

**H.R. 1509, THE RECREATIONAL BOATERS
STREAMLINED INSPECTION ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC
SECURITY, INFRASTRUCTURE
PROTECTION, AND CYBERSECURITY

OF THE

COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES

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H.R. 1509, THE RECREATIONAL BOATERS STREAMLINED INSPECTION ACT

Thursday, May 19, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC SECURITY,
INFRASTRUCTURE PROTECTION, AND CYBERSECURITY,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The subcommittee met, pursuant to call, at 2:08 p.m., in Room 210, Cannon House Office Building, Hon. Dan Lungren [chairman of the subcommittee] presiding.

Present: Representatives Lungren, Linder, Rogers, Sanchez, and Langevin.

Mr. LUNGREN. The Committee on Homeland Security, Subcommittee on Economic Security Infrastructure Protection and Cybersecurity will come to order.

The subcommittee is meeting today for a legislative hearing on H.R. 1509, the Recreational Boaters Streamlined Inspection Act.

Mr. LUNGREN. I would first like to welcome our witnesses and thank them for taking the time out of their schedules to be with us today. We are holding this hearing to discuss legislation that has been referred to the Committee. H.R. 1509, the Recreational Boaters Streamlined Inspection Act was introduced by Mark Foley of Florida on April 6th of this year. I would like to welcome our colleague from Florida, who is here to testify before this Subcommittee.

Last week this Subcommittee held a hearing regarding the screening of airline pilots by the Transportation Security Administration. Since 9/11, the Federal Government has spent more than \$13 billion on this function. The problem with this policy appears to be that it treats all airline passengers the same, including the pilots, who ultimately wield a lethal weapon once they take control of the aircraft.

Airline pilots are subjected to psychological exams, FBI criminal background checks, a number of other tests, before being able to hold a badge that allows them to fly the planes. I believe that the man hours and dollars spent by DHS to fund these screenings might better be used elsewhere. Similarly, with all screening activities, precious DHS dollars and efforts should be focused on those persons that pose the greatest threat to our nation's security.

Today's hearing is similarly focused on ensuring that security policies and resources are appropriately directed. H.R. 1509 is intended to make it easier on travelers entering the United States by

recreational boat to comply with the immigration custom laws of the United States.

Currently recreational boaters entering the United States through one of Florida's marinas must report to U.S. Customs and Border Protection offices after arrival to complete their required immigration and custom entry declarations. I am advised that these offices are quite far away from the ports oftentimes, requiring car rentals, long drives, things of that sort.

The legislation that we are discussing today aims to relieve some of this burden on law-abiding travelers. As we will hear shortly from Mr. Foley, H.R. 1509 is intended to allow these travelers to meet Custom and Immigration requirements by creating an inspection program that uses two-way video phones. Video phones, under this legislation, would be installed at 13 ports in the State of Florida through which travelers could communicate with Customs and Border Protection officers during inspection.

Currently, 35 marinas along the northern border, including Detroit, Michigan; Buffalo, New York; and Portland, Maine utilize similar systems called the Outlying Area Reporting Station program, sometimes referred to as OARS. This subcommittee is particularly focused on evaluating how security programs and policies impact economic security, as well as how security programs can be developed in a manner that actually facilitates trade and travel.

We have an opportunity to further this discussion by reviewing options for travel facilitation in southern Florida, and the security implications of the proposed changes. We will hear from Congressman Foley, this bill's sponsor, Mr. Jimm Ellis, President of BoatU.S., and Mr. Robert Jacksta from U.S. Customs and Border Protection at the Department of Homeland Security.

I, once again, thank our witnesses for joining us today and look forward to their testimony. And the Chair would now recognize the ranking member, Ms. Sanchez, for any opening statement she might have.

Ms. SANCHEZ. Thank you, Mr. Chairman. And I appreciate you calling this Congressional hearing. And I would like to welcome all of our witnesses, of course, including our own colleague, Congressman Mark Foley of Florida. Thank you for your testimony today.

I am pleased that we have the opportunity to consider this bill, the Recreational Boaters Streamlined Inspection Act, as introduced by Representative Foley. The bill under consideration aims to ease the compliance burdens that recreational boaters face in Florida, and would require DHS to develop an inspection program for these boaters. And like my colleague from Florida, I believe that the Department of Homeland Security should put policies in place that do not overly burden our citizens. However, I have some concerns in which I hope he and the other witnesses will address during their testimony.

First, I am concerned that a video phone system such as the one that Congressman Foley proposes may be used by drug smugglers to facilitate their operations. And second, I am concerned that Customs and Border Protection does not have adequate staffing to conduct these inspections. CBP would have to increase staff to inspect boats year-round. The Great Lakes program, on which the proposal is based, runs for a much shorter period, as you know. Being on

the northern border, the boating season is shorter than what we would anticipate in Miami or southern California.

And finally, I am unaware as to whether or not DHS has determined that the video phone technology used by boaters meets our current security requirements. I would appreciate the Congressman's response to this question, in particular. And again, I look forward to hearing the witnesses' testimony, and I yield back my time and we will get on with it.

Mr. LUNGREN. Thank you, Ms. Sanchez.

And now the Chair recognizes the Chairman of the full committee, the gentleman from California, Mr. Cox, for any statement he may have.

PREAPRED STATEMENT OF THE HONORABLE CHRISTOPHER COX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

Good afternoon, I would first like to thank Congressman Lungren for chairing this legislative hearing. The bill we are discussing today—H.R. 1509, *Recreational Boaters Streamlined Inspection Act*—addresses the important issue of how we can facilitate the efforts of recreational boaters to comply with customs and immigration requirements.

As we have all realized, the terrorist attack of September 11th, 2001, forever altered our daily routines, our way of doing business, our travel plans, and our perceptions of safety and security. Where we once could run into the airport and board a plane with only minutes to spare before takeoff, we now must allow extra time for passenger and baggage screening. Where it was once a rare occurrence to walk through screening portals upon entering an office building, it is now expected.

The task before all of us now is to balance security requirements while establishing an atmosphere of travel facilitation and preserving the American way of life. The bill we are examining today provides an opportunity to examine the issue of entry requirements for U.S. citizens involved in the marina industry and recreational boating.

H.R. 1509 aims to facilitate the compliance of recreational boaters with customs and immigration inspection requirements. This legislation would create a system of video conferencing units that U.S. citizens and legal permanent residents could use to remotely complete inspections upon their arrival at any one of 13 Florida marinas.

Current policies call for boaters arriving in Florida to travel to the nearest official manned port of entry to comply with entry requirements, which in most cases is an airport.

We have an opportunity and a responsibility to weigh the security value of requiring US citizens to travel miles to a port of entry after docking their boat, rather than allowing them an easier alternative.

We have no data on how many boaters, citizens or non-citizens, refuse to comply with the reporting requirements. As the *Palm Beach Post* discussed in a March editorial of this year, South Florida residents used to enjoy hassle-free trips to the Bahamas. Now, however, the trip means either "a hassle or a flouting of the law."

The use of video conferencing to meet inspection requirements is not new to Customs and Border Protection. A similar program, called "OARS"—the Outlying Area Reporting Station program—has been in use since prior to 9/11 along the Northern Border. OARS is currently deployed at 35 ports of entry. This hearing provides an opportunity to explore lessons learned from OARS and how this program or a similar program might be expanded to other locations to provide greater travel facilitation.

Would deploying the OARS program in Florida or at other southern ports of entry pose a new set of challenges and concerns that must be considered? How likely would it be that travelers entering through Florida ports would utilize this inspection and reporting tool?

I look forward to discussing with each of our witnesses the potential of using video conferencing technology to streamline the inspection process. I also look forward to examining the differences between the Northern Border, where this technology is in use, and the Nation's Southeastern Border, to where it is proposed for expansion in this bill.

I am pleased we have with us today Congressman Mark Foley, the sponsor of the legislation, Mr. Jim Ellis of BoatU.S., who is representing the interests of the recreational boating community, and Mr. Robert Jacksta of Customs and Border Protection at the Department of Homeland Security.

Again, I thank our witnesses for their appearance today and look forward to their testimony.

Mr. COX. I thank the chairman, and I want to thank you first for holding this hearing.

The Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity, as its name implies, is focused first on the need to balance the economic security of the nation with its physical security. One of the things that Osama bin Laden seeks to destroy is the American economy, we want to be sure that in our response to terrorism, we don't do that for him. The bill we are discussing today, H.R. 1509, the Recreational Boaters Streamlined Inspection Act, which is authored by our colleague from Florida, Mr. Foley, addresses one aspect of this profoundly important issue, how can we accommodate the ongoing needs of our American way of life and of our economy with the security needs of a post 9/11 world?

It is now commonplace that the terrorist attack of September 11th forever altered our daily routines and our way of doing business, but while that is undoubtedly true, it should not mean that we cannot balance security requirements with the American way of life, the very way of life, after all, that Osama bin Laden seeks to destroy.

