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Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004: Balancing the Western Hemisphere Travel Initiative with International Tourism and Homeland Security

*Marc Philip Hedrich**

I. INTRODUCTION

Employing an estimated 76.7 million people worldwide and directly accounting for 3.6% of total gross world product, tourism is one of the largest and most important global economic forces.¹ In 2005 alone, it is estimated that more than 800 million international tourists² generated over \$800 billion in tourism related revenue.³ At a projected annual growth rate of 4.2% over the next ten years, the tourism industry is showing no signs of slowing.⁴

Domestic security became one of the most important issues facing the United States ("U.S.") following the terrorist attacks of September 11, 2001

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¹ WORLD TRAVEL & TOURISM COUNCIL, PROGRESS & PRIORITIES 2006/07 6 (2006) [hereinafter PROGRESS & PRIORITIES] (estimate figures as of 2006). If the indirect effects of the tourism are taken into account, the total economic impact of the tourism industry rises to over 10% of total gross world product and accounts for more than 234 million jobs. *Id.*

² See *infra* notes 16–18 and accompanying text.

³ U.N., WORLD TOURISM ORG., TOURISM HIGHLIGHTS 2006 EDITION 2–5 (2006) (estimate figures as of 2005).

⁴ PROGRESS & PRIORITIES, *supra* note 1.

("9/11") and continues to be a topic of considerable political debate.⁵ Once commonly referred to as the "world's longest undefended border,"⁶ the U.S.-Canada border extends over 5,522 miles.⁷ To the south, the 1,954 mile U.S.-Mexico border⁸ is one of the world's most frequently crossed with almost 250 million legal crossing annually.⁹ Concerns over security at the international frontiers, most notably land borders but also airports and seaports, have featured prominently in the national political discourse of the United States and consequently its neighbors. The porous nature of these long and heavily trafficked borders continues to influence homeland security strategy.

A disproportionately large percentage of worldwide international tourism revenue comes from the spending of U.S. citizens abroad or by foreigners visiting the United States. The Western Hemisphere Travel Initiative ("WHTI"), as mandated by Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004,¹⁰ puts intra-North American international tourism at risk. This Comment is an analysis of the WHTI and its effects on international tourism and homeland security in the United States.

Part II of this Comment provides a framework for discussion by presenting definitions for tourism and security. It also examines the current state of intra-North American international tourism and its economic impact. Part III details the WHTI, its key provisions, and legislative history. Next, Part IV describes the international landscape for passport free travel zones. While focusing on the European Union ("EU") and its Schengen area, this section also discusses the Nordic Passport Union, Common Travel Area, and other developing passport free areas. It then evaluates the WHTI in comparison with developments made in these other global regions.

Part V analyzes the costs and benefits of the WHTI. It explores the WHTI's economic and non-economic influences in the United States and

⁵ See Rick Klein, *National Security Takes Center Stage*, BOSTON GLOBE, Sept. 6, 2006, at A2.

⁶ See Luiza Ch. Savage, *It Was Fun While It Lasted*, MACLEAN'S, June 5, 2006, at 22 (noting the declining of appropriateness of this term); see also *The Unfriendly Border: Canada and the United States*, ECONOMIST, Aug. 27, 2005.

⁷ Embassy of the United States of America, Canada, U.S.-Canada Relations: Border Issues, http://canada.usembassy.gov/content/content.asp?section=can_usa&document=borderissues (last visited Jan. 28, 2008).

⁸ International Boundary and Water Commission, About Us, http://www.ibwc.state.gov/About_Us/About_Us.html (last visited Jan. 28, 2008).

⁹ Embassy of the United States of America, Mexico, Borders and Law Enforcement, http://mexico.usembassy.gov/eng/eborder_mechs.html (last visited Jan. 28, 2008).

¹⁰ Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 (2004) [hereinafter IRTPA].

abroad. Part VI proposes three alternatives to the WHTI: registered traveler programs, the People Access Security Service ("PASS card"), and the REAL ID Act. Part VII advocates for the adoption of enhanced driver's licenses resulting from the REAL ID Act for the second phase of the WHTI implementation. Part VIII concludes.

II. BACKGROUND

A discussion of this Comment's broad construction of the term "tourism" and somewhat narrow scope for the term "security" helps provide a more firm basis for the forthcoming analysis.

A. Definitions

The Merriam-Webster Dictionary defines "tourism" as "the practice of traveling for recreation"¹¹ and the American Heritage Dictionary similarly refers to it as "the practice of traveling for pleasure."¹² While these definitions are closely aligned with the popular conception of "tourism" in the United States, they are somewhat narrow by other standards. For example, the World Tourism Organization defines tourism as "the activities of persons traveling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes."¹³

This broad definition adopted by the World Tourism Organization encompasses the idea that tourism includes far more than the activities of people on vacation. Leisurely getaways, business meetings, medical treatments, educational fieldtrips, journalistic investigations, diplomatic missions, religious pilgrimages, cultural activities, family visits, and volunteer activities are just some of the variety of reasons why people travel domestically and internationally.¹⁴ Further complicating the situation, the rationales for tourism are often inextricably intertwined.¹⁵

¹¹ Merriam-Webster's Online Dictionary, Tourism, <http://www.m-w.com/dictionary/tourism> (last visited Jan. 28, 2008).

¹² American Heritage Dictionary of the English Language, Tourism, <http://www.bartleby.com/61/1/T0290100.html> (last visited Jan. 28, 2008).

¹³ U.N., WORLD TOURISM ORG., RECOMMENDATIONS ON TOURISM STATISTICS 5 (1994) [hereinafter RECOMMENDATIONS ON TOURISM STATISTICS].

¹⁴ See Richard F. Storrow, *Quests for Conception: Fertility Tourists, Globalization and Feminist Legal Theory*, 57 HASTINGS L.J. 295, 299–300 (2005) (discussing the variety of meanings that can be attached to tourism).

¹⁵ For example: Imagine that your brother has been temporarily reassigned to Paris for work. You take some time off and go out to visit for a long weekend. In addition to enjoying your time with your brother, you also manage to squeeze in a few hours at the Louvre and Notre Dame Cathedral. You could now easily find yourself under a variety of travel rationales, some overlapping in several capacities. What was your rationale for going overseas? Was it a relaxing getaway, an educational trip, a cultural activity, or maybe a

Given the difficulty of disentangling the various rationales for most travel, this Comment will use the definition of “tourism” adopted by the World Tourism Organization, which “goes beyond the conception of tourism as being limited to holiday markets to cover the worldwide travel market within the general framework of population mobility.”¹⁶

Furthermore, for any given state, tourism can be broken down into three constituent parts: domestic tourism (residents of a given state traveling only within this state), inbound tourism (non-residents traveling in the given state), and outbound tourism (residents traveling to another state).¹⁷ This Comment deals with international tourism, which consists of inbound and outbound tourism.¹⁸

“Security,” like “tourism,” can be a nebulous term. The Merriam-Webster Dictionary defines “security” as “freedom from danger” or “freedom from fear or anxiety”¹⁹ and the American Heritage Dictionary defines it as “[f]reedom from risk or danger; safety.”²⁰ However, in this Comment, “security” is meant as part of the larger concept of “homeland security.” As defined by the U.S. Department of Homeland Security (“DHS”), “[h]omeland security is a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”²¹ This definition is articulated as part of a larger “National Security Strategy” framework, which “aims to guarantee the sovereignty and independence of the United States, with our fundamental values and institutions intact.”²²

B. Intra-North American International Tourism Currently

With \$93 billion spent by international visitors in the United States in 2004 alone,²³ and Canada and Mexico both sending more travelers to the United States than any other foreign nation,²⁴ intra-North American

religious pilgrimage? Perhaps it was all four of these and several more. Thus, it would be an oversimplification to categorize your whole trip to France as purely a family visit.

¹⁶ RECOMMENDATIONS ON TOURISM STATISTICS, *supra* note 13.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Merriam-Webster’s Online Dictionary, Security, <http://www.m-w.com/dictionary/security> (last visited Jan. 28, 2008).

²⁰ American Heritage Dictionary of the English Language, Security, <http://www.bartleby.com/61/0/S0210000.html> (last visited Jan. 28, 2008).

²¹ DEP’T OF HOMELAND SECURITY, THE NATIONAL STRATEGY FOR HOMELAND SECURITY 2 (2002).

²² *Id.* at 5.

²³ Travel Industry Association, Did You Know? Tourism Facts, http://www.tia.org/marketing/toolkit_tourism_facts.html (last visited Jan. 28, 2008).

