

**TESTIMONY OF LINDSAY MCLAUGHLIN**

**LEGISLATIVE DIRECTOR, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION**

**BEFORE THE**

**HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE**

**JUNE 28, 2012**

Thank you Chairman Mica and members of the Committee for inviting the International Longshore and Warehouse Union (ILWU) to testify today on problems associated with the Transportation Worker Identification Card (TWIC) program. I am here today on behalf of ILWU International President Robert McEllrath and the 65,000 members our union. The ILWU represents longshore workers, warehouse workers, and maritime workers in the states of Washington, Oregon, California, Hawaii, and Alaska who are required to undergo a threat assessment and hold a TWIC card to gain access to their jobsite.

In your letter requesting our testimony, you asked our views on whether TWIC significantly enhances the security of U.S. seaports, or whether the costs the TWIC program imposes on U.S. port workers could be better spent on other port security initiatives. The members of the ILWU believe that TWIC offers very little to no benefits and feel it would be wiser to spend this money on other port security initiatives. In fact, representatives of longshore locals met two weeks ago and unanimously passed a resolution offered by ILWU Local 52 (Seattle, Washington) supporting the repeal of TWIC. The reasons for our opposition to the program are outlined below:

## **TWIC does nothing significant to increase security**

The Maritime Transportation Security Act (MTSA) of 2002 mandates that all workers who require unescorted access to “secure” areas of the ports obtain a TWIC. Workers are subjected to a criminal background check for felony convictions that in most cases do not have any relevance to terrorism using the FBI’s database, known to be error-ridden and incomplete verification of the worker’s immigration status, and other security checks.

At its core, conducting background checks of port workers in order to combat terrorism is misguided and based on erroneous notions about how modern port facilities operate. It is difficult to comprehend what particular access longshore workers have that warrants the TWIC program’s extreme degree of scrutiny and public expense. In a modern container facility, the longshore worker has no access to the cargo because it is sealed or locked in a container. Nor does a longshore worker know what any particular container holds.

Documentation showing the container’s contents is not available to most of the workers. A container could hold potentially dangerous cargo or it could hold tennis shoes. Thus, longshore workers have no meaningful way of determining which containers could be used to commit acts of terrorism and which ones could not. Only workers with access to information about containers’ contents should ever be required to undergo background checks. The vast majority of longshore workers do not possess this information. They pose no greater ability to use a container to commit an act of terrorism than someone driving near a truck carrying a container on a public highway. The credentialing system is a diversion from a real port security plan to require closer inspection of the containers themselves moving in and out of our ports.

We are not convinced that the TWIC readers will properly function in a maritime environment and increase security. The GAO report on the TWIC pilot report released in February 2012 concluded that “readers capable of passing all environmental tests would represent a serious business challenge to manufacture in terms of cost per unit.” Further, a high number of cards malfunctioned electronically. Durability of the card stock is a serious issue. Sun, wind, grime, dust on cards caused fading, stained and peeling cards that have difficulty being read by TWIC readers. Participants in the pilot program said they would reduce the number of guards when TWIC was implemented. However, these guards are the people who know the names and faces of individuals and would be able to recognize when an individual has no business on the docks.

In 2007, the Department of Homeland Security (DHS) estimated that the combined cost to the federal government and the private sector may reach \$3.2 billion over a ten-year period – not taking into account the full cost of implementing and operating readers. A serious cost/benefit analysis should be conducted that takes into account that most port related workers do not possess the knowledge or the opportunity to conduct subversive activities.

### **TWIC seriously undermines the civil liberties of port workers**

If a port worker has a criminal record, that only shows he or she may have served time in jail or prison or perhaps performed community service. None of these circumstances indicates that he or she is a terrorist threat. Denying work opportunity for that individual constitutes double jeopardy. In addition, it is bad public policy. Denying people good, paying jobs because of poor choices they made in the past is only likely to encourage people to reoffend and to destabilize families. Perhaps more disturbing, thousands of workers who do not have a felony conviction at all are denied work opportunities as a result of the TWIC program

until they prove their lack of a conviction. Unfortunately, the ILWU has numerous members who faced just these circumstances because of TWIC.

In 2009 when Washington state port workers were required to get a security clearance, ILWU member William Ericson was unable to obtain it; a background check wrongly showed that there was a pending case of forgery against him. Ericson had worked at the Port of Seattle for 12 years. Mr. Ericson was out of work for 6 months, had exhausted his savings, and came very close to having his house foreclosed upon even though he had done nothing wrong. Another longshoreman from Seattle was unlucky enough to have been born on a military base overseas and did not have his birth certificate to prove that he was an American citizen. He also exhausted his life savings while waiting for his documentation from the military to meet the immigration requirements in the law. He too had done nothing wrong. The income losses and emotional suffering that TWIC caused these workers and others like them and their families cannot be remedied.