The bill that we are examining today provides an opportunity to examine this issue in microcosm, it addresses the balance between entry requirements for U.S. citizens and the needs of recreational boaters. H.R. 1509 aims to facilitate the compliance of recreational boaters with existing Customs and Immigration inspection requirements, it doesn't change those requirements, rather, it would create a system of video conferencing units that U.S. citizens and legal permanent residents could use to remotely complete inspections upon their arrival at any one of 13 Florida marinas.

Current policies call for boaters arriving in Florida to travel to the first official manport of entry to comply with entry requirements, in most cases, that is an airport. We have an opportunity and a responsibility to weigh the security value of requiring boaters to travel miles to an airport after docking the boat.

I have a number of questions, Mr. Chairman, for our witnesses. I am looking very much forward to hearing both the merits and the demerits of this proposed legislation, but as I said at the outset, I think that this bill, in microcosm, offers us the opportunity to focus on this great question of whether we are going to change our way of life dramatically in order to accommodate security, or whether as we give Americans better security, we can't maintain and indeed perhaps improve our way of life.

And I thank you, Mr. Chairman.

Mr. LUNGREN. Thank you, Mr. Chairman.

Other members of the Committee, you are reminded obviously that opening statements may be submitted for the record.

Our witnesses today, again, are the Honorable Mark Foley, Congressman for Florida's 16th district and sponsor of the legislation; Mr. Jim Ellis, President of BOAT/U.S. an association for recreational boaters, and Mr. Robert Jacksta, the Executive Director

for Border Security and Facilitation at U.S. Customs and Border Protection, Department of Homeland Security.

Mr. LUNGREN. Let me just remind the witnesses that their entire written statement will appear in the record. And so that we might be able to get through questions and answers, we would ask that you strive to limit our oral testimony to the 5-minute period allotted. And first off, we would like to hear from the author of the legislation, Congressman Foley.

STATEMENT OF HON. MARK FOLEY

Mr. FOLEY. Thank you, Mr. Chairman, Ranking Member Sanchez, Chairman Cox for this opportunity.

Congressman Shaw, Congressman Kendrick and Don Manzullo are my co-sponsors—excuse my voice, I am having a little allergy attack—are my co-sponsors of this bill. And I think the debate that you were just having crystallizes the bill. It is an interesting situation we find ourselves in Florida; huge recreational boater industry. The Bahamas is 90 minutes by boat from our shores. What this legislation has required, the change has required, and you clearly enunciated it, that when a recreational boater comes back to the port with their boat, their trailer, their family, they then leave the marina, the dock, wherever they are, and are required to go to an airport where the Customs official is located and present themselves, including all passengers, for inspection by customs.

What happens in Florida, regrettably, is that in the afternoon Sundays, when most boaters are returning from the islands, the Customs office is closed, so the boater has to then return on Monday morning and miss valuable work or school.

Legitimate law-abiding citizens are trying their best to comply with the requirements of the law, but unfortunately, once again, we have devised a system that is only checking on the good, and ignores the bad. Osama bin Laden or a drug smuggler or a human smuggler is not going to comply with this regulation, they are going to come to our shores anyway.

I understand the ranking member, Mrs. Sanchez's, concern about these video machines, and I don't want to defeat the purpose of my bill by suggesting I would settle for something else, but I want to prove to you I am willing, a simpler system. They used to do it, I believe, by phone, and they would check in and out by phone. Anything to help provide security, and at the same time provide comfort for our citizens I think is critically important.

I told Chairman Cox the other day in conversation, a firm in my district came up with an impenetrable cockpit designed in 1993. It would not have allowed bullets to be fired through, it would not have allowed entry, it had a design for a bathroom for the pilot separately access from the cockpit. You couldn't put smoke devices in or anything else. It included a camera in the cabin of the plane and one in the belly of the plane for the pilot to observe what was going on in this plane.

The total package would have cost \$10,000 per plane. The airlines rejected it out of hand because it was too expensive. Had we spent that \$10,000, we would have prevented 9/11 from occurring because they never would have gotten to the cockpit. But instead, we spend hundreds and millions of dollars on airport security and

other things that I don't think provides the level of security we need. This is one further example where, while we are attempting to control our borders and protect our citizens, we have done nothing more than frustrate and hamper the lives of average citizens.

So rather than read the testimony, I would like to get to the questions and answers. I apologize to John Hildreth, who did many, many hours of work preparing these multitude of pages. But it really comes down to simple discussion on the merits of the current system; is it providing safety? Is it providing security? Does it make sense? I would welcome the chance not to install 13 kiosks with phone devices and videotape machines; I would love to save the taxpayers money, but unfortunately, it seems to be the only answer if homeland security insists on putting citizens through the ringer as they return from recreational boating.

It has hampered our economy, it has hurt Bahamian travel to that island. And again, I want to strongly underscore, legal citizens are trying their best to comply, illegals and others simply aren't going to pay attention. So if the law is designed for security, then it has failed on its face miserably. Thank you.

[The statement of Mr. Foley follows:]

PREPARED STATEMENT OF HON. MARK FOLEY

Mr. Chairman and Members of the Subcommittee, I want to thank you for holding this hearing and for inviting me to testify in favor of H.R. 1509, the Recreational Boaters Streamlined Inspection Act.

I am also pleased that Jim Ellis, President of BOAT/U.S., will be testifying in favor of the bill. This legislation is vital to the vast number of boaters in Florida who have been living under new, burdensome federal regulations when returning from so-called "foreign ports" or in vessels in international waters that may have visited a foreign port.

Florida is a state with many recreational and charter boaters who frequently visit nearby places such as the Bahamas, which are considered foreign ports. Doing so, however, has become incredibly burdensome as a result of Department of Homeland Security (DHS) requirements put into force two years ago.

Under on-going procedures, recreational and charter boat captains and their passengers returning from a foreign port still contact and clear themselves through customs by calling a hotline number. But under the DHS requirements, they also now must report in person to an immigration officer at a U.S. Port-of-Entry (POE) within 24 hours.

This second requirement often means car rentals and long drives to the closest seaport or airport to wait in lines that often consume several hours. In addition, if the vessel returns when the immigration office is closed—which is usually the case for weekend boaters—both captain and crew must report the following morning. This often means missed work or school.

The second requirement is a result of H.R. 2500, the Commerce, Justice, and State Department Appropriations Act for Fiscal Year 2002, which amended Section 231 of the Immigration and Nationality Act to require that all persons entering the United States "shall present" themselves to an immigration officer. This small provision, tucked into this enormous funding bill, presented the boating and charter community in my state with a stark contrast to the previous compliance regime.

Prior to implementation of these new regulations in May of 2003, boat captains made one telephone call from the marina or from their home. They were briefly interviewed and cleared for entry or ordered to stay on their vessel with their passengers until an agent could come and inspect the vessel.

Being forced under the new requirements to appear in person to often distant ports of entry has absolutely no impact on our overall efforts to tighten border security. In reality, only the law-abiding comply—when they do comply—and those wanting to harm us ignore the rules. No vessel carrying illegal aliens or contraband or terrorists will present themselves at an immigration office where they will face certain detention and arrest. This reporting requirement simply makes no sense.

Moreover, it isn't just ordinary private citizens who are being burdened under this new system in Florida. The entire marine industry has suffered as people decide not

to travel or charter to avoid the hassle. Many have moved their vessels to docks in the Bahamas and flown back and forth. The same applies to many seeking charter fishing services—opting to fly directly to the Bahamas and use a vessel docked there. When they fly back to the U.S., they clear immigration much easier and faster than by sea. This is inflicting serious harm on an entire segment of Florida's economy that provides dock slips, fuel, bait, maintenance, and other products and services to the boating community.

While I strongly support, and my record reflects, the implementation of effective border controls, the government must use common sense in this process.

My legislation would require the Department of Customs and Border Protection (CBP) to implement a system nearly identical to one that has proven to be effective in dealing with this same problem for boaters using the Great Lakes and St. Lawrence Seaway.

H.R. 1509 would require Customs and Border Protection (CBP) to institute a system in Florida that uses videophones to satisfy CBP requirements for boaters returning to the United States. It would require that they install a videophone system at 13 (thirteen) maritime points-of-entry (POEs) in southeast Florida. The thirteen ports will be Sebastian Inlet, Fort Pierce Inlet, St. Lucie Inlet, Jupiter Inlet, Lake Worth Inlet, Boynton Inlet, Boca Raton Inlet, Hillsboro Inlet, Port Everglades Inlet, Bakers Haulover Inlet, Miami Harbor Inlet, Islamorada, and Key West. These locations were chosen because they are the only points of entry to Florida's inland waterways on over 200 miles of coastline between Sebastian in the north and Miami to the south. The waters between Miami and Key West would be served by videophones at Islamorada and Key West.

The purpose of the videophone system is to allow recreational and charter boaters and their passengers, who are also American citizens or lawful Permanent Residents of the United States, to satisfy BOTH the immigration and customs requirements of the Department of Homeland Security when returning to the United States from foreign ports or from international waters.