²⁴ Travel Industry Association, Domestic Travel Fast Facts, <http://www.tia.org>

international tourism is big business for the U.S. economy. It is estimated that over 80% of the international travelers who leave Mexico each year come to the United States while nearly 60% of the international travelers who leave Canada each year visit the United States.²⁵ This is by no means a one-way system; the majority of the international travelers who leave the United States each year travel to Mexico and Canada.²⁶

In 2000, approximately 313 million visits were recorded between the United States and Canada and the United States and Mexico. This represents an increase of 10% from 1990.²⁷ Of these visits, U.S.-Mexico activity accounted for 72% (227 million trips) and U.S.-Canada travel represented 28% (86 million trips).²⁸ Additionally, 80% of the visits were same-day trips, with the remaining 20% involving some length of overnight stay.²⁹

Travel and tourism between the United States and Canada is an integral part of a larger system of international trade. The United States and Canada have the largest bilateral trade relationship in the world with total merchandise exports and imports between the two countries reaching nearly \$500 billion in 2005.³⁰ Of all the international travel expenditures made in Canada in 2004, 59% were made by travelers from the United States. Similarly, of all the international tourism expenditures made by travelers from Canada, 55.8% were made in the United States.³¹

Travel and tourism between the United States and Mexico is also part of a larger international trade relationship. With the United States supplying over 70% of Mexican imports and purchasing nearly 90% of Mexican exports in 2000, Mexico is the United States' second largest trading partner.³² Furthermore, the U.S. border with Mexico is one of the busiest in the world.³³ In 2003, there were over 193 million passenger crossings in personal vehicles and over 48 million pedestrian crossings at land ports of entry along the U.S.-Mexico border.³⁴

/pressmedia/domestic_a_to_z.html (last visited Jan. 28, 2008).

²⁵ *Id.*

²⁶ BUREAU OF TRANSP. STAT., U.S.-INTERNATIONAL TRAVEL AND TRANSPORTATION TRENDS 7 (2002).

²⁷ *Id.* at 8.

²⁸ *Id.*

²⁹ *Id.* at 8-9.

³⁰ Ian F. Fergusson, Cong. Res. Service Rep. for Congress, United States-Canada Trade and Economic Relationship: Prospects and Challenges 1 (2006).

³¹ *Id.* at 9.

³² Press Release, World Trade Organization, Mexico: April 2002 (Apr. 16, 2002), available at http://www.wto.org/english/tratop_e/tptr_e/tp190_e.

³³ Robert Cannell, *Mexico Border: Legislators Suggest Alternatives*, STATE NEWS, Feb. 2006, at 22.

³⁴ *Id.*

C. Homeland Security

In recent years, one of the central focuses of U.S. domestic and foreign policy has been the increase of homeland security. As a direct result of 9/11, the DHS was established by the Homeland Security Act of 2002.³⁵ The DHS was created as a consolidation of executive branches into a single cabinet agency to, inter alia, “prevent terrorist attacks within the United States” and “reduce the vulnerability of the United States to terrorism.”³⁶

Following 9/11, speculation spread that some of the hijackers gained access to the United States by illegally entering through Canada. While this was later found to be untrue, many Americans continue to believe that several of the 9/11 perpetrators initially entered the United States by crossing the Canadian border.³⁷ While debate over the long term economic and cultural impact of illegal immigration make up a large part of issues relating to the U.S. border with Mexico, concerns over its impact on homeland security also run high. On October 26, 2006, the Secure Fence Act of 2006 was signed,³⁸ which authorizes the construction of a 700 mile fence along one third of the U.S.-Mexico border.³⁹

III. THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

The Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”) was signed into law by President George W. Bush on December 17, 2004.⁴⁰ Its stated purpose is “[t]o reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.”⁴¹ The IRTPA is part of a package of homeland security legislation including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and

³⁵ Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) [hereinafter HSA].

³⁶ *Id.*

³⁷ See Sheldon Alberts, *U.S. senator revives 9/11 myth about Canada*, OTTAWA CITIZEN, Dec. 20, 2005 (quoting Montana Senator Conrad Burns as saying “[w]e’ve got to remember that the people who first hit us in 9/11 entered this country through Canada.”); see also Mike Blanchfield, *U.S. lawmakers continue to perpetuate 9/11 myth*, OTTAWA CITIZEN, Oct. 16, 2005 (noting that Canadian diplomats in the United States have spent a large amount of their time trying to debunk this myth).

³⁸ Secure Fence Act of 2006, Pub. L. No. 109-367 (2006).

³⁹ Michael A. Fletcher & Jonathan Weisman, *Bush Signs Bill Authorizing 700-Mile Fence for Border*, WASH. POST, Oct. 27, 2006, at A04. (noting that the Organization of American States had expressed deep concerns about the fence, calling it a “unilateral measure that goes against the spirit of understanding that should characterize how shared problems between neighboring countries are handled and that affects cooperation in the hemisphere.”).

⁴⁰ IRTPA, *supra* note 10.

⁴¹ *Id.*

Obstruct Terrorism Act of 2001 ("USA Patriot Act"),⁴² the Enhanced Border Security and Visa Entry Reform Act of 2002,⁴³ the Homeland Security Act of 2002,⁴⁴ and the REAL ID Act of 2005 ("Real ID Act").⁴⁵ All of which were enacted largely as a result of 9/11 and the subsequent findings of the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission") in its Final Report ("9/11 Commission Report").⁴⁶

The IRTPA changed a variety of features concerning the organization of federal intelligence gathering agencies. Notably Title I of the IRTPA created the Director of National Intelligence position to serve as the head of the national intelligence community⁴⁷ and established the National Counterterrorism Center.⁴⁸

Title VII of the IRTPA deals with the implementation of recommendations made by 9/11 Commission and is the main focus of this Comment.⁴⁹

⁴² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (2001).

⁴³ Enhanced Border Security and Visa Entry Reform Act of 2002. Pub. L. No. 107-173 (2002).

⁴⁴ HSA, *supra* note 35.

⁴⁵ REAL ID Act of 2005, Pub. L. No. 109-13 (2005) [hereinafter Real ID Act].

⁴⁶ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT (2004), *available at* <http://www.gpoaccess.gov/911/pdf/fullreport.pdf> [hereinafter 9/11 COMMISSION REPORT].

⁴⁷ IRTPA, *supra* note 10, § 1011.

⁴⁸ *Id.* § 1021.

⁴⁹ *Id.* § 7209. Section 7209 provides in pertinent part:

(a) Findings.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

- (1) Existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification.
- (2) The planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities.
- (3) Additional safeguards are needed to ensure that terrorists cannot enter the United States.

(b) Passports.—

- (1) Development of plan.— The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)). This plan shall be implemented not later than January 1, 2008, and shall seek to expedite the travel of frequent travelers, including those who

A. Analysis of Section 7209

Under the Immigration and Nationality Act (“INA”),⁵⁰ nonimmigrant aliens⁵¹ and U.S. citizens generally must present passports when entering the United States.⁵² However, the Secretaries of the DHS and the Department of State (“DOS”) have joint authority to waive this requirement for certain classes of nonimmigrant aliens. The DOS Secretary alone has authority to make exceptions to the requirement for U.S. citizens.⁵³ In accordance with these authorities, U.S. citizens and nonimmigrant aliens from Canada and Mexico have been allowed to enter the United States from countries within the Western Hemisphere without presenting passports for several decades.⁵⁴

Section 7209(a) adopts the findings of the 9/11 Commission Report, which found the lack of identification requirements for some categories of international travelers coming into the United States to be inadequate.⁵⁵ Section 7209(b)(1) attempts to rectify this problem by mandating that the DOS and DHS Secretaries develop an identification system involving

reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k)).

(2) Requirement to produce documentation.— The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act, to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

...

(d) Transit Without Visa Program.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.

⁵⁰ 8 U.S.C. § 1182(d)(4)(B) (2006) [hereinafter INA] (empowering the Secretary of State and Attorney General to waive the standard passport requirements for international travel “on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals.”).

⁵¹ Nonimmigrant aliens are non-U.S. citizens within the United States that, unlike their more infamous undocumented counterparts, do not intend to remain within the United States on a permanent basis. They notably include foreign tourists temporarily in the United States for work, study, or pleasure who have no intent to abandon their foreign residences, aliens in transit through the United States, and representatives of foreign government officials. *See* 8 U.S.C. § 1101(15) (2006) (limiting the classes of nonimmigrant aliens).

⁵² Documents Required for Travel Within the Western Hemisphere, 70 Fed. Reg. 52037, 52037 (proposed Sept. 1, 2005).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ IRTPA, *supra* note 10, § 7209(a).

passports, or an approved alternative document, to be used for all travel into the United States by international travelers who are currently exempted from the passport requirements, to be implemented by no later than January 1, 2008.⁵⁶ Essentially, Section 7209 revokes the discretion that the Secretaries previously held in waiving the passport requirements imposed by the INA and thus removes the exemption that allowed U.S. citizens and other approved classes of nonimmigrant aliens to enter the United States without showing a passport.

Section 7209(b)(1) also mandates that the plan should provide accommodation for people living along the border in the form of a registered traveler program.⁵⁷ Once a system has been adopted under Section 7209(b)(1), Section 7209(b)(2) will require all previously exempted travelers to produce the documents specified under the plan when entering into the United States.⁵⁸

Until its suspension on August 2, 2003, the Transit Without Visa program allowed foreign nationals to transit through the United States for the purpose of connecting to further international flights.⁵⁹ Section 7209(d) repeals the Transit Without Visa program until the DOS and DHS Secretaries are able to implement a plan that ensures secure transit of nonimmigrant aliens, thus preventing illegal entry into the United States.⁶⁰ Section 7209(d) also inhibits the DOS Secretary from using the authority granted in the INA⁶¹ to allow nonimmigrant aliens to transit through the United States without visas.⁶²

B. Implementation and Timeline

DOS and DHS introduced the WHTI on April 5, 2005, as a means of implementing Section 7209 of the IRTPA.⁶³ The WHTI was originally scheduled to be implemented in three phases, with requirements going into place for air and sea travelers returning from the Caribbean, Bermuda, and Central and South America by December 31, 2005, and then being extended to air and sea travel from Canada and Mexico by December 31, 2006, with the requirements finally being fully phased into to all land border crossings

⁵⁶ *Id.* at § 7209(b)(1).

