



U.S. Senate Committee on Appropriations

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**U.S. Senate Appropriations Transportation,
Housing and Urban Development, and Related Agencies Subcommittee
Testimony of James Hoffa
General President, International Brotherhood of Teamsters**

WASHINGTON, D.C. . The U.S. Senate Appropriations Transportation, Housing and Urban Development, and Related Agencies Subcommittee on Wednesday held a hearing to examine the proposed Fiscal 2008 budget for the department. As part of that hearing, the subcommittee heard testimony from James Hoffa, General President, International Brotherhood of Teamsters. Mr. Hoffa's prepared statement is below.

My name is Jim Hoffa, General President of the International Brotherhood of Teamsters. I am here representing 1.4 million Teamster members and their families who travel our nation's highways every day. Over 600,000 of our members earn their livelihood driving on our roads and city streets delivering goods and services to the American public. They deserve a workplace as safe as any factory or construction worker, but I am fearful that this proposed pilot program to permit Mexican trucks to travel beyond the currently permitted commercial zones will put our members, their families and the traveling public in danger. This action is reminiscent of the Dubai Port debacle, where the Bush Administration is willing to risk our national security by giving unfettered access to America's transportation infrastructure to foreign companies and their government sponsors and ignoring the safety and security of the American people.

We have many questions about how this plan will be implemented to ensure the safety of our highways and protect our homeland security, and I will outline our concerns to you in my testimony that follows. However, before I do that, I would be remiss, Madam Chairwoman and Senator Shelby, if I did not take a minute to thank you both publicly for your work in passing the Murray-Shelby safety provisions back in 2001 that put the spotlight on the lack of safety measures on both sides of the border that existed at the time. I realize that some progress has been made in the requirements outlined in your legislation, but I am alarmed that the Department of Transportation (DOT) is moving forward with a pilot program when so many questions remained unanswered.

My first concern is the mystery and contradiction surrounding this pilot program. Secretary Peters was asked at her confirmation hearing about it and said she had asked the question and there are no immediate plans to do so. The Secretary went on to say and if confirmed, would look forward to getting to the bottom of the so-called

rumors in addressing the issue.+ This contradicts DOT's own fact sheet (Cross Border Truck Safety Inspection Program) on its website which states that following the U.S. Supreme Court's decision in 2004 to reverse the U.S. Ninth Circuit Court of Appeals ruling that barred implementation of the NAFTA treaty's trucking provision, and I quote, "U.S. DOT began working immediately with its Mexican counterparts to develop a NAFTA trucking pilot program.+ So essentially, this pilot program has been in the works since 2004, but apparently Secretary Peters was not briefed about it before her confirmation hearing.

I also believe there is reason to question whether this pilot program conforms to all of the requirements of Section 350 of the 2002 Transportation Appropriations Act (PL 107-87), whether there is statutory authority to actually initiate a pilot program for Mexican trucks, and whether this is indeed a true pilot program. The statutory language of Section 350 is very clear there are 12 requirements that DOT must comply with, and 8 additional obligations that DOT's Inspector General must verify. While DOT may argue that it has complied with its 12 requirements, the recent Briefing to Congressional Staff on Audit Work Regarding Implementation of the North American Free Trade Agreement's NAFTA Cross Border Trucking Provisions (March 1, 2007) by the IG cites two issues, requirements for monitoring Mexican drivers and conducting bus inspections, where additional improvements are needed. While buses are not part of the pilot program, the fact that the statute requires the IG to verify these requirements before "any vehicle owned or leased by a Mexican motor carrier may be permitted to operate beyond United States municipalities and commercial zones+begs the question as to whether the DOT has acted prematurely and without proper authority to conduct this pilot program.

With regard to the pilot program itself, my guess is that the DOT will select the cream of the crop+of Mexican carriers, whether they be large or small, to slant the data on violations, crashes and other compliance issues and proclaim the program successful, wherein, it will announce a full blown opening of the border at the end of the one-year period. What criteria will be used to disqualify a carrier from the program? How will data be gathered on carriers and drivers participating in the program? This type of sham program does not serve the interests of highway safety and should be outright rejected from the start. Furthermore, to conform to Section 4007 of TEA-21 true pilot programs are required to be noticed in the Federal Register for review and comment by stakeholders and the public. What is DOT's justification for not following this process? It's certainly not coincidental that the announcement of this program was made late on a Friday afternoon, during a Congressional recess.