As I mentioned earlier, this system will be modeled on the videophone system called OARS, or Outlying Area Reporting Station (OARS), which was developed as an alternative to requiring all American boaters on the Canadian border from reporting in person to an Immigration office when returning to an American port. The OARS program uses videophones, typically located at public marinas or state parks, which boaters may use to report to U.S. Customs and Border Protection (CBP) officers. Currently 35 OARS units have been deployed along our maritime border with Canada.

These videophones transmit and receive both voice and video images over standard telephone lines and consists of a monitor, camera and telephone. Two videophones must be in use to place and receive video telephone calls. The videophones may be accessed 24 hours a day. Each phone has two cameras: one views the face of the traveler and the other reads the traveler's papers and identification. This allows the inspector to examine proof of citizenship and compare photo identification to the face of the traveler.

The new system in Florida will allow Immigration and Customs inspectors to retain the option of requiring boaters and all passengers to wait for a customs inspection or visit the nearest Immigration office.

Chairman Lungren, Ranking Member Sanchez, distinguished Members of the Subcommittee, I urge you to approve this legislation. Without it, law-abiding boaters in Florida are being forced to choose between non-compliance and onerous regulations that contribute absolutely nothing to national security or stem the flow of illegal aliens, terrorists or drugs into South Florida. In fact, these regulations place a burden on DHS agents to clear these law-abiding people who have volunteered themselves for inspection when these same DHS agents could be interdicting at sea those who are intent on violating our laws.

As a Floridian who has spent a lot of time on Florida's coastal and inland waterways, I can tell you that once a vessel with illegal cargo or persons enters a Florida inlet, it is virtually impossible for law enforcement officials to confront them. They blend into a maze of inland waterways, marinas, private docks and moving boat traffic. Vessels with illegal cargo must be confronted on the high seas and coastal waters well before they enter an inlet.

My legislation leaves enough leeway for CBP to modify these videophones as technology progresses. Such advances may one day include biometric data such as fingerprints or iris scans. Thus, this system could be incorporated into any larger, nationwide system that might be implemented.

There are nearly one million registered boaters in Florida who contribute \$7.8 billion into our economy. Some have estimated that nearly 70 percent of Florida boaters ignore the new rules in order to avoid missed work or school.

I urge you to approve this legislation and stop the practice of making outlaws out of these well-intentioned people.

Thank you.

Mr. LUNGREN. Thank you very much, Congressman Foley. And before I ask Mr. Ellis to speak, if there is no objection I want to enter into the record a statement submitted by Congressman Clay Shaw on this subject. And without objection, it is so ordered.

[The information follows:]

STATEMENT FOR THE RECORD OF E. CLAY SHAW, JR. (FL-22)

Chairman Lungren, Ranking Member Sanchez and Members of the Subcommittee, thank you for this opportunity to express my support for the Recreational Boaters Streamlined Inspection Act (H.R. 1509).

I am concerned about the burdensome immigration and customs reporting regulations being required of boaters taking recreational trips to foreign ports. As you know, current federal policy enforced by the Department of Homeland Security (DHS) requires recreational boater captains and their passengers, returning from a foreign port, to contact and clear customs by calling a hotline number and to report in person to an immigration officer at a U.S. port-of-entry. The current regulations place an undue burden on law-abiding boaters in South Florida, who in most cases are taking day trips to The Bahamas on a family recreation day.

In response to the concerns, Representative Mark Foley and I introduced the Recreational Boaters Streamlined Inspection Act (H.R. 1509). H.R. 1509 would create an inspection program that uses videophone systems at certain points of entry in Florida to satisfy customs and immigration reporting requirements. The proposal would allow boaters to use videophones to show agents themselves, their passengers and their documents. It is modeled after a system used in Great Lakes states for boaters returning from Canada. The change would cover 13 ports of entry from Sebastian Inlet, north of Vero Beach, to Key West. I am committed to working with DHS and South Florida boaters to find a quick resolution to this process, and a long term solution that balances our security needs with common sense policies for our recreational boaters.

As co-chairman of the Congressional Boating Caucus, I certainly understand the impact these issues have on recreational boaters. I am committed to working with DHS, the Members of the Subcommittee and South Florida boaters to find a quick resolution to this process, and a long term solution that balances our security needs with common sense policies for our recreational boaters. Thank you for your time.

Mr. LUNGREN. Now, Mr. Jim Ellis, President of BOAT/U.S.

STATEMENT OF JIM ELLIS, PRESIDENT, BOAT OWNERS ASSOCIATION OF THE UNITED STATES

Mr. ELLIS. Thank you, Mr. Chairman and members of the committee. I am Jim Ellis, President of Boat Owners Association in the United States. I am pleased to be here today representing more than 590,000 BOAT/U.S. members who are recreational boaters, and include over 113,000 of whom reside in Florida, where one out of every seven registered boaters is a BOAT/U.S. member.

Since it has been entered into the record, I will try and summarize my statement today by going directly to my personal experiences with this entry procedure.

I had the opportunity, Mr. Chairman, to experience the immigration process myself when my wife and I returned from a trip to the Bahamas in 2003. We left West End Bahama and returned to Lake Worth Inlet in West Palm Beach on our trawler.

Upon arrival at the marina, we called U.S. Customs, and after a brief and pleasant conversation, we were cleared through Customs. However, the Customs officer informed us that we needed, at that point in time, we needed to also clear through Immigration as well. After several phone calls and waiting on hold for a while—

it seemed like about an hour—we finally got through to an immigration officer who informed us that we needed, according to the law, to present ourselves in person at the West Palm Beach Airport. So we managed to get a cab at that point in time and travel the 4 miles over to the airport and tried to locate the Immigration Office, but were unsuccessful in doing so once we got to the airport because actually after another phone call we were informed that it was at the private aviation terminal at the back side of the airport.

The cab driver had no idea at that point exactly where that was, and frankly was very nervous about going to the Immigration Office to begin with, but did agree to take us over there as long as he could wait a half a block away. Nevertheless, we finally arrived at a somewhat poorly marked concrete building with no windows and a speaker out in front, which we pressed the button nervously, but a very nice, congenial officer came out, eventually appeared and took our passports and asked if we would wait outside, disappeared for only about 10 minutes, returned our passports, said that he had entered them dutifully into the computer, but since there are no cabs at that end of the airport we had to have our cab driver wait for us.

And we made it back, eventually, to the marina, and about a \$25, \$30 cab fare to get roundtrip and the wait. By the time we had returned, it end up taking us about a half a day to actually go through the entire check in procedure.

To put this tale in context, we had gone to the Bahamas on an organized trip of 25 boats. The instructions for clearing back in described in some of the materials our organizer had given us were accurate, but even so about half of the boats that we spoke to after the trip did not comply with the clearing in process, some gave up after repeated phone calls that they couldn't get through, others checked in with immigration, but did not bring everyone to the immigration office as required. Some didn't want the expense of a cab ride when they came into some other ports other than West Palm and found that it was going to be \$50 or more for them to actually get a cab; and still others had come back a couple of days later, and on a Sunday, and found that the office was not open. And since they were headed back up the east coast and expected to be on their way immediately, they simply did not check in.

In our case, we complied as timely—in as timely a manner as possible. We had spent several hours wandering around south Florida before getting to the government's official stamp of clearing in. Had we had any intention to do anything illegal, certainly there was plenty of time and opportunity to do so along the way to the immigration office.

It is our belief that any system that requires checking in of recreational boaters coming into this country, especially in south Florida, will have to end up being a voluntary one. And it only makes sense for us to come up with a system that encourages compliance. The current system does not encourage compliance. And we would be far better off with the system that is recommended in H.R. 1509 for getting recreational boaters to comply with their legal responsibilities in clearing back into this country.

I would be glad to entertain any questions. Thank you.

Mr. LUNGREN. Thank you very much, Mr. Ellis.

[The statement of Mr. Ellis follows:]

PREPARED OF STATEMENT OF JIM ELLIS

Mr. Chairman and members of the committee, I am Jim Ellis, President of Boat Owners Association of the United States. I am pleased to be here today representing more than 590,000 BOAT/U.S. members who are recreational boat owners, including over 113,000 of whom reside in Florida where one out of every seven boat owners is a BOAT/U.S. member.

Many of those boaters live in southeastern Florida and cruise to the islands of the Bahamas, only to find it difficult to check in with U.S. Customs upon their return. Congressmen Mark Foley and Clay Shaw have been searching for a solution to this problem for the past few years and BOAT/U.S. believes that the provisions of H.R. 1509 will ease the burden for Florida boaters when reporting in to U.S. authorities at various Florida ports.

Mr. Chairman, I had the opportunity to experience the immigration process myself, when my wife and I returned from a trip to the Bahamas in 2003. We left West End Bahamas and returned to West Palm Beach on our trawler. Upon arrival at the marina we called U.S. Customs and after a brief wait and pleasant conversation were cleared through Customs. However, the Customs officer informed us we needed to call Immigration and clear through them as well. We called several times and after waiting on hold for what seemed like an hour we finally got through to an officer who informed us we needed to present ourselves in person at the West Palm Beach airport.