⁵⁷ *Id.*

⁵⁸ *Id.* at § 7209(b)(2).

⁵⁹ See Press Release, Dep't of Homeland Security, Suspension of Transit Without Visa and ITI Programs (Aug. 2, 2003), available at http://travel.state.gov/visa/visa_1248.html.

⁶⁰ IRTPA, *supra* note 10, § 7209(d).

⁶¹ INA, *supra* note 50, § 1182(d)(4)(C).

⁶² IRTPA, *supra* note 10, § 7209(d).

⁶³ See Frank James, *Crossing the border about to get tougher; Americans will need passports to return from Canada, Mexico*, CHI. TRIB., Apr. 6, 2005, at C1 (one of the few large American dailies to cover the story immediately after the announcement of the WHTI).

by December 31, 2007.⁶⁴ This was subsequently changed to a two-phase plan with the consolidation of the original first and second phases, thus harmonizing implementation of the air and sea requirements for all effected countries.⁶⁵ As a result of strong lobbying from the travel industry, this timeline has been further reorganized and pushed back significantly.⁶⁶

The first phase, with the passport requirements being applied only to air travelers, went into effect on January 23, 2007.⁶⁷ This initial implementation date was moved back three weeks in an effort to accommodate concerns about infrequent travelers being caught off guard by the new regulations on their way home from international holiday travels.⁶⁸ Nonetheless, with the majority of air travelers having already been accustomed to providing passports as identification on international flights, the timeline for the implementation of the air requirements was able to proceed nearly on schedule.⁶⁹ As expected, the implementation of the first phase proceeded smoothly.⁷⁰

Further, implementation of the requirements for sea travel was pushed back from the first to the second implementation phase with land crossings.⁷¹ While the second phase was previously scheduled to occur on December 31, 2007, in order to comply with the original January 1, 2008 deadline for implementation set under Section 7209,⁷² Congress gave the DOS and DHS until June 1, 2009 to come up with a suitable plan to

⁶⁴ Eric Green, Dep't of State, Rule Changes Aim to Make Travel Safer, Simpler, To and From U.S. (Apr. 5, 2005), *available at* <http://usinfo.state.gov/gi/Archive/2005/Apr/06-337950.html>.

⁶⁵ See Press Release, Dep't of Homeland Security, Western Hemisphere Travel Initiative Formally Submitted for Public Comment (Sept. 1, 2005), *available at* http://www.dhs.gov/xnews/releases/press_release_0728.shtm.

⁶⁶ See Rachel L. Swarns, *Travel Industry Seeks Delay on New Passport Rules at U.S. Borders*, N.Y. TIMES, Aug. 18, 2006, at A13 (noting the lobbying efforts of the nation's largest travel industry association, the Travel Industry Association of America).

⁶⁷ Dep't of State, WHTI's Successful Implementation, Western Hemisphere Travel Initiative Fact Sheet, http://travel.state.gov/pdf/whti_successful.pdf [hereinafter WHTI's Success] (last visited Jan. 28, 2008).

⁶⁸ See Press Release, Dep't of State, Passport Requirements for Air and Sea Travel to the United States Announced (Aug. 11, 2006), *available at* <http://www.state.gov/r/pa/prs/ps/2006/70299.htm>.

⁶⁹ See John Gillie, *No more free passes: Soon if by air, next year if by sea or land*, NEWS TRIB. (Tacoma, Wash.), Jan. 9, 2007, at D01. ("Air travelers . . . are more likely to already have passports than those who travel to bordering countries by car.")

⁷⁰ WHTI's Success, *supra* note 67 (noting the success of an aggressive outreach campaign to promote the new regulations to the traveling public for the fact that "[c]ompliance rates, which were 94% for Americans and 96% for Canadians the week before implementation, reached 99% on the second day and have remained there.").

⁷¹ See *id.*

⁷² IRTPA, *supra* note 10, § 7209(b)(1).

implement the requirements.⁷³

While concerns raised by constituencies potentially affected by future implementation of the sea and land crossing regulations have played large roles in the delay of their application, these implementation delays have only increased the consternation of WHTI opponents displeased with the phase-in plan and its lack of regulation harmonization.⁷⁴ Instead of staggered implementation, which inherently favor some tourism sectors over another, these opponents take an all-or-nothing approach, advocating, if anything, that fairness requires a complete WHTI implementation which disadvantages all equally.⁷⁵

IV. COMPARATIVE LANDSCAPE

In the continuing globalization of the world economy, growing numbers of nations are removing barriers to the movement of people. The passport free travel zone amongst the United States, Canada, and Mexico, which the WHTI dissolves, is by no means unique. Several similar areas already exist, the most well known being the European Union's Schengen area, while others are currently under negotiation or scheduled to commence in the near future. The following section examines these areas in greater detail.

A. Schengen Area

Perhaps the most prominent passport free travel zone in the entire world is Europe's Schengen area. On June 14, 1985, France, Belgium, Luxembourg, the Netherlands, and Western Germany signed the Schengen Agreement, pledging their support to work towards the gradual abolition of checks at their common borders.⁷⁶ In 1990, the Schengen Convention was signed, which implemented a plan for the actual realization of the zone.⁷⁷ By the time it finally came into effect in 1995, a growing number of states had already signed on to participate.⁷⁸ With the currently implemented

⁷³ Leahy-Stevens Amendment, Pub. L. No. 109-295 (2006) [hereinafter LSA].

⁷⁴ See Peter Richards, *Caribbean: New U.S. Travel Rules Could Devastate Tourism*, INTERPRESS SERVICE, Oct. 18, 2006 (noting Caribbean tourism stakeholder concerns that differentiation in regulation implementation timelines will inequitably drive American tourism dollars to other destinations).

⁷⁵ See *id.*

⁷⁶ European Commission, Abolition of internal borders and creation of a single EU external frontier, http://ec.europa.eu/justice_home/fsj/freetravel/frontiers/fsj_freetravel_schengen_en.htm [hereinafter Schengen Convention] (noting that Schengen is the name of the Luxembourg town in which the Agreement was signed).

⁷⁷ See *id.*

⁷⁸ *Id.* (noting that Italy, Spain, Portugal, and Greece had also signed the Convention by 1995).

zone extending over a fifteen-country region⁷⁹ encompassing much of Western Europe and an additional nine nations set to come online by the end of 2007,⁸⁰ the Schengen area is the world's most comprehensive passport free travel zone.⁸¹

Having begun in the 1980's, the Schengen movement predated the European Union, which at the time still only existed as the European Economic Community and did not fully coming into being until the signing of the Maastricht Treaty on February 7, 1992.⁸² In 1997, with large amounts of overlap between the jurisdictions of the European Union and Schengen area, the Treaty of Amsterdam was signed, incorporating the Schengen developments into the European Union's legal and institutional framework.⁸³ As a result, the "Schengen acquis"⁸⁴ is now part of the institutional and legal framework of the European Union and countries applying to join the European Union will have to fulfill its requirements.⁸⁵

The harmonization of external borders became an important issue given that full Schengen implementation would eventually do away with checkpoints along the common borders within the area. Once a foreigner was admitted into any point within the Schengen area, they basically had full access to all countries within the area.⁸⁶ All of the implementing countries now had to concern themselves with the external border controls of each of the other implementing countries. Similarly, the harmonization of visas became useful. Foreigners who previously were required to obtain individual visas to enter the countries within the Schengen area are now able to simply apply for one Schengen visa, which allows them to travel freely throughout the entire area.⁸⁷

⁷⁹ See *id.* This region includes: Belgium, France, Germany, Luxembourg, Netherlands, Portugal, Spain, Italy, Austria, Greece, Denmark, Finland, Iceland, Norway, and Sweden.

⁸⁰ This additional region includes: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

⁸¹ At least in terms of the number of participating states.

⁸² Treaty on European Union, Feb. 7, 1992, *available at* <http://www.eurotreaties.com/maastrichtec.pdf> [hereinafter Maastricht Treaty].

⁸³ Schengen Convention, *supra* note 76 (noting that "[t]he Schengen area now comes under the scrutiny of the European Parliament and of the Court of Justice of the European Communities . . .").

⁸⁴ The Schengen acquis is the general body of laws which all Schengen Convention member states have to apply.

⁸⁵ Schengen Convention, *supra* note 76.

⁸⁶ For example: With the freedom provided within the Schengen area, a foreign wrongdoer arriving into a port in Marseille or Hamburg could now be able to do just as much damages to the Netherlands as another foreign wrongdoer arriving directly into a port in Amsterdam.