While DOT has laid out an impressive public relations campaign to assure the American public that Mexican trucks and drivers will meet all U.S. safety requirements, there will be no meeting+of those requirements without adequate enforcement and oversight, and this is where I am convinced that neither the U.S. nor the Mexican governments have the resources to carry out an aggressive oversight and enforcement program. Let me tell this Subcommittee what the Teamsters Union has learned about the current state of the Mexican trucking industry. If you have not had the opportunity to read an

investigative report, Holding the Line that appeared in our August 2006 Teamster magazine I suggest that you do so. Madam Chairwoman, I would request that this article be made part of the hearing record. This is a story by investigative reporter, Charles Bowden, who in 1999 wrote a similar story after spending several weeks with Mexican drivers. Back then he told of exploited, exhausted Mexican truck drivers, pushed to the limit by their employers. And guess what, seven years later, he found nothing had changed. He found the same conditions within the industry in 2006 that existed in 1999. Let me read you a few excerpts from truckers who were interviewed by Mr. Bowden:

"The longest distance I drive," said a driver about 30 in a black T-shirt, "is from Ensenada to Cancun, 4500 kilometers. Five days and six nights alone. Tomatoes. The company won't pay for a second driver. Ah, but how can a man stay awake and drive for five straight days? The table erupts in laughter. The man facing the empty liter of beer smiles and says "Professional secret." The younger man in the black t-shirt offers one phrase, "Magic dust." There are more smiles and mention of "special chemicals." They are all family men who run the highways at least 25 days a month and they are adamant about two things . that nobody can run these long hauls without cocaine and crystal meth, and now and then some marijuana to level out the rush.

"The man with the empty beer explains. "We make almost nothing . less than \$300 a week. I work 48 hours non-stop. I drive 2,400 kilometers per trip and get no time for turnarounds."

And every man at the table agrees on their biggest problem . the government. And by that they mean the police, especially the federal police, who they say rob them at will. One said, "If you drive to Mexico City, you are robbed, for sure. Police are the first to rob you. If you report a robbery, the police try to make you the guilty person."

These drivers are victims . victims of a system that we, the U.S., will depend on to enforce drug and alcohol testing and hours-of-service regulations of drivers in this pilot program. What kind of confidence level does this give you?

I thought it important that the Subcommittee hear these stories because I want to talk further about hours-of-service enforcement and drug and alcohol testing. Again, without sufficient enforcement on the Mexican side of the border that establishes a strong no-tolerance policy, Mexican truck drivers will arrive at the U.S. border without the benefit of government and industry practices that deter this kind of behavior.

Let's peel back the layers a bit . first on hours-of-service. As I understand it, there has not been any real enforcement of any hours-of-service (HOS) regulations in Mexico, beyond the recent requirement of drivers having to carry log books, and those participating in the pilot program, having to produce a record-of-duty-status (RODS) at

the border for the last eight days of work. Apparently there is a general prohibition against working more than eight hours a day, which I am told is ignored in most cases because it is not enforced. In fact, according to the Federal Motor Carrier Safety Administration, more than 15 percent of Mexican drivers in the commercial zone were placed out of service for not having a paper logbook to record their hours worked. To think then that all of a sudden, these Mexican drivers will change their habits overnight and adhere to U.S. HOS requirements when they cross the border is a leap of faith that does not give me great comfort for the safety of those motorists that will share the road with these potentially fatigued drivers. I have no confidence that the 8-day logbook that the Mexican driver produces at the border crossing will be indicative of his driving record for those past eight days, primarily because there will be no rigorous enforcement of HOS on the Mexican side of the border. You can demand all the paper records you want, but without enforcement those records are suspect.

The requirement of a drug and alcohol-testing program for Mexican drivers is of course necessary, but the need for carriers to simply provide proof that the drug and alcohol testing programs are in compliance with U.S. requirements is not enough. Aside from paper+programs, I fail to see an effective way for the FMCSA to ensure compliance. To comply with U.S. standards, there needs to be scientifically valid random testing; a chain of custody; trained collectors and requirements for collection facilities; requirements for collection kits; and use of the same technology for testing, including two-part testing. When a U.S. driver tests positive, the driver has to attend and complete an education program and/or rehabilitation, and have a post treatment evaluation by a substance abuse professional. The driver must then have a return-to-duty test before returning to work. He can be subject to unannounced follow-up tests for one year to five years. Can we be assured that this is the type of program that the Mexican DOT will implement?