We called a cab and made our way the four miles to the airport but couldn't locate the Immigration office. After another phone call we were informed that it was located it was at the private aviation terminal in the back of the airport. The cab driver had no idea how to get there and seemed nervous about going to the Immigration office anyway. Nevertheless, we finally arrived at a poorly marked concrete building with no windows and pressed a speaker button. A very nice officer eventually appeared, took our passports and asked us to wait outside. He disappeared for ten minutes and then reappeared to return our passports. Since there were no cabs in that part of the airport we had to have our cab wait for us. The round trip fare was about \$25. By the time we returned to the boat, a half day had been used up completing this procedure.

To put this tale into context, we had gone to the Bahamas on an organized trip of 25 boats. The instructions for clearing back in were described in some materials the organizers had given us, but even so, about half of the other boaters we spoke with after the trip did not clear back in with Immigration. Some gave up after repeated phone calls; others checked in with Immigration but did not bring everyone who was aboard their vessel and others, who returned to different ports, did not want to go to the time or the expense of a long cab ride to an airport miles from port. Still others who returned from the Bahamas on Sunday did not check in because some Immigration offices are not open on Sundays. In these cases, taking a Monday off from work to report to Immigration or delaying a flight out with the added expense of an overnight hotel stay was just too much.

In our case, where we complied in as timely a manner as possible, we had to spend several hours wandering around south Florida before getting the government's official stamp of approval to clear in. Had we intended anything illegal there was plenty of time and opportunity along the way to the Immigration office.

Mr. Chairman, the current method of enforcing this regulation is inconvenient, inadequate and inefficient. Law abiding American citizens are turned into scofflaws by a system that has not changed to meet the needs of the times. Instead of turning law abiding citizens into criminals, we should embrace new or existing technologies, such as that recommended by H.R. 1509, that will get the job done in less time and less expense.

Consider the billions of dollars the Department of Homeland Security has spent on getting the latest technology for our nation's airports. They are installing iris-scan readers to identify passengers and recently unveiled a scanner that can see through a person's outer garments. They have readers that measure the unique geometry of a person's hand to protect the baggage handling area, with motion-tracking video systems to keep unauthorized people from entering the area. Even our highway's borders have adapted new technology with their NEXUS and SENTRI programs that speed vehicles through Customs checkpoints.

Unfortunately, very little has been spent on technology to secure the thousands of miles of our coastal waters. Certainly, there must be a way to leverage some of the technological advances in aviation to make our coastlines more secure while at the same time simplifying a boater's reporting procedure.

The "Recreational Boaters Streamlined Inspection Act" offers a practical way for recreational boaters to report back to customs officials after visiting the Bahamas, as well as other Caribbean islands. H.R. 1509 requires the Department Homeland Security to establish a program allowing boaters returning from outside the U.S. to use videophones at a number of Florida marinas and public docks. This plan has worked successfully in the Great Lakes for a number of years. Recreational boaters returning from visiting Canada simply pick up a videophone and complete the necessary verification in a matter of minutes. In fact, videophones have been so successful in the Great Lakes that they are now installed at over 30 locations from New York to Minnesota.

Recreational boaters are needed as eyes and ears on the water in our quest to make our homeland secure. Meaningless regulations and low compliance destroy the governments creditably and do nothing for homeland security.

While the government's reorganization combining Customs and Immigration into one Customs and Border Protection office is a step in the right direction, it still does not solve the problem of requiring a law abiding citizen to find a cab and travel miles to report into a government office in person. There has to be a simpler way for the government to protect our borders and at the same time enable law abiding citizens who pose no threat to obey the law.

I commend the committee for holding this hearing on H.R. 1509 and urge you to approve it this year so that 13 south Florida locations can have videophones installed in early 2006. Again, thank you for this holding hearing. I am happy to respond to any questions that you might have.

Mr. LUNGREN. Mr. Robert Jacksta, the Executive Director For Border Security and Facilitation at the U.S. Customs and Border Protection Department of Homeland Security.

STATEMENT OF ROBERT JACKSTA

Mr. JACKSTA. Good afternoon, Chairman Lungren, Chairman Cox, Ranking Member Sanchez, and distinguished members.

I am honored to appear before you today to discuss U.S. Customs and Border Protection's efforts to improve and streamline the reporting process for travelers who enter the United States by small pleasure crafts.

CBP's Office of Field Operation works closely with our border patrol and air and marine officers to ensure coverage and reporting of all small boat travellers. We are also working with the U.S. Coast Guard and State and local law enforcement officers to provide coverage and report suspicious marina activities. In addition, CBP field officers conduct special outreach with marinas and attend local boat shows in order to advise boaters of our reporting requirements. And finally, CBP field officers have developed special enforcement operations to ensure targeted high-risk areas of vulnerability.

As you know, CBP is a new agency bringing together the authorities of Customs and Immigration. Title 8 United States Code requires that every applicant for admission to or transit to the United States must be inspected by a CBP officer. The implementing regulation requires that every application for entry into the United States must be made in person to an officer at a port of entry at a time when the POE is open. A person claiming to be a U.S. citizen must establish the fact to the examining officer's satisfaction.

Title 19 requires that the master of a vessel report immediately upon arrival at the nearest facility or designated place. The implementing regulations, Title 19, require boaters to immediately report their arrival by any means of communication approved by the agency.

Pleasure boaters are required to comply with these reporting requirements. Boat masters, family members and all guest entering the United States must report for inspection. Inspection may be obtained in one of three methods. On the northern border, boaters must be in possession of a pre-approved I-68 form, or a NEXUS number, or they can utilize an outlying area reporting stations, ORES. And for all other arrivals, boaters must physically report for inspection to the nearest open port of entry.

As mentioned, the alternative inspection programs are available for those travelers by boat along the northern border, specifically the I-68 Canadian boat landing program will be continued this year. Under the form I-68 program applicants for admission into the United States by small pleasure boats are inspected and issued a single boating permit for the entire boating season. Each applicant must appear in person for inspection, interview and various other law enforcement checks. The fees are \$16 for an individual, or \$32 for a family; the same as last year.

If approved, the I-68 will bear the photograph and fingerprint of the applicant. The I-68 permits boaters, allows the boaters to enter the United States from Canada for recreational purposes with only the need to report to CBP for further inspection by placing a phone call to report their arrival.

These persons eligible for the I-68 who are enrolled in any other alternative program, such as NEXUS, may enter the United States by pleasure boat reporting without obtaining an I-68 form. Boaters on the northern border not in possession of a valid form I-68 or proof of enrollment in NEXUS must either report in person for inspection at a port of entry, or utilize the outlying reporting system, or its video phones.

The OARS program was established to simplify reporting requirements for boaters who are members of the Registered Travelers programs, such as I-68 or NEXUS. In addition, it allows them to call up without being members of those programs to be cleared. Under the OARS program, video phones installed at public marinas along the Canadian borders provide an automated inspection service, enabling a two-way visual and audio communication between the CBP officer and the applicant for admission.

Whichever program is used, each small boat arrival is tracked in our CBP pleasure boat reporting system within our tech system. Any person that does not comply with these procedures may be subject to adverse actions under the provisions of the INA, and may be subject to a penalty as well under the Customs Authority.

While OARS may be a potential solution for the Miami area, CBP is not opposed to OARS as an alternative means of reporting. CBP is currently developing a strategy or method to secure the borders and the small boat program, but as well as looking at other alternatives. This strategy will identify key locations where remote reporting is beneficial to the public. CBP will determine these key locations based on risk factors associated with securing our Nation's waterways. The discretion and the decision to decide on where to place these remote reporting processes must remain with CBP, rather than fix it at a predetermined location.

CBP must be able to maneuver or relocate to more operational feasible areas based on resources and/or potential risk factors. In

addition, CBP needs to explore technology that includes not only a video phone, but a system to read travel documents, and to receive biometrics.

In summary, CBP is continuing to explore new solutions for small boat reporting in low traffic areas in conjunction with a trusted traveler program; however, the large volume of pleasure boat traffic in the Florida area, the smuggling and migrant threat, all create additional challenges to CBP.

Chairman thank you again for the opportunity to testify today. I will be happy to answer any questions if you have any.

[The statement of Mr. Jacksta follows:]

PREPARED STATEMENT OF ROBERT JACKSTA

Chairman Lungren and Members of the Subcommittee, thank you for this opportunity to testify. I am Robert Jacksta, Executive Director for Border Security and Facilitation, Office of Field Operations. I would like to discuss the efforts of the U.S. Customs and Border Protection (CBP) regarding the process of improving and streamlining the reporting processes for travelers who enter the United States by small pleasure craft.

The Outlying Area Reporting Station (OARS) was implemented in remote areas along the Northern border to facilitate compliance with statutory and regulatory reporting requirements. The OARS videophones allow the master of a small boat to call into a CBP monitoring site and establish a video feed (face-to-face reporting) to report arrival into the United States and make an oral declaration. The OARS program was established to simplify reporting requirements for boaters who were not members of a Registered Traveler Program such as the Small Boat Landing Permit (I-68) or a Port Pass (northern border).