⁸⁷ See European Commission, Same visa policy for all European Union Member States, http://ec.europa.eu/justice_home/fsj/freetravel/visa/fsj_freetravel_visa_en.htm [hereinafter Visa Policy].

B. Nordic Passport Union

On July 12, 1957, the five Nordic States (Denmark, Finland, Iceland, Norway, and Sweden) signed the Convention on the Abolition of Passport Controls at Intra-Nordic Borders in Copenhagen, establishing the Nordic Passport Union.⁸⁸ This allowed the citizens of these countries to travel freely across their common borders without passports.⁸⁹ While Denmark, Finland, and Sweden are members of the European Union, Iceland and Norway are not. This created an issue: the EU contingent of the Nordic Passport Union was interested in joining the growing Schengen area but Iceland and Norway were not interested in joining the European Union.⁹⁰ However, in 1996, all five countries eventually signed the Schengen Convention after an agreement was reached according Iceland and Norway associate EU memberships.⁹¹ Since March 25, 2001, the Schengen acquis agreements have been fully applied to the entire Nordic Passport Union.⁹²

C. Common Travel Area

The United Kingdom ("UK") and Ireland have maintained a passport free travel zone dating back to early Irish independence in 1922.⁹³ For decades there was no formal agreement governing the travel zone which allows British and Irish citizens to travel between two countries without passport controls.⁹⁴ In fact, the first significant legal recognition of the travel zone only came in 1997, with its mention as the "Common Travel Area" in the Treaty of Amsterdam.⁹⁵ However, unlike the Schengen area, there is no Common Travel Area visa. Thus, visiting foreigners who require visas must obtain separate ones for each country.⁹⁶

Both countries are the only current EU members to have not signed the

⁸⁸ Monica Den Boer & Laura Corrado, *For the Record or off the Record: Comments about the Incorporation of Schengen into the EU*, 1 EUR. J. MIGRATION & L. 397, 411 n.53 (1999).

⁸⁹ STEPHEN KABERA KARANJA, NORWEGIAN BORDER CONTROL IN A EUROPE WITHOUT INTERNAL FRONTIERS—IMPLICATIONS FOR DATA PROTECTION AND CIVIL LIBERTIES 14 (1999), available at http://www.afin.uio.no/forskning/andre_publicasjoner/schengen.pdf.

⁹⁰ For example: If any combination of Denmark, Finland, and/or Sweden were to join the Schengen, by design of the currently in existence Nordic Passport Union, they would effectively be bringing the entire five Nordic State group into the Schengen area.

⁹¹ KARANJA, *supra* note 89, at 15 n.28 ("Associate membership means that Norway and Iceland while not being EU members have accepted the Convention as well as the full Schengen acquis and agreed to all Schengen obligations.").

⁹² Council Decision 2000/777, 2000 O.J. (L 309) 24 (EC).

⁹³ Bernard Ryan, *The Common Travel Area between Britain and Ireland*, 64 MOD. L. REV. 855, 856 (2001).

⁹⁴ *Id.* at 855.

⁹⁵ *See id.*

⁹⁶ *See id.* at 863; *see also* Schengen Convention, *supra* note 76.

Schengen Convention.⁹⁷ The UK has refrained from joining Schengen out of a reluctance to give up control of its borders and work permit system, feeling that as an island nation it has a much more viable role in managing its borders than the rest of its continental EU counterparts.⁹⁸ Ireland highly values its Common Travel Area relationship with the UK and thus has been constrained from joining the Schengen Area,⁹⁹ knowing that doing so would summarily result in border controls between the UK and Ireland. This could prove especially problematic on the largely unchecked land border with Northern Ireland.¹⁰⁰

D. Future Passport Free Travel Zones

The planning for several future passport free travel zones is currently taking place in various regions around the world. For example, the Caribbean Community and Common Market ("CARICOM")¹⁰¹ has been working towards integration into a single market and economy since the signing of the Grand Anse Declaration in July 1989.¹⁰² Following an initiative to allow hassle-free travel,¹⁰³ its member states are implementing the usage of a common CARICOM passport in conjunction with separate immigration lines for CARICOM nations.¹⁰⁴ Furthermore, a common CARICOM visa was created for the 2007 Cricket World Cup, which was

⁹⁷ See Schengen Convention, *supra* note 76.

⁹⁸ See PIARAS MAC ÉINRÍ, IRISH CENTRE FOR MIGRATION STUDIES, THE IMPLICATIONS FOR IRELAND AND THE UK ARISING FROM THE DEVELOPMENT OF RECENT EU POLICY ON MIGRATION (2002), available at <http://migration.ucc.ie/schengencta.htm>.

⁹⁹ Editorial, *Migrant Access*, IRISH TIMES, Oct. 19, 2006, at 17 ("The common travel area between Ireland and the United Kingdom is a major constraining factor on our capacity to make independent decisions about international migration.").

¹⁰⁰ See ÉINRÍ, *supra* note 98 ("In the case of the North/South land frontier this would be virtually unworkable, while enormous inconvenience would undoubtedly be caused to people in two societies which, in trading and labour market terms, are still highly integrated.").

¹⁰¹ CARICOM includes fifteen full member states: Antigua and Barbuda, the Commonwealth of The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Caribbean Community (CARICOM) Secretariat, CARICOM Member States, http://www.caricom.org/jsp/community/member_states.jsp?menu=community (last visited Jan. 28, 2008).

¹⁰² Grand Anse Declaration, July 1983, available at http://www.jis.gov.jm/special_sections/CARICOMNew/grandAnse.pdf (calling for, inter alia, the eventual elimination of passport requirements for "CARICOM nationals traveling to other CARICOM countries.").

¹⁰³ Caribbean Community (CARICOM) Secretariat, Hassel Free Travel, http://www.caricom.org/jsp/single_market/travel.jsp?menu=csme (last visited Jan. 28, 2008).

¹⁰⁴ *Id.*

hosted by ten Caribbean states.¹⁰⁵ This created a “single domestic space” to allow for easier travel amongst the islands from January to May 2007.¹⁰⁶

The signing of the Cuzco Declaration on December 8, 2004 created the South American Community of Nations (“CSN”).¹⁰⁷ Styled after the European Union, the CSN aims for complete economic integration and will merge South America’s two current trading blocs, the Andean Community of Nations and Mercosur.¹⁰⁸ Towards this end, the CSN’s twelve initial members have agreed to work towards abolishing visa requirements for its own nationals traveling throughout the region.¹⁰⁹

Finally, the Economic Community of West African States (“ECOWAS”)¹¹⁰ is pursuing the implementation of a common ECOWAS passport in an effort to better promote the free movement of citizens amongst the member nations.¹¹¹ The passport, while ostensibly facilitating movement across borders within ECOWAS, is also intended to encourage further economic integration and fuse a common cultural identity.¹¹²

E. Lessons for the United States

Given the continuing economic integration taking place across the world, it is increasingly important for the United States to maintain some openness in its borders with its neighbors, specifically Canada and Mexico. As other regions of the world are increasingly removing the restrictions on the movement of people, the WHTI stands in stark contrast.¹¹³

¹⁰⁵ Caribbean Community (CARICOM) Secretariat, CARICOM Special Visa for Cricket World Cup 2007, http://www.caricom.org/jsp/cwc_2007/caricom_special_visa.jsp?menu=cwc (last visited Jan. 28, 2008).

¹⁰⁶ *Id.*

¹⁰⁷ Cuzco Declaration, Dec. 8, 2004, available at <http://www.comunidadandina.org/ingles/documentos/documents/cusco8-12-04.htm> (signed by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela).

¹⁰⁸ See Press Release, Andean Community, Experiences of the CAN, EU and Mercosur to be utilized in building the South American Community of Nations (Mar. 4, 2005), available at <http://www.comunidadandina.org/INGLES/press/press/np4-3-05a.htm>.

¹⁰⁹ See *S American 12 cut travel red tape*, BBC NEWS, Nov. 25, 2006, available at <http://news.bbc.co.uk/2/hi/americas/6182760.stm>.

¹¹⁰ PBS, What is ECOWAS?, <http://www.pbs.org/newshour/bb/africa/liberia/ecowas-background.html> (last visited Jan. 28, 2008) (ECOWAS includes Benin, Burkina Faso, Cape Verde, Cote d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo).

¹¹¹ *Id.*

¹¹² See Yemi Akinsuyi, *Nigeria: Immigration—Towards Common Force in W/Africa*, THIS DAY (Nigeria), Nov. 12, 2006 (The Nigerian Minister of Internal Affairs believes that the common passport “is critical to the achievement of integration in the sub-region.”).

¹¹³ See Canadian Prime Minister Stephen Harper, Speech to the Economic Club of New York (Sept. 20, 2006), available at <http://www.pm.gc.ca/eng/media.asp?id=1327> (Harper explained that “[the WHTI] threatens to divide us at exactly the time we should be

While the interests of security are important, they must be kept in perspective. The members of the European Union continue to suffer their own share of terrorism concerns. However, the 2004 train bombings in Madrid did not derail the Schengen Area nor did the 2005 public transit bombings in London cause a disintegration of the Common Travel Area. Instead the European Union has focused on improving its external border controls, an area the United States could work on more fully with both Canada and Mexico.

