

**Hearing before the House Committee on the Judiciary**  
**Subcommittee on Immigration Policy and**  
**Enforcement**

**“H.R. 704, the Security and Fairness**  
**Enhancement (SAFE) for America Act”**

*Amending the Immigration and Nationality Act to eliminate  
the diversity visa lottery immigrant program*

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**Testimony of Janice L. Kephart**

National Security Policy Director  
Center for Immigration Studies

Former counsel, The National Commission on Terrorist Attacks Upon the United States and an author of *September 11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States*

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**Introduction**

Thank you for the invitation to testify on the *terrorist travel* and national security vulnerabilities that remain with the 20 year old program commonly referred to as the “Diversity Visa Lottery” (DV Program). 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;
- 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 the past three years.

At the Commission, I was responsible for the investigation and analysis of the INS and current 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 of the *9/11 Final Report* that were unanimously agreed to and refined by 9/11 Commissioners led by Governor Tom Kean and Representative 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 are properly understood and implemented, and that other types of terrorist travel that were not covered as part of the 9/11 investigation are considered under the tenets and intentions of the 9/11 Commission findings, lessons learned and recommendations in light of ever-changing times.

I want to thank full Committee Chairman Smith, Subcommittee Chairman Gallagly and Vice-Chairman King, and Ranking Member Lofgren for holding this hearing on the DV Program. I especially want to acknowledge the leadership of Rep. Goodlatte for the introduction of his SAFE for America Act eliminating the DV Program, as well as Sen. Hatch, who has introduced a

full interior enforcement bill that also contains a DV Program elimination provision. I am glad this Committee takes to heart the policy put forth in the *9/11 Final Report* that securing our borders is not only in our national interest, it is essential to our national security. Eliminating the pre-9/11, 20 year old DV Program, in my view, is in our national interest and will shore up a current national security vulnerability.

### **9/11 Commission Backdrop**

This nation cannot *ever* afford to say it is not important or there is a segment of our border apparatus to which security does not apply. On March 30, 2011, Gov. Tom Kean and Rep. Lee Hamilton testified before the Senate Governmental Affairs Committee in a hearing ““Ten Years After 9/11: A Report From the 9/11 Commission Chairmen”. Our 9/11 Commission leadership reiterated once more how important it is for this nation to prevent exploitation of border vulnerabilities:

*Since 9/11 and the creation of the Department of Homeland Security, a critical goal of our border security apparatus has been to prevent terrorists from entering the United States.*

*Border security remains a top national security priority, because there is an indisputable nexus between terrorist operations and terrorist travel. Foreign-born terrorists have continued to exploit our border vulnerabilities to gain access to the United States.*

In part because Congress chose to make law or provide resources to implement many 9/11 Commission recommendations, the U.S. government now has the legal authority and infrastructure to secure against terrorist travel in a manner it did not prior to 9/11. Yet, somehow this nation has still has a fully funded DV Program in place. The program exists despite creating a large, exploitable border vulnerability whereby almost anyone from almost anywhere (but for some of our key allies) can apply, cross their fingers, (or lie), and be granted a visa that turns into permanent residency with no assurance that this nation really knows the background or intention of the foreign national.

My purpose today is to provide my analysis of the DV Program from the vantage point of a former 9/11 counsel as well as National Security Policy Director at the Center for Immigration Studies. Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. My underlying perspective is that we must treat our borders as they truly are: as a marker of U.S. sovereign rights to assure that people who seek to come here are who they say they are, and will not cause a public safety or terrorist threat to American citizens. The DV Program assures none of these elements.

Without repeating the content and findings of *9/11 and Terrorist Travel*, terrorists will use any infiltration tactic if it works, from hiding in a ship’s hull or car trunk, to seeking legitimate visas, to entering into a sham marriage that will gain them access to either a visa waiver, or, better yet, a U.S. passport. The DV program is a terrorist’s gamble, but if it works, it is an infiltration tactic with little oversight, a guaranteed visa, and permanent residency whether already in the United States, or seeking entry from abroad.

### **Summary**

The Diversity Visa (DV) Program is an unfortunate blind spot in our immigration system that has outlived whatever purpose it might have had. The applicants for these 50,000 "visa lottery" immigration slots require few skills. Neither their qualifications nor identity can be properly vetted. The program does not know, really, who these applicants are or their true purpose in coming to the United States. The program is a national security vulnerability, and has been used by terrorists and organized criminals to not only enter the U.S., but bring others as well.

According to unofficial statements from the State Department, the program is rife with fraud in part because application standards are so low. The program claims to have strict eligibility requirements, but only calls for a high school education or its equivalent *or* two years of work experience within the past five years in an occupation requiring at least two years' training or experience. In most of the countries eligible for a diversity visa, neither education nor work experience can be verified, let alone identity. Consular officers in U.S. embassies abroad thus spend an inordinate amount of time attempting to determine if people are who they say they are and actually qualify for the program. Checking watch lists based on names or prior U.S. immigration histories thus often has little bearing on making a solid determination of identity, qualifications, or legitimate national security concerns.