The current authorized procedure for small boat reporting under 19 USC 1433 requires the master of the vessel to report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations. These reports are tracked in the Pleasure Boat Reporting System within the Treasury Enforcement Communications System (TECS). Pursuant to 8 CFR 235.1, an application to lawfully enter the United States must be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection. For the northern border only, alternatives to the regulatory face-to-face reporting requirement are the Canadian Border Boat Landing Permit (I-68) that is issued seasonally to qualified small boat operators and the "Port Pass" enrollment. The I-68 satisfies the boat operator's legal requirement to report to a port-of-entry for face-to-face inspection in accordance with 8 CFR 235.1, but a phone in arrival is still required to satisfy 19 USC 1433. Port Pass is an alternative inspection program for Registered Travelers, such as NEXUS.

OARS could be an optional method of reporting entry for boaters who are not participants in the I-68 or any other Registered Traveler Program. However, while the OARS system is effective along the Northern Border, CBP cautions that, due to the large number of boaters along the Florida coast, OARS may not be able to handle the volume of calls. In some cases along the Northern Border, even with a relatively small amount of boaters utilizing the OARS phones, boaters have experienced unusually long waits connecting with CBP monitoring sites.

While OARS may be a potential solution, and CBP is not opposed to OARS as an alternative means of reporting, CBP is currently developing a strategy on secure remote reporting process for low-risk boaters. The strategy will identify key locations where remote reporting is beneficial to the public. CBP will determine these key locations based on risk factors associated with securing our Nation's waterways. The discretion to site the remote reporting process, rather than fix it at pre-determined locations, is essential. CBP must be able to maneuver and/or relocate to more operationally feasible areas based on resources and or potential risk factors.

Similarly, program eligibility will impact the remote reporting process. Although U.S. citizens and Lawful Permanent Residence are considered low risk (as indicated in OARS draft), CBP seeks to expand the program to all low-risk travelers (non U.S. citizens), as part of a Registered Traveler Program, to develop expeditious and secure cross border travel.

In summary, the OARS program is a viable solution for small boat reporting in low traffic areas, in conjunction with a trusted traveler program. The large volumes of pleasure boat traffic in the Florida area, however, would likely overwhelm the

OARS system. CBP is developing a strategy to expand the Registered Traveler Program nationwide to simplify the reporting process while meeting the reporting requirements.

Thank you again, Chairman Lungren and members of the Sub-Committee, for giving U.S. Customs and Border Protection this opportunity to testify. I would be happy to answer any questions you may have.

Mr. LUNGREN. Thank you very much for your testimony. And I will recognize myself for 5 minutes to begin this round of questioning.

Mr. Jacksta, you indicated certainly some flexibility in the program that already exists with respect to the northern border, and it sounds like you are suggesting, on behalf of the Department, that there is a view towards flexibility with the problem articulated by the other members of the panel. Do I read you correctly?

Mr. JACKSTA. That is correct, sir. What we are looking at right now—we had a group come in this week, members from Blaine, Washington, from the Miami area, from the Boston area to take a look at our small boat program and to determine what is the best way to move forward. Obviously we think there are a couple of opportunities for us to move forward. First of all, we believe a trusted traveller or a Registered Traveller program would help the situation with the small boaters by allowing them to register, preregister, when they arrive back in their boat, be able to call up and we can verify that it is that individual and have them cleared.

We are also looking at the whole issue of the OARS and the capabilities of that system. And specifically, as we look at the northern border, it is a system that has been out there since about 1997. We think that it has capabilities, but we probably have to look at the technology and see if we can improve it to bring it up to today's standards. And one of the things that we would want to look at is maybe having additional cameras in the area to view the area, the total marine area, take a look at whether we can place biometrics at these locations so we can verify the biometrics of the individuals that would be coming back. So we think there is opportunities here, and we are looking at that.

We are also looking at the issue of the authorities to have a trusted traveller program down in the Florida area. The regulations and the law currently limits it to the northern border or southern land border locations. So we think there are some things we need to do to look at it to address the concerns that are being raised by various members.

Mr. LUNGREN. I noted in your prepared testimony as well as the testimony that was given that you indicate that the much greater volume of boat traffic in Florida versus the northern border might make it problematic or make it more difficult to implement an OARS program or something similar to that. Let me take the other side of that argument. Isn't the fact that you have such a high volume in the Florida areas—and having heard the testimony of the first two gentlemen which suggest that there is probably a lot of lack of compliance, not because people don't want to follow the law, but just because there is an inconvenience—wouldn't that suggest that perhaps the best place for the use of technology, including OARS—by itself or in conjunction with the other things you have talked about—would be Florida, that is, you probably have a lot more peo-

ple slipping through the system down there than you do in the northern part of the country right now.

Mr. JACKSTA. We understand that the traffic down in the Miami area is very high. I can tell you that based on statistics, it is probably right up there with the Washington area, Blaine, Washington area, Seattle area where there is a lot of small boaters that come across the northern border up there.

Clearly we recognize that the Miami area has a concern or threat. We have problems with that area being utilized by narcotic smugglers, as well as individuals who are smuggling individuals. We think that the Florida area gives us the opportunity for those people who are in compliance, who want to be in compliance, to give them an opportunity we think we should look at and explore the Trusted Traveler program as well as the OARS program for that area.

Mr. LUNGREN. Congressman Foley, how do you react to the testimony you heard?

Mr. FOLEY. Well, I am very delighted that there is an effort underway; I was unaware of it. And I have written the agency repeatedly asking for some details of some hope and opportunity, so I welcome looking at a better system, because I believe in my heart one can be designed that both offers flexibility and security.

My question would be, obviously, is, from the gentleman from the agency, do you think the requirements for an individual to report in person to an immigration officer have been a success?

Mr. JACKSTA. Yes, sir, I think so. I think there is a requirement to make sure that people who are arriving in the United States are in compliance with our law. There are obviously people who have—good citizens who make that extra effort, an example of that is Mr. Ellis, and we appreciate that. And that is what we expect of all travelers coming in.

What we also recognize is that we have to make it as easy as possible and give the opportunity for those travelers to report. And I would be the first one to admit that taking a cab for 3 hours or going down there is a concern. So that is why we are looking at this, how can we explore better ways of addressing those people who want to be in compliance.

Those people who are not in compliance, that is where we have our enforcement efforts, that is where we work closely with the State and locals, with the Coast Guard and border patrol, our air and marine units to identify those people who are coming back.

Mr. FOLEY. Mr. Chairman, I apologize for turning a question to him.

Mr. LUNGREN. No, that is just fine. I would rather have that so we have an exchange of ideas.

I would just say that—well, before I recognize the Ranking Member—that Mr. Ellis mentioned one of the times he returned to Florida where he made this extra effort. I am not going to ask about all the other times.

Mr. FOLEY. Mr. Chairman, the one question I probably would have for the agency is how many illegal aliens have presented themselves? I guess that is the fundamental question.

Mr. LUNGREN. Not the ones with Ph.Ds probably.

Mr. FOLEY. What is the purpose? And not that it is about illegals, it is about protecting the borders.

Mr. LUNGREN. Well, the other question is, what are we doing to put unnecessary burdens on those who are most likely to follow the law? And to the extent we put money and effort into that, are we wasting that money that could be directed elsewhere? And we are looking at that all through this. And it is not an easy question, and I am not trying to suggest that the Department is not doing a genuine effort, but we have got to look at what is actually effective. And now 5 minutes—I recognize the gentlelady from California, the Ranking Member for 5 minutes.

Mr. SANCHEZ. Thank you, Mr. Chairman.

You know, I represent an area, along with Mr. Cox, Orange County, California, one of the wealthiest areas in the Nation, and there have been plenty of times where I have got—we have the highest general aviation coming out of our airport there, John Wayne Airport. And there are plenty of times when I get on a plane and I go over to Mexico or someplace, and on the way back, we have to make a stop in Brown Airfield to get checked by Customs and Immigration and everything.

It is a pretty laborious process, it takes time to come down, it takes time to get up, it costs money to do that. And there are plenty of people who say all the time, we would pay extra if you would put somebody to check us at John Wayne Airport. We have never done that.

I just wonder, Mr. Jacksta, what would it take to have something closer to a port, a water port of entry in Miami or Palm Beach or something? And could we not maybe do that by charging more to people who go through that process rather than have them do what Mr. Ellis did, which was to take a \$40 cab ride back and forth and half the day of his time—I am sure his time is worth a lot of money, especially when you are a recreational boater. Have we looked at those figures or those numbers to see what we could do with respect to that?

Mr. JACKSTA. Well, Congresswoman, let me start off by indicating that currently small boats, 30-foot boats or bigger, require a user fee, it is a very minimal fee, it is about \$25 per vessel for an entire season with that, so there is not much revenue coming in that way.

What is our concern, and something that we are always challenged with, is exactly how many places small boats can arrive at at a port of entry. Take, for example, the Miami area, I might be off by a couple, but there are something like 50 marinas right in an area when you come into that Miami area. So the question comes down to, first of all, where would you put that system that you want to put out there, do we put it in a public park area, do we put it on one of the marinas? The question comes down to is that we don't have enough resources to put our officers at every marina to be ready and available to respond to every type of phone call that comes in at all different hours.