Many feel that the trend towards isolationism taken by the WHTI is not the key to success in the modern world economy and that "common sense should prevail to keep travel flowing in North America."¹¹⁴

V. EFFECTS OF THE WESTERN HEMISPHERE TRAVEL INITIATIVE

Depending on the ultimate method of implementation chosen, the WHTI stands to have a profound and far reaching impact both domestically and abroad. Balancing the interests of homeland security with international tourism will likely not be an easy task. While many in the United States are strongly concerned about the security of its international frontiers, many others are worried about the future continued accessibility of U.S. borders.

A. Benefits and Motivations

The WHTI was mandated by Section 7209(a) of the IRTPA.¹¹⁵ While a variety of incidental beneficiaries could gain from implementation of the WHTI, its primary purpose is to strengthen border security as a means of improving homeland security.¹¹⁶ According to the DHS, its first strategic goal is "[a]wareness,"¹¹⁷ and its second strategic goal is "[p]revention."¹¹⁸

The first part of the prevention strategy is to "[s]ecure our borders against terrorists, means of terrorism, illegal drugs and other illegal activity."¹¹⁹ Currently, U.S. citizens and nonimmigrant aliens from Canada

collaborating closely on global economic and security challenges.").

¹¹⁴ See *Passports won't pose problems: Chretien*, 24 HOURS (Toronto), Jan. 11, 2007, at 11 (Former Canadian Prime Minister Jean Chretien also noted that "travellers can cross several national borders in Europe without any significant delays and requirements . . .").

¹¹⁵ IRTPA, *supra* note 10, § 7209(a).

¹¹⁶ *Id.*

¹¹⁷ DEP'T OF HOMELAND SECURITY, SECURING OUR HOMELAND: U.S. DEPARTMENT OF HOMELAND SECURITY STRATEGIC PLAN 10 (2004), available at http://www.dhs.gov/xlibrary/assets/DHS_StratPlan_FINAL_spread.pdf (Explaining that the DHS's awareness objective is to "[i]dentify and understand threats, assess vulnerabilities, determine potential impacts and disseminate timely information to our homeland security partners and the American public.").

¹¹⁸ *Id.* at 12.

¹¹⁹ *Id.*

and Mexico can still enter the United States from the majority of the countries in the Western Hemisphere without presenting a passport, except by air.¹²⁰ All that is required of these travelers is a verbal declaration of citizenship and/or presentation of other form of documentation such as a driver's license, birth certificate, or baptismal record.¹²¹ In the United States alone, more than 8,000 different state and local entities issue birth certificates and driver's licenses.¹²² While U.S. Customs and Border Protection ("CBP") officers were able to "apprehend[] over 84,000 individuals at the ports of entry trying to cross the border with fraudulent claims of citizenship or documents" in 2005,¹²³ the sheer number of different types of accepted identifying documents prevent many from being properly validated or verified in a timely manner.¹²⁴

Given the availability of counterfeit identification, a potentially exploitable hole in the international frontier exists for those interested in crawling through it.¹²⁵ Implementation of the WHTI would help to close this hole by utilizing currently available technology to more accurately and efficiently verify the identity of all travelers entering the country at international frontier checkpoints.¹²⁶ Nonetheless, even with WHTI implementation, several thousand miles of an un-policed land border will continue to exist for any potentially illegal entrants to cross, so this is just

¹²⁰ See *supra* notes 51–54 and accompanying text.

¹²¹ Dep't of Homeland Security, Frequently Asked Questions: Western Hemisphere Travel Initiative—Publication of the Air Final Rule, http://www.dhs.gov/xnews/releases/pr_1164210249468.shtm [hereinafter DHS WHTI FAQs] (last visited Jan. 28, 2008).

¹²² Press Release, Dep't of Homeland Security, Western Hemisphere Travel Initiative Rule Outlines New Document Requirements for Air Travel (Nov. 22, 2006), available at http://www.dhs.gov/xnews/releases/pr_1164209628449.shtm.

¹²³ *Id.*

¹²⁴ See John Allen Muhammad, *Document Fraud, and the Western Hemisphere Passport Exception: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the Comm. on the Judiciary*, 108th Cong. 3 (2003). Subcommittee Chair John N. Hostettler remarked in his opening statement: "Even excluding baptismal records, it is doubtful that anyone could have even a passing familiar with, let alone a working knowledge of, each and every one of these documents." *Id.*

¹²⁵ This potential hole in our border security was perhaps most notably exploited by the "D.C. Sniper" John Allen Muhammad, who helped bring this issue to light. While living in Antigua before going on his shooting rampage, Muhammad is believed to have sold over twenty sets of fraudulent U.S. driver's licenses and corresponding counterfeit birth certificates to Jamaicans seeking to enter the United States. *Id.* at 1–2.

¹²⁶ See generally MARTIN LLOYD, *THE PASSPORT: THE HISTORY OF MAN'S MOST TRAVELLED DOCUMENT* 155 (2003) (noting that the United States has been issuing machine readable passports since 1981); Bruce Finley, "E-passport" makes debut in Colorado, DENVER POST, Aug. 15, 2006, at A01 (noting that the United States started using digitized photos in passports in 1998 and in August 2006 began issuing "new electronic passports embedded with radio microchips holding personal data.").

one part of the ultimate solution.¹²⁷

Additionally the WHTI stands to unify the current patchwork of fast-pass border crossing card systems for registered low risk travelers.¹²⁸ Instead of a handful of redundant systems, one unified identification form might allow for greater border security and quicker crossing times for everyone.

More cynically, certain U.S. stakeholders stand to gain, beyond any increase in homeland security, through implementation of the WHTI. Implementation of the WHTI is likely to lead to a large increase in the number of applications for both passports and whatever form of alternative identification for registered travelers is chosen. While passports are issued by the DOS,¹²⁹ the technology behind the new U.S. e-passport¹³⁰ and any future biometric identification advances will be privately developed. The lucrative terms that frequently come with U.S. government contracts stand to catapult this sector for the security industry into prominence as the usage of such technology increases.

While the WHTI might hurt some foreign travel businesses, their U.S. counterparts could gain business as substitutes.¹³¹ Depending on the selection of an acceptable alternative form of identification,¹³² this effect could be anywhere from negligible to rather substantial.¹³³ While such effects could also simultaneously occur on the other side of the border, with Canadian families making travel choices to stay in Canada,¹³⁴ the flurry of

¹²⁷ See *The Need to Implement WHTI to Protect U.S. Homeland Security: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the Comm. on the Judiciary*, 109th Cong. 1 (2006). Subcommittee Chair John N. Hostettler remarked in his opening statement: "In fact, it is fair to say that the Canadian border is virtually unguarded. Canadians as well as those who are impostures [sic] pretending to be Canadians or returning American tourists roll through our border ports of entry with little or no document inspections." *Id.*

¹²⁸ See *infra* Part VI.A.—Currently Existing Programs.

¹²⁹ As likely will be whatever alternative form of identification is approved.

¹³⁰ See Finley, *supra* note 126.

¹³¹ For example: Instead of flying to Jamaica for their annual winter family trip, a Midwestern family may now simply fly to Miami; both are roughly similar when their primary concern is escaping February cold.

¹³² See *infra* Part VI—Alternatives.

¹³³ For example: A family of four without passports in Buffalo, NY would not be likely to divert their planned trip to the Hockey Hall of Fame in Toronto to the Rock and Roll Hall of Fame in Cleveland, if the cost of a pass is only \$5 per person and readily available; however, if the cost was \$50 per person and required a four week lead time, the situation could easily be different.

¹³⁴ However, it is worth noting this does not appear to be a large issue for Mexican citizens, who are currently required to possess BBC cards to enter the United States, and thus, will likely be far less deterred by the implementation of the WHTI because they already factor such identification inconvenience into their travel planning.

discussion in the Canadian press over the effects of the WHTI and its relative lack of mention in the United States seem to indicate where the concerns are located and who really stands to benefit.¹³⁵ As former Canadian Prime Minister Jean Chrétien explained: "The problem is that there's more at stake for Canada than for the U.S, where the Bush administration needs to be convinced it really needs Canadian visitors and the tourism dollars they generate."¹³⁶

It is further worth noting that the WHTI will not apply to U.S. territories.¹³⁷ U.S. tourists seeking a Caribbean getaway without the expense of a passport may now turn more heavily to Puerto Rico and the U.S. Virgin Islands.¹³⁸

B. Costs and Motivations

The costs of WHTI implementation to intra-North American international tourism could be substantial. While a variety of studies attempting to quantify the possible economic impact of the WHTI have been completed,¹³⁹ the less obvious, non-economic impact could be equally harmful.

1. Economic Impacts

Intra-North American international tourism is a large industry.¹⁴⁰

¹³⁵ Up to the beginning of 2007, the *Globe and Mail*, Canada's most highly read national newspaper, has mentioned the WHTI in more than twice as many articles, 23 to 11, as the *Chicago Tribune*, *Los Angeles Times*, *New York Times*, *USA Today*, *Wall Street Journal*, and *Washington Post* combined.