My conclusion is that the DV Program, as legally authorized today, is a threat to our national security because it:

(1) draws from nations that are state sponsors of terror or are known to harbor terrorist organizations that have overtly stated terrorist intentions towards the United States, which [will remain unchanged for the 2012 lottery](#) despite serious shifts in geopolitics since 9/11 and again over the past few months;

(2) does not include national security standards or reviews of participant countries (which would be resource intensive for the 173 nations included in the program today) , such as those standards or reviews made of Visa Waiver countries to maintain their status in that program;

(3) is susceptible to serious fraud and malfeasance both in and out of the United States because of the program's inability to assure identities or qualifications—a similar type of fraud we addressed on the 9/11 Commission pertaining to the processing of visas in Saudi Arabia pre 9/11 (stated by the State Department in a [2010 press conference](#) as the biggest problem with the program from an administration standpoint);

(4) has low applicant standards ([admitted as low by the State Department](#))—a high school education or equivalent—combined with a blind "[computer-generated random lottery drawing chooses \[that\] selectees](#)," essentially acting as an invitation to those with nefarious intentions to take advantage of the program's "blind" picks and negligible standards;

(5) has been exploited to support human trafficking and a slave trade by crime syndicates, nothing close to promoting straightforward "diversity" from "lower immigration" countries; and

(6) enables those already in the United States to apply for the lottery, thus enabling those already here to stay while their “change of status” is under consideration as did Hesham Hedayet, a known terrorist, this increasing the vulnerabilities already built into the program.

### **National Security Concerns**

Looking closely at the worldwide distribution of visa lottery winners from the [most recent compilation of statistics](#) by the State Department, almost the entire world is represented in the nearly 50,000 visas issued in 2010 (citizens of all but the top source countries of immigration may participate). What is perhaps most troublesome is that the low threshold of requirements to obtain a diversity visa and the wide breadth of foreign nations eligible for DVs means that foreign nationals from states sponsors of terror, states with terrorists operating within their borders that threaten U.S. national security, and struggling third world nations whose citizenry include economic migrants with few skills and no means to support themselves upon arrival, all are issued visas annually through the program.

Of the 173 foreign states and territories represented in the State Department's 2010 catalogue of actual diversity program visas issued (and adjustments of status for people already here), Iran – a designated [state sponsor of terror](#) since January 19, 1984, and the country with one of the longest, most tangled, and unnerving [terrorist resumes](#) in the world – received 1,854 visas or adjustments of status. Iran only fell behind Bangladesh, Ethiopia, Egypt, Ghana, Kenya, Nepal, Nigeria and Uzbekistan in numbers of DVs actually awarded.

Iran's participation in the program seems to be at an anomaly with the State Department's own designation of Iran, for years, as a state sponsor of terrorism. Indeed, Iran's high numbers of DV awards is perhaps the best indication that the DV Program operates in a vacuum unconcerned with national security. Our nation has economic sanctions against Iran, and Iran is known for its active security forces that seek infiltration abroad; support terrorist acts around the world (the 9/11 Commission made clear that Iran was involved to some degree in supporting the nineteen 9/11 hijackers); provide training and financial support for Hezbollah; and currently harbor al Qaeda.

The United States has admitted more than once that our nation has little visibility into the actual terrorist on-goings of Iran on a day-to-day basis. Yet, Iran was the third largest recipient of DVs amongst the 29 nations in Asia that also obtained DVs, and ninth worldwide, is four spots up from their 13<sup>th</sup> place ranking in 2009. There is a possibility that among those Iranians obtaining legal permanent residence through their DVs are those who do not support the United States, or perhaps worse.

The three other state sponsors of terror – Sudan (557), Syria (37) and Cuba (140) – received a total of 734 lottery visas between them. Nations with active terrorist populations such as Yemen and Somalia, as well as governments known to support terrorist causes and terrorist travel, such

as Venezuela, also benefit from the lottery program. Again, there are no stop-gaps against fraud to determine qualifications or properly vet identity or derogatory intelligence to assure that radicalized individuals applying from Yemen, Somalia, or Venezuela, let alone Iran, for example, do not enter the United States on a DV.

Other nations whose governments are not designated state sponsors of terror but are known to harbor terrorist organizations or radicalized populations that have overtly stated terrorist intentions towards the United States or are undergoing political turmoil that could be detrimental to U.S. interests—also receive DVs. In 2010, actual awarded DV numbers for a sampling of these countries were as follows: Afghanistan (66); Algeria (1,957); Egypt (3,253); Iraq (37); Lebanon (46); Libya (70); Nigeria (2,834); Saudi Arabia (34); Somalia (71); Syria (98); Trinidad and Tobago (103); Venezuela (391); Yemen (33). All of these countries' natives are eligible to apply in 2012, despite tremendous unrest and anti-American style activity in Egypt, Libya and Yemen, for example, in the past few months.