So the challenge of the program is that we are trying to make it so that people who are trusted, people who are in compliance have the opportunity to report their arrival, be cleared, and be sent on their way. But the private boat program does have a lot of chal-

lenges. We have not looked at specifically reporting—or putting a proposal to report to specific locations simply because of the concerns that would clearly come up if we pinpoint specific areas.

Mr. SANCHEZ. Mr. Ellis, do you think that would be inviting in any way to someone like you?

Mr. ELLIS. Congresswoman, it could; however, I also see it as being a very significant expense.

One of the problems that exists, as Mr. Jacksta pointed out, is that the number of ports or marinas far outnumber the number of general aviation airports that are out there where you have a concentration of planes. Also, where the average recreational plane might be a \$100,000 investment, the average recreational boat in this country is 16 feet in length, and probably represents a couple of thousand dollar investment. And some boats at 18 feet are regularly transiting between the U.S. and the Bahamas. I understand that here in Washington my \$25 cab right got to be a \$40 cab ride within a half an hour. But the \$25 user fee for the 18 foot owner out there is actually a pretty significant amount of money they are putting out to begin with.

Mr. SANCHEZ. \$25 a year?

Mr. ELLIS. Yes, annual fee of \$25 a year, which is about equal to what they pay the State of Florida to register their vessel in the State of Florida.

And I guess what I am trying to point out is that recreational boaters, over 12 million registered recreational boaters in the U.S., are not, as an average, a wealthy group. Certainly there are wealthy individuals where \$25 would not make any difference to, but there are a number of them out there that are very concerned about the cost.

Mr. SANCHEZ. Mr. Jacksta, one of the briefings that you brought up with your staff was the technology that H.R. 1509 would mandate. In that briefing, you mention that you believe that equipment would have a biometric component and document scanning capability. Does technology like that exist today? Is it being used on the northern border? And what type of biometrics requirement would CBP like boaters to use?

Mr. JACKSTA. The issue of equipment, currently the equipment on the northern border, is for the most part very basic equipment, it is a video phone, it has a camera, it has a document camera to view the documents. It also gives the capability for the officer and the traveler to see each other.

What we are looking at—and that is technology that has basically been out there for the last 5 years. What we would like to do is if we were going to move forward with the next level, we want to improve on the security features and the capabilities of the system. First of all, we would like to have a system that might be able to read the documents that the person is presenting. For example, if they have a machine readable passport, we would like to be able to query that and use that; that allows us for a better security feature. We would also like to have the better cameras so that we can have a better view of the area and actually a better view of the traveler himself or herself.

We would also like to take a look and utilize biometrics. And why we would want to use biometrics, if we did have a trusted traveller

program and someone called up and said I am Bob Jacksta, here is my fingerprint, we could verify it with the—we would verify it with the record that we had when the person actually registered in the program, once again, to validate that that is the person that is in front of us, and that there isn't any threat.

We would also be able to utilize that system to help us with the whole process of registering people who might be coming in under the U.S. VISIT side of the House. The current requirement is if you are a nonimmigrant visiting the United States, you have to be cleared through the U.S. VISIT process at airports and at most of our major seaports. We would like to bring those capabilities to any type of video phone or OARS process system in the future.

So we believe, if we are going to put a system out there, that we should have the best technology to be able to do the job the right way, and allow us, when we say to that person, go on, it would fulfill the legal obligations.

Mr. SANCHEZ. Thank you. Thank you, Mr. Chairman.

Mr. LUNGREN. The gentlelady's time has expired. The gentleman from California is recognized for 5 minutes.

Mr. COX. Thank you, Mr. Chairman.

I am going to come at this from the other direction. Most of the discussion has been focused on how we can relieve the burden for beleaguered vacationers; I want to come at it from the homeland security standpoint, from the counterterrorism standpoint.

This requirement that is being complained of by the author of the legislation didn't exist before 9/11; is that right?

Mr. JACKSTA. The capabilities to be cleared by the OARS system, sir?

Mr. COX. No, no, no. The requirement that the master of the vessel report in person to a physical facility such as an airport, that didn't exist before 9/11; is that correct?

Mr. JACKSTA. The authority existed, sir, from my understanding—

Mr. COX. I just wondered whether the procedure and the requirement existed before 9/11.

Mr. JACKSTA. The procedure did not exist, sir.

Mr. COX. Okay. So I think it is safe to infer that, since we had immigration policy concerns pre-9/11, we had Customs revenue concerns pre-9/11, that the difference was 9/11, that we have put these provisions in force because we have a counterterrorism purpose. I want to see now whether we are getting anywhere with our counterterrorism measures.

In your view, does the system that is in place present a hurdle to terrorists? Do you believe or does IA at the Department of Homeland Security believe that there is any scenario in which terrorists would present themselves voluntarily to this system?

Mr. JACKSTA. Sir, I think that there is a reporting requirement for people arriving to report—

Mr. COX. I understand there is a bureaucratic requirement. What I want to know is whether there is, in the IA office at the Department of Homeland Security, an assessment that terrorists would ever present themselves voluntarily in this reporting system.

Mr. JACKSTA. I can't speak for IA, sir.

Mr. COX. You are unaware of any IA input into this?

Mr. JACKSTA. My understanding is that it is, in our view, the best interest of the U.S. Government to register, have people come in—

Mr. COX. Let me ask the question very simply then. Is there any IA put into this requirement?

Mr. JACKSTA. Not that I know, sir.

Mr. COX. Let me ask the next question. Do you know whether or not anyone on a terrorist watch list has ever presented themselves voluntarily in this system? Has it ever happened?

Mr. JACKSTA. I know of no example, sir.

Mr. COX. And would you—I am going to ask a question that you can answer any way that you feel comfortable, because I am not really asking for DHS policy, but I am just going to ask you to reason with us here. Do you think that somebody who was part of an Al-Qa'ida cell or someone who was like-minded, a terrorist bent on doing injury to the American territory of people, would ever voluntarily go out of their way, by hours and miles, to check in in this system?

Mr. JACKSTA. I would think that it would be very unusual, unless they had—

Mr. COX. I think so, too. So I think we should write off any counterterrorism value to these procedures that have been put in place post 9/11. And if that is the case, we would ask two questions; first, is there something else that we can do that would have better counterterrorism return? And second, if we are willing to write off—as apparently we have with the system in place—any counterterrorism value, shouldn't we just focus on the Customs and Immigration pieces of this, and in as much as both of those require maximum voluntary compliance, shouldn't we make the system as easy as possible?

If we are going to jump to the second question, I want to ask whether you might imagine something even more significantly different than what presently we do that is what is in Mr. Foley's bill? I have been listening during this hearing and wondering why it is, if we want to make this system efficient and usable for travelers, and we want to collect as much in the way of Customs revenues as we possibly can, and we want to encourage that person who is coming here, maybe legally, maybe illegally, to, when they are thinking about should I check in with immigration to do so, if they have any possibility of doing so, why wouldn't we decentralize it all together and say that you have got to check in by cell phone? Just call. Why wouldn't we go to that system, instead of building stations and so on, to maximize the amount of people that would voluntarily comply if all we are after is the Customs benefit and the Immigration benefit?

Mr. JACKSTA. Well, I think that, sir, in all honesty, there is certain requirements from the Customs side, which is the requirement to make sure that people are in compliance, that they are not bringing in anything that is illegal, anything that might be of concern. Some travellers might not know that until actually getting questioned by an officer. But from the Immigration side of the house, I think there is a clear responsibility to make sure that individuals who are coming in are in compliance with the INA law.

And specifically, if you are visiting the United States, that you are eligible to be entered into the United States.

Mr. COX. Well, that is a fair point. The paradigm that Mr. Foley outlined for us is a U.S. group of people vacationing for the weekend. If we start with that universe of people, might we not have a requirement that kicks in when they are leaving the marina, and then if they don't call back we will know we have a problem?

Mr. JACKSTA. That is exactly what we would like to do, sir. We would like to get people to register in the program, and that registration process might start before they even leave. Maybe they know they are going to take a trip, they might want to take a trip down to the Customs Office—

Mr. COX. May they could do it by the Web, by Internet, print the out the forms in PDF and do whatever they can over the Internet so we wouldn't have to have all of these physical locations. And then if they don't check back in when they return, it is sort of like a flight plan, if they don't come back ever, we will know we have a problem.

Mr. JACKSTA. I mean, that is what we are looking at, sir, and that is exactly what the group came up. I mean, the people that we had in from the field are familiar with the issues, and trying to build the best way possible for people to be in compliance. And there are a lot of opportunities.

Mr. COX. Mr. Chairman, my time is expired. If there is an opportunity for a second round, I would like to get back to the counterterrorism question and ask if there is something that we can do better to fulfill that mission.

Mr. LINDER. I will yield my time.

Mr. LUNGREN. You have got 5 minutes, and you have yielded.