¹³⁶ Mike Oliviera, *New Liberal leader can call for advice any time, but Chretien won't meddle*, CNEWS, Jan. 10, 2007, available at <http://forums.canadiancontent.net/canadian-politics/55817-new-liberal-leader-can-call.html>.

¹³⁷ DHS WHTI FAQs, *supra* note 121 ("U.S. citizens returning directly from a U.S. territory are not considered to have left the U.S. territory and do not need to present a passport. U.S. territories include the following: Guam, Puerto Rico, the U.S. Virgin Islands, American Samoa, Swains Island and the Commonwealth of the Northern Mariana Islands.").

¹³⁸ Cf. Hilary Howard, *Passports? Not For U.S. Territories*, N.Y. TIMES, Dec. 3, 2006, § 5, at 2 (noting that this apparent potential competitive advantage might be tempered by the fact that "[w]hen people think of the Caribbean, they don't differentiate between the U.S. territories and places like Antigua or Jamaica.").

¹³⁹ See generally U.S. CUSTOMS AND BORDER PROTECTION OFFICE OF REGULATIONS AND RULINGS, REGULATORY ASSESSMENT FOR THE NOTICE OF PROPOSED RULEMAKING: DOCUMENTS REQUIRED FOR TRAVEL WITHIN THE WESTERN HEMISPHERE (2006), available at http://www.cbp.gov/linkhandler/cgov/travel/vacation/ready_set_go/land_travel/ref_material/whiti_land_assess.ctt/whiti_land_assess.pdf; see also CANADIAN TOURISM COMM'N, THE POTENTIAL IMPACT OF A WESTERN HEMISPHERE TRAVEL INITIATIVE PASSPORT REQUIREMENT ON CANADA'S TOURISM INDUSTRY (2005), available at http://www.ic.gc.ca/epic/site/dsib-tour.nsf/en/h_qq00117e.html.

¹⁴⁰ See *supra* Part II.B. Intra-North American International Tourism Currently.

While the DOS currently estimates that over 70 million Americans have passports,¹⁴¹ this accounts for less than a quarter of the total U.S. population. Marginally better, an estimated 40% of Canadians have passports.¹⁴² While the effects of implementation of the WHTI stand to be far reaching, they will likely be mainly felt in certain border regions and the Caribbean.¹⁴³

Several areas along the U.S. border with Canada are particularly reliant on bilateral international tourism. For example, the region surrounding Detroit, MI and Windsor, Ontario as well as the Niagara Falls area look to be particularly effected by the WHTI.¹⁴⁴ Niagara and Winsor area businesses "have reported they are already losing tourists who are canceling trips due to the mistaken belief that the tougher ID law is already in effect."¹⁴⁵ Many in the Canadian tourism industry worry that this is only foreshadowing the behavior of U.S. travelers after WHTI implementation.¹⁴⁶

A large number of communities along the U.S. border with Mexico are also heavily reliant on bilateral international tourism, with several categories of business along Mexico's northern border almost wholly dependent on American tourists. A diverse sector of businesses has evolved to cater to American day trippers: markets selling artisan crafts, clinics providing inexpensive dentistry and optometry, and restaurants and bars. Given the price elasticity of their patrons, these areas could be drastically affected by the added travel costs imposed by implementation of

¹⁴¹ DHS WHTI FAQs, *supra* note 121.

¹⁴² Rachel Swarns, *Travel Industry Seeks Delay on New Passport Rules at U.S. Borders*, N.Y. TIMES, Aug. 18, 2006, at A13.

¹⁴³ However this is not to say that the United States as a whole will be immune from the effects. Implementation of the WHTI likely only stands to exacerbate the problem of the United States' declining market share for international travelers, which has decreased from 9.4% in 1992 to 6.1% in 2005, with the United States failing to capture any of the 20% growth in worldwide international travel from 2000 to 2005. Barrie McKeena, *Americans are loved. America? Not so much; U.S. tourism leaders team up in attempt to improve image*, GLOBE AND MAIL (Canada), Sep. 13, 2006, at B14.

¹⁴⁴ See Sarah Ryley, *Passport law could threaten border business; Lawmakers try to balance commerce, safety*, DETROIT NEWS, Aug. 15, 2006, at 1C. (noting that approximately \$321.7 million flow into southeast Michigan's economy every year as a result of Canadian tourists).

¹⁴⁵ Press Release, Mich. Dep't of State, Secretary Land Applauds Expected Delay in Implementation of New Passport Requirement (Sept. 26, 2006), *available at* <http://www.theautochannel.com/news/2006/09/26/023220.html>.

¹⁴⁶ See Dan Herbeck & Lou Michel, *Passport law could strain border ties; War on terrorism might be a blow to local tourism*, BUFFALO NEWS, Sep. 13, 2006, at A1 ("Gordon Weston, owner of a bed-and-breakfast inn in Niagara Falls, said he already is getting calls from potential customers from America who are concerned about the passport law. 'It's hurting our business already,' he said.").

the WHTI. Additionally some hotels in Baja California are reporting cancellations due to American confusion about the passport requirements of WHTI.¹⁴⁷

The Caribbean region could also be substantially affected by the WHTI.¹⁴⁸ A study of the potential economic impact of the WHTI on the Caribbean tourism industry estimated a loss of \$2.6 billion in revenue as well as 188,300 jobs.¹⁴⁹ Some entire Caribbean nations are almost completely dependent on international tourism, much of which comes from visitors from the United States who very likely lack passports.

Furthermore, the final blow to the Transit Without Visa program that was dealt by Section 7209(d) of the IRTPA has also had a large impact. While it was once common for foreign nationals to transit through the United States, one of the Western Hemisphere's largest hubs for connecting international air traffic, on their way to further abroad destinations, this practice has been significantly curtailed.¹⁵⁰ While this has been a loss for U.S. airlines and airports, it has been a boon for Canada.¹⁵¹

2. Non-economic Impacts

While much of the focus of WHTI criticism has been directed towards its financial consequences, large non-economic consequences could also arise as result of implementation.¹⁵² Many communities along the U.S. borders with Canada and Mexico extend across both sides of the border. For these border communities, the WHTI threatens an essential part of their entire way of life. Especially on the U.S. border with Canada, casual border checkpoints enable a lifestyle that incorporates communities in both countries, where close family members often live on opposite sides of the border.¹⁵³ The fluidity of these border crossings would be significantly

¹⁴⁷ See Press Release, Rosarito Beach Convention and Visitors Bureau, New Passport Rules Confusing Some Baja Visitors (Jan. 9, 2007), available at http://findarticles.com/p/articles/mi_hb5554/is_200701/ai_n21890847.

¹⁴⁸ See Richards, *supra* note 74.

¹⁴⁹ See *id.*

¹⁵⁰ For example: While Brazilian travelers going from São Paulo to Tokyo by way of Chicago could previously transit through O'Hare without visas, they must now must apply in advance and pay substantial fees for a visa. As a result many may choose to bypass the United States entirely.

¹⁵¹ See Brent Jang, *Air Canada to Add Non-stop Flights from Toronto to Seoul*, GLOBE AND MAIL (Canada), Jan. 8, 2005, at B2 (noting that Air Canada saw "its traffic soar last year on international routes as many foreigners opted for lower airport congestion and less red tape in Canada compared with the United States.").

¹⁵² See *infra* Part VI.B.—People Access Security Service.

¹⁵³ See P.T. Wright, Dep't of Homeland Security, Remarks at WHTI Public Hearing in Watertown, NY (Oct. 25, 2005) ("A lady in Maine said that many of the smaller crossings, and some of those reflected here in New York State, that what you needed to cross the

reduced under the WHTI.

By closing its borders many fear that the United States is further isolating itself from the rest of the world. Additionally, some people view the WHTI border restrictions as an indication that the perpetrators of 9/11 achieved their goal.¹⁵⁴ With many Americans already highly ignorant of the outside world, the WHTI could possibly only increase the divide.

However, the WHTI could potentially have the reverse effect; it could drive more Americans to obtain passports and then in turn embark upon more frequent and extensive international travel. In fiscal year 2006, the DOS issued a record 12.1 million passports, a 20% increase from 2005. In 2007, the DOS anticipated that it would issue 16 million passports.¹⁵⁵ As a result of the WHTI, millions of Americans who in the past would not have obtained passports will now be doing so. This group, having cleared the passport procurement hurdle, might be more likely to engage in international travel that they otherwise would not have previously considered.¹⁵⁶ The barriers to international travel are lowered once a person has obtained a passport and implementation of the WHTI appears likely to lead to a direct increase in the number of Americans with passports.

VI. ALTERNATIVES

The following section evaluates different identification documents that could serve as potential alternatives to passports under the WHTI.

A. Currently Existing Programs

1. Secure Electronic Network for Travelers Rapid Inspection

The Secure Electronic Network for Travelers Rapid Inspection

border, in many cases, was a nod, a smile and a wave, and to lose that would be something that the community was greatly apprehensive about . . ."). Many in these areas have expressed concerns about what that would mean to their unique communities. *See generally id.* (noting many peoples concerns about the potential effects the WHTI could have on cross border field trips and other similar educational opportunities, attendance at cross border sporting events, and the ability for casual cross border entertainment).