Not surprisingly, at least one terrorist incident was helped by the DV program. [Hesham Hedayet](#), an Egyptian who had entered the United States in 1992 and claimed asylum based on his "radical religious beliefs" for which he "was persecuted." His asylum claim was denied but he eventually obtained legal permanent resident status when his wife won the visa lottery in 1996. On July 4, 2002, Hedayet drove to the L.A. Airport with two guns and a hunting knife, approached the Israeli Airline El Al ticket counter, and killed an employee and man waiting in line. He was killed by a security guard.

### **Organized Crime Concerns**

Diversity visas have also been used to support significant organized criminal enterprises. In December 2010, Attorney General Eric Holder [presented a coveted Department of Justice award](#) to a team of federal prosecutors and Immigration and Customs Enforcement (ICE) agents who had busted a human trafficking organization that was using the DV Program to obtain forced child labor for salon-type retail shops in New Jersey. The main perpetrator was Akouavi Kpade Afolabi, formerly from Togo, who, with her husband and son, had essentially used the DV program to create their own personal slave trade by soliciting young African female winners of DVs who could not afford to come to the United States, agreeing to pay their way but in return forcing them to lie about their identity and then permanently confiscate their passports. Attorney General Holder described the case while presenting the "Superior Performance by a Litigative Team" on December 8, 2010, to three federal prosecutors and three senior ICE agents:

*[For their] outstanding investigation and prosecution of Akouavi Kpade Afolabi and co-conspirators for human trafficking, alien smuggling, and visa fraud in the District's most significant human trafficking case to date. For over five years, defendants obtained the forced labor of two dozen African girls, ranging from 10 to 19 years old. Through physical beatings, threats of voodoo curses, shame, and isolation, defendants forced the*

*victims to work without pay seven days per week, for 10 to 14 hours each day. Many of the victims were subjected to repeated sexual abuse. The team did a superior job working with severely traumatized victim-witnesses and investigating the case, resulting in three pleas, the convictions of two defendants in separate jury trials, and over \$3.9 million in restitution.*

## **Fraud Abuse Concerns**

The fraud employed by the Togolese criminal enterprise described above is not unusual. The DV program is permeated with fraud from all over the world, and while fraud pervades immigration programs, the DV program's issues (especially attempts at defrauding applicants) are so profound that warnings were issued in January 2011 by U.S. embassies in [Ghana](#), [Pakistan](#), [Nepal](#), and [Bahrain](#). In addition, a [general warning](#) is posted at the State Department and Federal Trade Commission websites:

***Fraud Warning.** Please Note: There have been instances of fraudulent websites posing as official U.S. Government sites. Some companies posing as the U.S. Government have sought money in order to "complete" lottery entry forms. There is no charge to download and complete the Electronic Diversity Visa Entry Form. The Department of State notifies successful Diversity Visa applicants by letter, and NOT by e-mail. To learn more see the Department of State Warning and the Federal Trade Commission Warning.*

Our federal courts have also had to expend time and resources dispensing with DV fraud cases. In a 2008 case, *U.S. v. Nouira*, the defendant received a 30 month sentence for visa fraud. Nouira operated the "Moroccan Service Center" in Casablanca, Morocco whereby he would "arrange" marriages for winners of the DV program for the distribution of resident alien visas to Moroccan citizens, so that the "spouses" of the visa lottery winners would become eligible to reside in the U.S. as derivative family members.

In *U.S. v. Badmus*, decided in 2003, a New York based individual was also sentenced to 30 months for visa fraud when federal investigators discovered more than 100 DV-related documents. Investigators counted 14 passports, 63 visa applications, and more than 300 photographs all being used in an attempt to place multiple entries into the DV program for only a handful of people. In about "150 passport photos, there were identical photographs with different names and biographical data written on the back; (2) applications and other paperwork relating to the Diversity Visa Lottery Program; (3) a composition book listing names, numbers, amounts of money and occupations, as well as references to the "DV 2000 visa lottery"; and (4) a luggage tag and phone bill, both bearing the defendant's address."

## **Proposals to Do Away with the DV Program**

As our immigration landscape has changed since the creation of the visa lottery in 1990. Our security landscape has shifted significantly since September 11, 2001. Our economy has struggled to recover since 2007. The DV program – which brings into the U.S. 50,000 low-skilled, low-educated individuals whose identities cannot be fully vetted – seems an anomaly to a secure, economically vibrant nation. In fact, the House voted to abolish the DV program in 2005 by a vote of 273-148. At that time, concerns over fraud and national security won the House, but the Senate never passed the bill. In 2007, another bill was introduced in the House to eliminate the program. In June 2007, the Senate and House both agreed to negate funding for the DV program, but the final bill included DV appropriations.

So where does that leave us? There are now two attempts to deal with the DV program head-on. Neither Rep. Goodlatte nor Sen. Hatch are shying away from what is obvious and understated: the DV program, which assertively creates national security vulnerabilities by admitting foreign nationals it cannot viably vet from state sponsors of terror or nations harboring terrorists, acts to support criminal human trafficking, and perpetrates low-skill economic migration during a time when Americans need jobs desperately, has outlived its usefulness. If this nation seeks more diversity in our immigration population, the DV program is not the path to do so.