these visa applicants would abide by the terms on their stay, and abide by our laws, this bill may have value. However, these are countries not in the Visa Waiver Program because their overstay rates are traditionally high and, in the case of China, security issues are especially severe. Visa overstays for countries in the Visa Waiver Program must be

held under 3 percent of all visitors for a country to remain in the program. Legally countries must "meet certain conditions" to be considered for Visa Waiver status. In addition, DHS must first complete and certify a number of required actions aimed at enhancing the security of the program, including its ability to verify the departure of 97 percent of foreign nationals who depart through U.S. airports (referred to as an air exit system which we still do not have in place fully).

We need to stop illegal immigration activity and enforce current immigration law before we consider broadening our immigration policies by what I will term "Executive Policy" (as opposed to laws or Executive Orders). Now is not the time to increase the workload of the State Department in the manner conceived in the bill; the work of consular officers-- already often just shy of a rubber stamping process due to scant resources and closed embassies-- will indeed become one. The whistleblowers issue that has arisen with U.S. Citizenship and Immigration Services (USCIS) to which I have testified in prior years could easily re-arise with the implementation of this bill. In recurrent USCIS management policies, citizenship applications are adjudicated on a "timed" basis. Performance is based on numbers of applications vetted, and are not based on security or full merit evaluation. This situation could be projected into an already stressed State Department consular function where no authorization for appropriations is included for any of the changes sought in the bill.

Section Analysis

The bill's solution to get more tourists here more quickly for China, India and Brazil is to (1) hire more consular officers using nonimmigrant visa fees and (2) video-conferencing of interviewees, including the State Department's ability to unilaterally modify visa validity periods for any country once video-conferencing is proven as a fast and effective solution to interviews.

SEC. 3. VISA PROCESSING
Notwithstanding any other provision of law, the Secretary of State shall set a visa processing standard of 12 or fewer calendar days at United States diplomatic and consular missions in China, Brazil, and India, and use machine readable nonimmigrant visa fees to hire a sufficient number of Foreign Service officers and limited non-career appointment consular officers to meet and maintain such standard throughout the year.

Potential spies and tremendous amounts of fraud can be turned away with proper visa interviewing and document review. *To be clear, fraud employed does not change depending on where a person is from or what the intent is upon coming to the United States. Fraud is fraud whether employed by a terrorist, spy, criminal or simple economic migrant. The commonality is that it all breaks the law, and it is all detectable.* A mandatory 12 day visa processing time frame will necessarily reduce consular officer ability to catch fraud whether that fraud is perpetrated in terrorist havens like Yemen, Somalia, or spies in China or fraud in Brazil, India or any other country in the world. Performance reviews will be based on numbers processed, not fraud caught or terrorists or spies referred for further scrutiny. Without visa interviewing done systematically and on terms fairly based on terms provided our citizens, our nation will have conveniently forgotten the learned the lessons of 9/11 for the greed of an immediate dollar.

SEC. 4. VISA VIDEO-CONFERENCING
(a) Pilot Program - The Secretary of State shall conduct a two-year pilot program for the processing of nonimmigrant visas using secure remote video-conferencing technology as a method for conducting visa interviews of applicants, and shall work with other Federal agencies that use such secure communications to help ensure security of the video-conferencing transmission and encryption.

First, Section 4 is unduly vague. What video-conferencing for what countries, under what circumstances, and with what personnel? Who will run the program? How will it be funded?

Second, video conferencing necessarily does limit an in-person review of documents, assessment of behavior, and most importantly, in-country follow-up when necessary.

Third, the issue with video-conferencing is also technical. How do we take biometrics from someone 8,000 miles away at the other end of a video screen in India? How do we ensure the biometrics that somehow are taken actually belong to the person who was interviewed? And how do we assure that video-conferencing does not become a slippery slope whereby Washington D.C. becomes the interview hub for the entire world? There is a potential that video-conferencing will produce a false sense of security, and diminish INA law and policy requiring an in-person interview for proven reasons.

Fourth, there remains an issue for the security of personnel. Where would the video-conferencing locations be? Presumably, in remote areas where there is no embassy thus enabling an in-person visa interview where there otherwise is no opportunity for one. That is good in theory, but once implemented, that would require a State Department employee must man that remote office, with expensive equipment, without security. That sets up a potential for attacks, kidnappings, or simple burglaries.

SEC. 7. VISA VALIDITY PERIOD
If the Secretary of State can demonstrate no adversarial effects to the United States, the Secretary may modify or enter into agreements with certain countries on a non-reciprocal basis to allow for longer visa validity periods than the periods with such countries that are in existence as of the date of the enactment of this Act.

Granting longer visa validity without reciprocity is the natural complement to waiving interviews for those seeking to simply dismantle the visa regime and let foreign visitors pour into the country without care for security or growing illegal population statistics. That may be the Obama administration position to support amnesty. Yet the State Department has a long history of using visa reciprocity in diplomatic negotiations, and INA 221(c) gives State the ability to use law to back up negotiations. Trumping the reciprocity requirement at INA 221(c) with a provision like this so Chinese can be granted 10-year visas, even though they only give U.S. citizens 1-year visas, makes it easy on consular officers but State realizes, unofficially, that the ramifications in the long run for their diplomatic missions, and consular functions where security is important, are not good. State knows the rest of the country pays the price if their officers are not doing their job. It is much easier, and efficient, to spend the time and energy to keep out nefarious purposes, then dispose of it once in the country. The purpose of vetting is to bring

those that will spend money in the United States, abide by our laws, and go home. We do not know if that is who we are saying 'yes, come' to if visa interviews become the exception, not the rule. The foreign service officers at State knows this well.

Another problem with Section 7 is that it is unduly broad and unnecessary. This provision has no limitations on how the secretary uses her discretion to modify agreements with other countries on visa validity time frames. What's the issue with this? First, Section 7 would override the reciprocity requirement of INA 221(c), a provision that has existed since 1952 to assure a strong U.S. negotiating position to assure U.S. citizens receive the same treatment traveling abroad as foreign visitors coming to the United States. It is unlikely these countries would grant our citizens the same visa validity the United States grants their citizens simply because we are playing the 'nice' card. In fact, such behavior could be considered weak by a country like China. Most importantly, extra-long visa periods promote a greater desire to immigrate, even if illegally. The longer people are here, the more likely they will not want to leave, even if it means living and assimilating illegally. A future policy that invites overstays is not a policy that is good for our country.