¹⁵⁴ See Canadian Prime Minister Stephen Harper, Remarks at a White House Press Conference (July, 6 2006), *available at* <http://www.whitehouse.gov/news/releases/2006/07/20060706.html> ("[I]f the fight for security ends up meaning that the United States becomes more closed to its friends, then the terrorists have won.").

¹⁵⁵ Press Release, Dep't of State, Passports Required for Air Travel to United States as of January 23, 2007 (Nov. 22, 2006), *available at* <http://www.state.gov/r/pa/prs/ps/2006/176752.htm>.

¹⁵⁶ For example: As a result of the WHTI, an American couple required to obtain passports to fly to Cancun may be more likely to engage in travel to Europe because the time and financial involvement in obtaining passports will have already been committed.

("SENTRI")¹⁵⁷ is a registered traveler program for commuters operating at eight checkpoints along the U.S. border with Mexico.¹⁵⁸ For a five year enrollment fee of \$122.25, SENTRI provides expedited processing through dedicated vehicle lanes at the checkpoints for pre-approved, low-risk travelers.¹⁵⁹ SENTRI applicants voluntarily undergo thorough background checks against criminal, law enforcement, customs, immigration, and terrorist indices, as well as fingerprint checks and a personal interview with a CBP Officer.¹⁶⁰ Upon approval, SENTRI users are issued a Radio Frequency Identification ("RFID") card and RFID decal for their vehicle, which will both be used to identify their record and status upon arrival at the checkpoint.¹⁶¹

2. NEXUS

NEXUS is a registered traveler program that simplifies U.S.-Canada border crossings for pre-screened, low-risk travelers.¹⁶² For a five year enrollment fee of \$50 (C\$80 in Canada), the NEXUS program allows pre-approved travelers to be processed with little delay by United States and Canadian officials. The NEXUS program is currently in operation at high volume land-border crossings, Canadian airports, and marine reporting locations.¹⁶³ Applicants are fingerprinted and photographed and must provide employment and address history for the last five years.¹⁶⁴ Upon approval by both the U.S. and Canadian governments, NEXUS applicants are issued photo-identification/proximity cards to show at the checkpoint.¹⁶⁵ While initially intended to better facilitate land border crossings, NEXUS

¹⁵⁷ U.S. Customs and Border Protection, Secure Electronic Network for Travelers Rapid Inspection, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/sentri/sentri.xml (last visited Jan. 28, 2008).

¹⁵⁸ *Id.* Having first started at the Otay Mesa, CA checkpoint in November 1995, SENTRI has since expanded to El Paso, TX, San Ysidro, CA, Calexico, CA, Nogales, AZ, Hidalgo, TX, Brownsville, TX, and Laredo, TX checkpoints.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* "Participants in the program wait for much shorter periods of time than regular lanes to enter the United States, even at the busiest time of day. Critical information required in the inspection process is provided to the Officer in advance of the passenger's arrival thus reducing the inspection time from an average of 30–40 seconds to an average of 10 seconds." *Id.*

¹⁶² U.S. Customs and Border Protection, NEXUS Program Description, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/nexus_prog/nexus.xml [hereinafter NEXUS] (last visited Jan. 28, 2008).

¹⁶³ *Id.*

¹⁶⁴ Canadian Border Services Agency, Join NEXUS, Enrolment Process, <http://www.cbsa-asfc.gc.ca/prog/nexus/enrol-inscrire-eng.html> (last visited Jan. 28, 2008).

¹⁶⁵ See NEXUS, *supra* note 162.

was only recently been expanded to include the air and marine program.¹⁶⁶

3. Border Crossing Card

Generally, to enter the United States, a citizen of Mexico must have a passport and a Form DSP-150 nonimmigrant visa (also known as a "Laser Visa").¹⁶⁷ Laser Visas are biometric, machine readable, border crossing cards that can be used to enter the United States from within the Western Hemisphere.¹⁶⁸

B. People Access Security Service

As part of Section 7209 of the IRTPA, the DHS and DOS were required to come up with a plan "to expedite the travel of frequent travelers, including those who reside in border communities".¹⁶⁹ The DOS and DHS have proposed the People Access Security Service ("PASS card") as a means of meeting this WHTI objective.¹⁷⁰ The PASS card would be a less expensive and more conveniently sized alternative to the passport.¹⁷¹ However it would only be issued to American citizens for use in two limited situations: crossing U.S. land borders and traveling by sea between the United States, Canada, Mexico, the Caribbean, or Bermuda.¹⁷² Citizens would be allowed to hold both a passport and a PASS card concurrently, with both being issued for periods of ten-year validity.¹⁷³

When the final deadline for the second phase of WHTI implementation was pushed back to June 1, 2009, several changes to the IRTPA were also made.¹⁷⁴ Notably, the implementation timeline became tied to

¹⁶⁶ *Id.*

¹⁶⁷ U.S. Customs and Border Protection, Documentary Requirements for Canadian and Mexican Residents, http://www.cbp.gov/xp/cgov/travel/id_visa/citizens/req_canada_mexico.xml (last visited Jan. 28, 2008).

¹⁶⁸ *Id.*

¹⁶⁹ IRTPA, *supra* note 10, § 7209.

¹⁷⁰ Card Format Passport; Changes to Passport Fee Schedule, 71 Fed. Reg. 60928, 60929 (proposed Oct. 17, 2006) [hereinafter PASS Card Proposal].

¹⁷¹ *Id.*

¹⁷² *Id.* (citing the fact that including air travel into the PASS card's function would "undercut the broad based international effort to strengthen civil aviation security and travel document specifications to address the post 9/11 threat environment.").

¹⁷³ *Id.*

¹⁷⁴ LSA, *supra* note 73, § 546. LSA struck § 7209(b)(1) and replaced it with:

(A) The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of

accomplishment of a set of seven criteria, five of which relate to the PASS card.¹⁷⁵

Two methods of Radio Frequency ("RF") technology are currently being evaluated by the DOS and DSH for making the PASS card machine

individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)). This plan shall be implemented not later than three months after the Secretary of State and the Secretary of Homeland Security make the certifications required in subsection (B), or June 1, 2009, whichever is earlier. The plan shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k)).

(B) The Secretary of Homeland Security and the Secretary of State shall jointly certify to the Committees on Appropriations of the Senate and the House of Representatives that the following criteria have been met prior to implementation of section 7209(b)(1)(A)—

(i) the National Institute of Standards and Technology certifies that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents: Provided, [t]hat the National Institute of Standards and Technology shall also assist the Departments of Homeland Security and State to incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card: Provided further, [t]hat to facilitate efficient cross-border travel, the Departments of Homeland Security and State shall, to the maximum extent possible, develop an architecture that is compatible with information technology systems and infrastructure used by United States Customs and Border Protection;

(ii) the technology to be used by the United States for the passport card, and any subsequent change to that technology, has been shared with the governments of Canada and Mexico;

(iii) an agreement has been reached with the United States Postal Service on the fee to be charged individuals for the passport card, and a detailed justification has been submitted to the Committees on Appropriations of the Senate and the House of Representatives;

(iv) an alternative procedure has been developed for groups of children traveling across an international border under adult supervision with parental consent;

(v) the necessary technological infrastructure to process the passport cards has been installed, and all employees at ports of entry have been properly trained in the use of the new technology;

(vi) the passport card has been made available for the purpose of international travel by United States citizens through land and sea ports of entry between the United States and Canada, Mexico, the Caribbean and Bermuda; and

(vii) a single implementation date for sea and land borders has been established.

¹⁷⁵ *Id.*

readable.¹⁷⁶ RF Vicinity Read Technology, which would allow PASS cards to read from up to twenty feet away is the method currently favored by DHS.¹⁷⁷ The Vicinity Read technology is similar to that of windshield mounted RF transponders currently utilized by electronic toll collection systems.¹⁷⁸ This would allow DHS to utilize currently existing systems for the dedicated lanes for SENTRI and NEXUS, which utilize the same technology.¹⁷⁹

Another option is the more limited RF Proximity Read Technology.¹⁸⁰ This is the technology that is currently being used in the United States' new e-Passport, which allows contact-less close range reading within four inches of the reader, and would thus be interoperable.¹⁸¹ Many feel that the potential privacy concerns that are raised by the Vicinity Read Technology make the Proximity Read Technology the better choice for the PASS card.¹⁸² However, this contact-less technology might not offer much more privacy in the end,¹⁸³ thus negating some of its value.

Beyond security concerns, other issues have been raised with the PASS card program.¹⁸⁴ Many tourism stakeholders along the U.S. border with Canada are concerned with the time and cost that will be involved in obtaining a PASS card.¹⁸⁵ While less expensive than a full passport, the PASS card will still cost \$45 for adults and \$35 for children under the age of sixteen.¹⁸⁶ The fear is that these costs will still be enough to deter some casual tourists from crossing the border.¹⁸⁷

A number of other issues remain. For example, the application time for the PASS card could be no shorter than for full passports, thus preventing spur of the moment travel across the border. Nor would the PASS card be available to Canadians, who would still need a full passport

¹⁷⁶ PASS Card Proposal, *supra* note 170, at 60930.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See Smart Card Alliance challenges DHS stand on deploying RFID For PASS Card, SecureIDNews, June 8, 2006, available at <http://www.secureidnews.com/news/2006/06/08/smart-card-alliance-challenges-dhs-stand-on-deploying-rfid-for-pass-card/> ("RFID chips are not designed for human identity applications . . . [i]n contrast, contactless smart card technology is widely used in secure identification cards and travel documents, supporting the level of security functionality required for protecting individual privacy.").