Mr. COX. Well, in that case, let me ask the question. If our purpose were to find people—and this is a big problem, as you know, I mean, it's a problem not just Florida, it is a problem along thousands of miles in our border, it is a problem certainly in the Caribbean, it is a problem in the Virgin Islands, it is a problem virtually uniformly on our maritime borders.

You know, in our other subcommittee, which Chairman Linder is responsible for, we were looking at the problem of nuclear attack against the United States. If someone were going to import fissar material, one of the leading scenarios is they would bring it in a row boat or they would bring it in a power boat. But they are not going to come through a radiation portal monitor in San Diego or New York, they are going to show up on our shores, probably; or maybe they will bring it in a 4x4 across the Canadian border or what have you. But they are going to do it someplace that is away from what we are looking at, and they might do it in a boat. So this is serious stuff. We would like to look for terrorists on our shores, how can we do it?

Mr. JACKSTA. Well, I think, sir, that it looks—to have a proper strategy we need to make sure that we are all working together. I would like the committee to know that there is clearly good cooperation taking place at the ports of entry, and that the whole process of our air and marine, where we have boats, close to 60 boats out there making sure that people are in compliance, and that if there are any kinds of questions that we do stop those ves-

sels. We stop them out on the water, out at sea before they come into the port of entry.

We have the Coast Guard, who we work very closely with, where it is not unusual for the Coast Guard to stop vessels that coming from various locations. We also have at our ports of entry, we do have our officers that do go to the various marinas on various enforcement actions to see who is coming in, to ask around, to work. We need the support of the public on this one here, is there anything unusual, is there a marine operator that sees somebody who comes in that they have never seen before? It really is an effort by a multiple number of groups to try to ensure that we are coordinating and communicating.

The back end of it is that the person has to report the arrival; that is the closing of the entire process. But it really—please understand that it is not just the reporting requirement that CBP has out there, there are other assets that we utilize. The State and locals are very engaged; it is not unusual for us to work with them. The various boat operators at the piers, I mean, it is a group effort. So I think that obviously there could probably be more in that area, but remember the small boat is a community that can be watched very carefully, too, I mean, in the sense that there are the capabilities to know who is coming into an area that you might not have seen before, and we depend on that cooperation.

Mr. COX. Well, I would suggest that we get the Information Analysis Office at DHS in collaboration as you take a look as this. I am very pleased that Customs and Border Protection are working together. And there is no reason in the world that we shouldn't infuse this process with more intelligence so that we are looking at terrorist capabilities and intentions, and our own vulnerabilities and problems like this with the real measure of counterterrorism in mind.

I would yield whatever time Chairman Linder has remaining to Chairman Linder.

Mr. LINDER. I just have a question for you, Mr. Jacksta; do you have any problem with this bill?

Mr. JACKSTA. Sir, I think that we have some concerns with it when it specifically pinpoints what areas we should be going to or what inlets. I think that what we need to do is look at it from a perspective of what is the best place for our resources, and let us, if we are going to move forward, make the decision on what the right place is based on that intelligence, based on an evaluation of the workload issues, evaluation of what is available for us in those areas to do the job.

Mr. LINDER. How about the Net, how about the Web, and a phone call?

Mr. JACKSTA. I am concerned about that, sir. I will tell you that that is something that we have looked at. We clearly would like people to come to us and identify themselves. If you call up on the phone or on the Web and we never get to see you, there is no capabilities to verify that you are actually that person. So we would like to have somewhere in the process, before we register you in any type of trusted traveller program, to have the capabilities to verify, first of all, is your documents okay, and if there is any issue, not issue clearance. So we think that—we can start the process with

the Web application, but we don't want to close that process until we do a face to face.

Mr. LINDER. What do you think the chances are that somebody who is coming here intending ill will is going to cooperate with you?

Mr. JACKSTA. Well, I think that there—I mean, if you look at people who are of concern to us, not all of them want to come into the United States illegally; they want to get in here and be able to move freely and be able to get across the border, and if necessary go back and forth. So people who get into the country illegally in one way are sort of trapped here in the sense that they don't have the capabilities to go back and forth, and if they get stopped they are a concern and can alert—

Mr. LINDER. So is it your position that if they sign up with you, even though they are intending ill will, and get here legally, and go back and forth to the borders legally, you are going to give them that credit?

Mr. JACKSTA. Based on our background check, based on what we know about that person, if there is anything that would prevent us, we wouldn't issue that person a travel card, a trusted card. I think we have some historical background on the northern border and on the southern border with the Century programs and the NEXUS program where we require the 10 fingerprint check, we verify who they are. We do a check of them. The officer does an interview of them. We ask them questions about their employment, what they are doing. Clearly that is not going to be the perfect system, but it definitely weeds out those individuals who might be of concern.

Mr. LINDER. My time has expired. Thank you, Mr. Chairman.

Mr. LUNGREN. I would like to ask Mr. Foley and Mr. Ellis this. And that is, we in Congress are engaged in trying to strengthen our borders. There has been a big argument in the House, as you know, to add Border Patrol officers to intensify our eyes and ears across the board. Some might look at this proposal as an effort, yes, make it more convenient for boaters, but in the process to make our borders even more porous. And while we might not conclude that those who want to do us ill would necessarily sign up and come through the process, part of what we do is for deterrent effect, the show, if you will, the sense that it is tough to get in illegally.

And what would you say to those who would say this goes in the wrong direction in that it would look like we are sort of giving up to the sense for convenience? And I am not underestimating the difficulty of someone coming back, spending half a day running around doing it.

If you have, on one hand, securing our borders and concern about terrorism, and on the other hand, inconveniencing people who spent a weekend in the Bahamas now coming back and having to spend several hours, maybe we can cut it down by having places a little bit closer to them. The balance ought to be for safety. I wonder what is your response.

Mr. FOLEY. I would welcome tightening the borders with security. If you are asking people to comply with the law and then you don't provide the people at the building when they arrive to present themselves, what was the point? I think it is better to have Immi-

gration—and they have been very helpful on holiday weekends, Memorial Day, Labor Day—to station people at the inlets so they can be doing good enforcement, monitoring the boats coming in and having face-to-face interviews.

I personally do not want to spend money on the OARS system in Florida. I don't want to waste money. I am not sure it would work. When you fly a plane, you fly a flight plan, and when you land you have an exit plan. That works for aviation. Boating is a little bit different.

But to assume somehow that we are going to toughen our security profile by having people show up at an airport when they are boaters and assume somehow that gives comfort and terrorists are going to go, woo, I don't want to go to America, my God, you know what you have to do now? If you get in a boat, you are going to drive to an airport; how inconvenient.

We have to have some sense around here. And the reason I introduced the bill with the OARS program, it was the only way I could get a debate on this failed system. But I think the phone, as suggested by Chairman Cox, placing Immigration on the inlets so the boats come alongside and check in and stamp permits, I see everybody on the boat. But the burden of the poor Customs man at the airport, as he is trying to clear flights, to go outside and look at a trailer with kids in the back, okay, I guess you are all here. I don't know who left, because we didn't require you to file a plan before you left; but since there are 20 in the boat, I assume they were with you when you left. Welcome home. They don't even know who left, and yet they want them to check in when they come home.

Pre-flight or pre-boat trip, after-boat trip, if they explain that to me, great, 1-800 number. Yesterday I called on my credit card. I needed to buy something. So quickly and easily enter your credit card, press pound. Last four digits of your Social Security number, pound. Took me right into the system. How many people returned? Five. You hit the buttons, 5 minutes later, automatically entered under the frequent program. But to sit here and frustrate legitimate boaters under the current system is a total joke, and I don't mean to demean the agency, but once again the best questions were asked: Has anybody presented themselves that have ill intent against America? That has to be answered, "absolutely not."

Mr. LUNGREN. To the extent we know.

Mr. ELLIS. I would like to add, first, if recreational boaters want to be enthusiastic participants in increasing our homeland security and basically whatever can be done to shore up our borders and especially along our coast, I think of the fact that 2 weeks ago I came back by airplane from outside the country and basically was shuttled down a glass-enclosed hallway, talked to several armed officers, went through a complete check where I felt it was tough to get into this country. When I arrived at that inlet at Lake Worth and pulled up to that marina and had to take the cab ride, I didn't think it was tough to get into this country. I felt the borders were so porous, I am not sure there could have been anything more. I am not aware of probably all the surveillance that went on of my boat or my vessel or whatever may have happened back behind the scenes, but this requirement did not add anything to that.

My belief is that if we want to secure or have a more secure coastal border, we are going to have to enlist the help of the millions of recreational boaters in helping us do this. And if we have regulations that don't make sense, the government destroys its credibility with that particular group. And we would much rather have a partnership than a destroyed credibility.

Mr. LUNGREN. Thank you. You might be one that suggested that prohibition didn't work.

The gentlelady from California.

Ms. SANCHEZ. Thank you, Mr. Chairman.