Since implementation of the TWIC program, close to 50,000 workers have filed for appeals after an initial determination by TSA that they were ineligible to receive a TWIC. An appeal is different from a waiver in that an individual who receives this determination was probably never convicted of a felony and must prove that he or she was not convicted by obtaining court and police records and sending them to the TSA for their review. TSA issues interim denials in all cases when the record on file with the FBI is an open arrest for a potentially disqualifying offense, even if the arrest has been dismissed or otherwise disposed of by local enforcement. The processing of TWIC appeals and waivers at one time took over 6 months in many cases while the worker was struggling to survive without a livelihood and was unable to obtain unemployment insurance. While we strongly support the existence of the

appeal process, the fact that TSA granted approximately 99% of all such appeals shows that TSA wrongly denied TWICs to almost 50,000 American workers, forcing them to prove their innocence on pain of losing their jobs.

Our members who filed their appeals and waited months, missing mortgage payments while TSA decided their fate, are the lucky ones. About 25 percent of workers who received an initial denial of a TWIC card never contested the denial even though most waivers and appeals are granted. These are generally workers who have no union or organization to educate them on the process and probably give up after receiving the letter. These workers have given up their livelihoods due to a nonexistent outreach to properly educate them on the process of filing TWIC waivers or appeals.

According to a report published by the National Employment Law Project, there were serious racial disparities in the processing of TWIC applications and the waiver and appeal process. On average white applicants were approved for their TWIC within six months. That compares with almost seven months for African Americans and over eight months for Latino workers. NELP speculated that these delays may have been associated with the lack of targeted outreach and education to these communities and the absence of translation and interpreter services.

The availability of a waiver for workers who do have disqualifying offenses is essential. The statutory option to seek a waiver and appeal a final determination by the TSA before an independent law judge has saved jobs. These due process protections were put into law on a non-partisan basis, and we believe strongly that these protections should be afforded to other workers at the local, state, or federal level.

### **There are alternatives that provide significant port security benefits**

- We strongly encourage Congress to stop throwing money at ineffective programs. A wiser approach to port security would be to invest these federal dollars into Customs, the Coast Guard and other federal agencies to implement container security and intelligence programs rather than spending billions more on TWIC. Furthermore, more money for these agencies can be found from wasteful port security grants. How many more cameras and fences are needed? Instead of mounting cameras for the purpose of monitoring the perimeter for illegal entry, employers are using these taxpayer funded cameras to monitor workers' activities. The Port of Stockton used port security grant to place a fence in a narrower space than necessary which adversely impacted the conditions at work. Ironically, this plan was put in place so that other workers who process fertilizer (which could be used as an explosive) would not have to apply for a TWIC. Despite the objections of Congressman Jerry McNerney, the Coast Guard took no action to reverse this plan. If these ports need more security cameras and fences, then it's time for them to take the responsibility and pay for it.
- There must be alternative programs and flexibility built into the TWIC program that would allow a more localized approach. There is no reason that the ILWU and our employer, the Pacific Maritime Association (PMA), could not negotiate a more efficient, cost effective way to ensure that unauthorized persons are not allowed access to the docks. The TWIC program is too large and too cumbersome to guarantee that workers do not fall through the cracks. Allowing flexible, localized

programs with the same due process protections under the TWIC program is fairer to workers and accomplishes the same goal to control access to our nation's ports.

Finally, I want to acknowledge members of Congress who voted in favor of the Smart Port Security Act. This legislation would spare workers the financial and procedural burden of renewing their application until DHS puts the infrastructure in place to make the program fully functional. This legislation was a product of non partisan work by Homeland Security Chairman Peter King, Ranking member Bennie Thompson, Subcommittee Chair Candice Miller and Ranking Subcommittee Member, Henry Cuellar.

Thank you for allowing me to testify today before the Committee.

LM/lm

cwa39521

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
*Truth in Testimony Disclosure*

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:

Lindsay McLaughlin

(2) Other than yourself, name of entity you are representing:

International Longshore and Warehouse Union

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

NONE

Signature

Date

June 27, 2012

**Lindsay McLaughlin**  
**Curriculum Vitae**

Lindsay McLaughlin is the Legislative Director for the International Longshore and Warehouse Union (ILWU). In his role as Legislative Director, Mr. McLaughlin has advocated for a wide variety of issues to benefit the members of his union. He has lobbied for due process protections for longshore workers undergoing background checks and advocated that longshore workers receive adequate port security training. He has educated members of his union on port security law and helped individual workers with TWIC waivers and appeals. In addition to representing longshore and warehouse workers on the mainland workers, Mr. McLaughlin represents tourism and agriculture workers in the state of Hawaii, where the ILWU is the largest private sector union in that state as well as tug and barge workers and ferry workers on the mainland and Alaska.

He manages the union's political activities as well as legislative. He is also an award winning columnist for the union's newspaper, The Dispatcher.