¹⁸³ See Kim Zetter, *Hackers Clone E-Passports*, WIRED NEWS, Aug. 3, 2006, available at <http://www.wired.com/news/technology/0,71521-0.html>.

¹⁸⁴ See Savage, *supra* note 6.

¹⁸⁵ See *id.*

¹⁸⁶ PASS Card Proposal, *supra* note 170, at 60931.

¹⁸⁷ See Savage, *supra* note 6.

to cross into the United States. Finally, some believe that the DHS and DOS will not be able to ready the PASS cards in time for their implementation, nor will they be able to promote the program adequately in advance.¹⁸⁸

Additional criticism comes from New York Senator Charles E. Schumer, one of largest critics of the PASS card. According to Senator Schumer, the PASS card is "simply a passport in sheep's clothing" and that it "will offer all of the inconvenience and inefficiencies of a standard passport book, while providing none of the security assurances for individuals' private information."¹⁸⁹

C. REAL ID

The REAL ID Act is sweeping legislation aimed at improving and standardizing the security of state issued identification, primarily driver's licenses, through increasingly stringent federal regulation.¹⁹⁰ It requires all licenses to comply with anti-counterfeiting measures and be common machine readable by May 2008.¹⁹¹ The Act was passed with little debate as part of bill providing emergency funding for the war in Iraq and relief for the South Asia tsunami victims.¹⁹²

The REAL ID Act comes after the recommendation of the 9/11 Commission Report that the "federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses."¹⁹³ However, some claim that it is just meant as a check on illegal immigration.¹⁹⁴

Several of the potential effects of the REAL ID Act have surfaced as major concerns. First, many view the REAL ID Act as the implementation of a de facto national identification system.¹⁹⁵ They believe that states are

¹⁸⁸ See Business For Economic Security Trade and Tourism, Official Position on WHTI, <http://www.besttcoalition.com/Position.html> (last visited Jan. 28, 2008).

¹⁸⁹ Press Release, U.S. Senate, Senator Charles E. Schumer, In First Week Of New Congress, Schumer Kick-Starts Renewed Effort To Derail "Destructive" Pass Card Rule (Jan. 5, 2007), available at <http://www.senate.gov/~schumer/SchumerWebsite/pressroom/record.cfm?id=267377>.

¹⁹⁰ See REAL ID Act, *supra* note 45.

¹⁹¹ See *id.*

¹⁹² Angie C. Marek, *Will Real ID Cause Chaos at the DMV?*, U.S. NEWS & WORLD REPORT, Dec. 18, 2006. As a consequence, there was little debate on this potentially controversial measure. See *id.* (noting that "[t]he amount of congressional attention paid to something so game changing," says one Washington lobbyist, "was . . . microscopic.").

¹⁹³ 9/11 COMMISSION REPORT, *supra* note 46, at 390 ("All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud.").

¹⁹⁴ See Editorial, *Real ID, Real Problems*, WASH. POST., Feb. 10, 2005, at A22.

¹⁹⁵ See Erik Larkin, *Coming Soon: National ID Cards?*, PC WORLD, May 31, 2005, available at <http://www.pcworld.com/article/id,121077-page,1/article.html>.

essentially coerced into complying with the REAL ID standards because residents of non-compliant states will no longer be able to use their licenses for federal purposes like boarding planes or picking up social security checks. These penalties make non-compliance unrealistic for states.¹⁹⁶ This has led to a variety of privacy concerns, ranging from the potential for identity theft stemming from the common machine readability of the licenses to the vulnerability of new central identification databases to hackers.¹⁹⁷ Federalism issues have also been implicated by the REAL ID Act with its requirement that an applicant's residency status now be verified before being issued a license, something that was once the exclusive purview of the states.¹⁹⁸

Finally, the costs of the REAL ID Act appear to be significant. The process of upgrading state equipment and hiring additional employees to handle the increased workload is estimated to cost states over \$11 billion over the next five years. Substantial indirect costs may also be incurred in the form of the lost productivity due to the roughly 245 million Americans who will now have to spend over twice as long renewing their licenses.¹⁹⁹

VII. BEST OPTION

The WHTI appears to stand at the precipice of uneasy balance between international tourism and homeland security. However, the U.S. Ambassador to Canada, David H. Wilkins, recently told a Canadian audience: "My country wants what you all want: prosperity and security—and as President Bush has said you can't have trade and tourism without security. They are not mutually exclusive."²⁰⁰ A middle ground between border security and border fluidity would best benefit all. With this in mind, more secure driver's licenses, which will eventually be provided as a result of the REAL ID Act, should be adopted as the alternative form of identification for passports under the WHTI.

Driver's licenses have been the preferred method of identification on the U.S. border with Canada and Mexico for generations. The border

¹⁹⁶ See *id.*

¹⁹⁷ See *id.*

¹⁹⁸ See Editorial, *A license for overkill*, CHI. TRIB., May 11, 2005, at C24 ("The REAL ID Act also would effectively pre-empt the efforts of several states to resolve whether illegal immigrants should be permitted to drive legally. Nine states issue driver's licenses to them, reasoning that, legal or not, they're going to drive and for public safety it is better to have them licensed as capable of driving. That option would be foreclosed by the new federal rules.").

¹⁹⁹ See Marek, *supra* note 192.

²⁰⁰ U.S. Ambassador to Canada David H. Wilkins, Speech to the Tourism Association of Nova Scotia (Dec. 6, 2006), available at http://ottawa.usembassy.gov/content/textonly.asp?section=embconsul&document=wilkins_120406.

tourism of these three countries has developed around this system being in place. Implementation of the WHTI featuring usage of a new secure REAL ID driver's license would achieve the security regulation and tourism facilitation objectives of all parties. Additionally, the second phase of the WHTI can be timed with the proper implementation of the REAL ID Act, and thus further avoid Senator Patrick Leahy's envisioned "train wreck on the horizon."²⁰¹

The development of a PASS card program would simply be an investment in redundancy, a wholly separate, but parallel, and thus unnecessary program. Driver's licenses already exist and are being used at the border. Therefore, usage of the REAL ID Act driver's licenses for the WHTI best preserves the way of life for border communities that otherwise stand to be torn apart. The PASS card could never achieve the same seamless integration into the current livelihoods of the millions of Americans, Canadians, and Mexicans living along the U.S. borders. Furthermore, the REAL ID Act implementation together with the WHTI best protects the freedom of movement of people and the economic integration that will continue to be vital for all North American nations while also enhancing security at the international frontiers.

VIII. CONCLUSION

International tourism and homeland security are two areas of the utmost importance to the United States and its citizens. The implementation of the WHTI, as mandated by the IRTPA, will regulate both international tourism and homeland security in ways never before attempted in the United States. It will require a passport, or an approved alternative identification, for all people entering the United States from any international destination, irrespective of citizenship or method of travel. With the WHTI, the United States appears to be the outlier on the global trend towards economic integration on the freedom of movement of people. Many think the United States is moving in the wrong direction with this somewhat isolationist initiative.

While the United States is currently embarking on the implementation of the WHTI, many other passport free travel zones are flourishing internationally. Most prominently, Europe's Schengen Area, having subsumed the Nordic Passport Union, is now in the process of further expanding to include recently added members of the European Union. The Common Travel Area between the UK and Ireland has continued informally since the two countries split in the 1920's. Furthermore, the nations of

²⁰¹ Press Release, U.S. Senate, Senator Patrick Leahy, Senate Approves Stevens-Leahy Amendment To Delay Stiff New Border-Crossing Requirements (May. 17, 2006), *available at* <http://leahy.senate.gov/press/200605/051706.html>.

South America are currently in process of moving towards a passport free travel zone for their citizens, as are a handful of Caribbean and West African nations.

The WHTI requires the creation of a registered traveler program for those who cross the border frequently. To achieve this, an alternative form of identification is being sought for use in place of a passport in some international travel situations. Two registered traveler programs currently exist; SENTRI on the U.S. border with Mexico and NEXUS on the U.S. border with Canada. Furthermore a BCC exists for Mexican citizens traveling into the United States. The DOS and DHS have proposed a PASS card that would be half the size and cost of a current full passport. However the PASS card still requires weeks of lead time for application processing and carries a significant cost. On the other hand, the recently passed REAL ID Act calls for the harmonization of state issued identification standards and the enhancement of security features.

The adoption of the more secure driver's licenses which will result from the REAL ID Act as the alternative form of identification for passports under the WHTI provides the best option for everyone. It is the least intrusive for border communities, it best promotes the freedom of movement of people, which is vital for further economic integration, and it also increases the security of United States' international frontiers.