I just—it doesn't seem like this OARS program is a very good one. So I have a question for you gentlemen. What about—I am trying to figure out maybe there is a way in which we can—I am thinking maybe if we just don't spend the money on more people in the port area to do random checks on the sea than having a whole check-in program—I left the country, I came back-type of thing—considering that most of the people who will check in are the ones who are decent people, and you aren't going to have a terrorist check in, maybe we don't go into this whole thing and maybe we take the limited resources we have to do more random checks of boats coming in or leaving or what have you.

I am trying to figure out where we use limited resources for its best use. And maybe we just have a little shack somewhere in the inlet where people know they bought more than the \$800 can come in and declare their Customs or what have you, versus having this check-in, where it seems to me like we are never going to catch everybody anyway, especially if we do it at the airport. Not everybody is going to come. And wouldn't we be better off using our resources to actually go after possible bad guys? Do you have—any of you have a comment on that?

Mr. ELLIS. There is one point in there that I don't want anybody to get down the wrong path on. The Fort Worth inlet, which is a secure inlet from a safety standpoint, large ships use that inlet. Having said that, the day I came in, there were 4-foot seas running, and there will be no individual place within that inlet or within a confined area where you would be able to actually put up a station to pull aside or talk to any Customs or Immigration officials.

So I am afraid you may find that geography may force you into the point you may have to look at multiple points of contact. But going to your point of trying to use limited resources as best as possible, to me it seems very simple that you make compliance relatively easy and then focus 95 percent of your resources on non-compliant individuals, and you will get your highest opportunity for interdicting problems out there.

Mr. JACKSTA. I would like to add, once again, it is a very difficult issue. If you are familiar with the boating areas, when you go in there, trying to filter out who was actually coming back from an international trip versus who just went out 3 miles to do some fishing and coming back is very difficult.

It is extremely important for us to once again work with all the various agencies involved with securing our borders to make sure we can spot anyone who might be of concern. I agree that we need to use risk management. It is something that is important to us.

And putting a lot of money into this is something we are trying to evaluate right now. The OARS system is a system that will help out. If you ask me my feeling, I think the position of the agency is we want to have a trusted traveler-type program; people who register before, whether it is before the boater leaves on the trip or weeks before they leave, that they let us know, they come in and register: I am Bob Jackson, I am going on a trip, and this is my family. And we put them in a system so when they come back, we can verify that they are in compliance and that can be done by telephone. That is an easy process and we don't need to see those individuals.

We also need to recognize that there are other people other than U.S. citizens coming in here. There are a lot of other people that are not U.S. citizens and visiting the United States and they come in through this small-boat environment. That is where the immigration requirements come in, and that is why we ask them to come, because we need to verify that their documentation is correct and they are eligible to come into the United States.

Miami is a difficult area and there are a number of reasons why that is, but clearly something we have to pay attention to because of illegal immigration and narcotics.

Ms. SANCHEZ. If they don't come in—say you are a foreigner and coming to visit Miami for 3 weeks, and my mom is here and I am from Columbia, but I am living in the Bahamas or whatever it is, and I come in by boat and I don't have a visa to be in the country. The alternative is I just don't check in; right? They come in on the boat, unload at the marina, and I am there for 3 weeks and friends come by and pick me up; 3 weeks later take me out, or I use my boat to go out and what have you. We are not catching all those kinds of people.

Mr. JACKSTA. That is correct. That is a vulnerability that we have there, and the question is, you know, how much risk do you want to put into trying to correct that? Do you want to put an officer at every marina? That would cost a large amount of money.

To put the OARS system at every location would be extremely expensive. We are trying to look at what is the best way to do this, and make it easier for the people who want to be in compliance, and then focus our efforts on those that we know are not.

Mr. FOLEY. I would like a date certain when we leave this hearing that something will be decided, hopefully by the agency, whether it is that frequent program or maybe the OARS system; that somehow we don't go years down the road under the same current burden.

I think the Congresswoman is absolutely correct. I would rather have people out in the inlets patrolling, looking for suspicious people. I think that does a face-to-face job better than assuming this group is going to show up again at an airport. It is absolutely nonsensical to me that anybody is going to comply that either has ill intent or is seeking to sneak into the country.

Enforcement money spent, rather than OARS, on putting people at inlets to monitor. You are right about inlets. There is no place to pull over. You have to go inside and find some kind of place. But at the end of the day, I am afraid we will do this month after month and frustrate the legitimate boater and create economic

problems in south Florida which have been exacerbated by this more recent requirement.

Mr. LUNGREN. The gentleman from California.

Mr. COX. I like the direction this discussion has taken because we are starting to focus on what we are paying and what we are getting.

What is our purpose here? We have three potential purposes. One is counterterrorism, one is Customs revenue and one is enforcing immigration regulations. Obviously, immigration and secure borders is part of counterterrorism, but there was an immigration policy priority before 9/11 and before we decided that this was a terrorist hole. So I think those three pieces are the right three pieces.

I want to continue to explore the counterterrorism piece because that is the genesis of these burdensome requirements. What I have heard makes me think that this is another example of a change that we made post-9/11 that has placed burdens on law-abiding Americans but has not given us a security payback, it is not making us safer. And I think we actually have agreement all around on that; that there really isn't a high counterterrorism value to the system that is in place.

So I want next to move to challenge what we might do next as being weak on the same ground, and that is this idea we are going to apply registered traveler to boaters who can come in along this miles and miles and miles-long shoreline.

The fallacy, it seems to me, is in comparing the airport model, which is a involuntary system, to this model, which is a voluntary system. If I have a cube at an airport and everybody is lined up and I can get some of those people through the cube faster because they are registered travelers, that is reducing the size of the haystack and making it easier to find the needle. But the needle is in line somewhere.

Whereas if I have a voluntary system and all I am doing is registering all the law-abiding people, I haven't reduced the size of the haystack because the other folks aren't volunteering to be in my line. I don't understand the security payback. Am I missing something?

Mr. JACKSTA. Sir, I think what is of concern is that what we want to do is to make sure that people who arrive are documented that they arrived.

Mr. COX. Is this an immigration purpose rather than a counterterrorism purpose?

Mr. JACKSTA. I think that ensuring that the immigration requirements are met, it helps our antiterrorism effort.

Mr. COX. Why?

Mr. JACKSTA. I think it is important to make sure that people—that we document those people who are arriving at our ports of entry, whether it is at an airport, a land border, or at a seaport.

Mr. COX. If we could do that, if we could corral the universe of people coming here and identify them and then search for the exceptions to the rule, that would be a workable system. But I think we have all conceded in this discussion thus far that that is not possible. You told us that an objection to OARS is you don't have enough people to answer the phones, and yet we are proposing a

system that is going to require background checks on all Florida boaters. Is that realistic?

Mr. JACKSTA. Yes, sir, I do. Obviously it would be difficult to begin with. If people want to register in this program—remember, the small boat program is only based on our numbers from the international side of the house. We have somewhere in the area of 50,000 arrivals in fiscal year 2004. With that, I mean, if we can get people to participate in the trusted traveler program, we already have 75,000 people registered on our northern border. We have 70,000 on our southern border. We think that that is an opportunity for these boaters who go back and forth to register.

Mr. COX. Let us assume we have 100 percent compliance by all Florida recreational boaters in the registered traveler program and we have done background checks on every single one of them; have we gained access to a single one of the problems of the terrorists who still are participating in a voluntary system? The problem, it is a voluntary system so there are no boundaries to it; whereas in the airport, you have to stand in line and go through the magnetometer, get on the plane and there ain't no choice.

Mr. JACKSTA. The only other alternative, which is a Draconian effort, is to make the small boats arrive at specific locations. Make them—instead of giving them the authority to arrive at the port of entry which is a vast area, make the small boats arrive at specific locations where we could have a CBP officer 24/7 and have the boat processed that way. I don't know whether that would go very well in the boating community.

Mr. COX. Mr. Chairman, I just want to say while this hearing has been focused on issues surrounding recreational boating, it really is a useful example of problems that we have got to debate and decide throughout our economy, because we have to find a way to balance our way of life with the security demands in the post-9/11 world. If we can constantly go back to square one and say what is our point, how are we doing in tracking down these terrorists, measure our results, is this system working to find terrorists, I think we will in the end spend our dollars much more wisely and simultaneously achieve our objective of making this country better every day instead of worse.

Mr. LUNGREN. I thank the gentleman for his questions. I thank Mr. Jacksta for helping us with our inquiries here today; Mr. Ellis, and, of course, Congressman Foley.

One thing I would like to say, Mr. Jacksta, I am happy to hear you and your cohorts are looking at this problem in trying to figure out what is effective. I hope as you do that, you would take the words of the Chairman of the full committee to heart. We need to go back to first principles, if you will. That is what is the purpose in what it is we are doing. We all get caught up in having started doing something and trying to do it better, and it may not be what we want to do when we look back on it.

So I thank all of you for presenting today. I thank our colleague, Mr. Foley, for inducing this presentation, this discussion, by virtue of the bill he has introduced. I think we have got valuable testimony. Members of the committee may have some additional questions for the witnesses and we will ask you to respond to those in writing. The hearing record will be held open for 10 days. We

thank the members of the committee and our witnesses and the committee stands adjourned.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