What happens to a Mexican driver who may test positive in a post-accident testing scenario in the U.S? I know he is taken out of service, but if he's in Illinois, for example, how does he get back to Mexico? What happens to the load? What happens in a situation where a Mexican driver is in the U.S. for an extended period of time, but is selected for random drug testing? How will a driver be notified in the U.S.? Will the carrier simply wait until the driver returns to his/her domicile (wherever that may be)? What happens if the driver returns after the testing cycle has expired? It may create an opportunity for these drivers to fall through the cracks and virtually never be tested. What happens if a carrier is found to be liable in a crash? Do U.S. legal remedies apply? These are questions that must be answered before any Mexican trucks are permitted to travel beyond the commercial zones.

Another area of concern is driver compliance with medical qualifications. In FMCSA's recent Notice of Proposed Rulemaking for combining the medical qualifications with the Commercial Drivers License (CDL) process, the FMCSA indicated that there is no agreement between the U.S. and Mexico concerning the medical qualifications for drivers, although such an agreement exists between the U.S. and Canada. While the U.S. and Mexico signed a Memorandum of Understanding that recognized the Licencia

Federal de Conductor to be equivalent to the U.S. CDL, there is little known about the physical and medical criteria used to qualify truck drivers in Mexico. We need to know how their system of evaluating drivers stacks up to ours.

The DOT Inspector General, in its recent Congressional briefing on the pilot program, indicated that FMCSA should correct inconsistencies or reporting problems in the border states. FMCSA reported that it had taken action to see that Texas eliminated a backlog of Mexican commercial driver license tickets that had not been entered into the database. FMCSA stated the other border states needed to take corrective action as well, and the FMCSA was encouraged to proactively monitor future reporting by the states. This leads to another issue that needs examination. Under the Motor Carrier Safety Improvement Act of 1999, U.S. drivers are subject to CDL disqualification for certain serious driving violations occurring in their personal vehicle. At the time the implementing regulations took effect, the International Brotherhood of Teamsters argued that in fairness, this same regulatory scheme should apply to Mexican drivers operating in the United States. The FMCSA dismissed our suggestion, but this situation creates a severe gap in equal treatment of drivers and could allow Mexican drivers, with what would be disqualifying offenses that sideline U.S. drivers, to operate in the U.S.

This issue of accuracy and population of the Mexican driver database is a great concern, and perhaps can be best illustrated in light of the decision that the Transportation Security Administration took with regard to the Mexican criminal data base in issuing regulations to administer the Free and Secure Trade (FAST) commercial driver card. The Subcommittee should know that when asked by Congressional staff how it would perform criminal background checks on Mexican drivers who haul hazardous materials into the U.S., the TSA responded that it would check Mexican drivers against the U.S. criminal database. When asked why, the agency responded that the Mexican criminal database was incomplete and not easily accessible. How confident can we be in safety data of Mexican carriers and drivers, if the Mexican government's criminal database is suspect? I would venture to guess that hazardous materials transport was not included in this pilot program because of the questions it would raise with regard to the Mexican driver background check. How can checking a foreign driver against another country's criminal database provide a similar background check, as the law requires?

While the transport of hazardous materials is not to be a part of this program, the Teamsters Union still has enforcement concerns in this area. It has been well documented that hazmat loads from Mexico crossing into the commercial zones have not been properly placarded (not reflective of the hazmat contained in the load) or placarded at all. What assurances do we have that trailers carrying hazmat will be stopped inside the commercial zones?

Other homeland security issues need to be examined as well. Will Mexican drivers be subject to threat assessments against the terrorist watch lists? The DOT's website has a list entitled U.S. Safety and Security Requirements Await Trucks From Mexico. It states, "all trucks and drivers entering the U.S. are screened by U.S. Customs and

Border Protection Officers, which could include radiation portal monitoring and x-ray inspections of high risk cargo. What does ~~could,~~ mean in terms of the frequency rate of monitoring for radiation and x-ray inspections? What does it mean that drivers must meet immigration entry requirements? Since 9/11, we have strengthened our borders to protect our country against terrorism threats. While I do not consider Mexican drivers a terrorism threat, I am fearful that their trucks could be used to carry weapons of mass destruction or be used by terrorists as a means to sneak into this country and do us harm.

I am very concerned that local and state law enforcement will not have sufficient information or the resources to monitor and properly enforce this pilot program. The decal/registration number system that is proposed will apparently assign a different letter to those trucks permitted to operate in the commercial zones and those enrolled in the pilot program that can travel anywhere in the United States. We are apparently relying heavily on state and local law enforcement to keep watch over a vast expanse of territory and prevent those trucks authorized to operate only in the commercial zones from entering other parts of this country.

Finally, there will be a strong temptation by unscrupulous employers to capitalize on lower wage Mexican drivers and entice them into carrying domestic cargo in the United States. We know that this occurs now, as Mexican trucks have been caught over the years operating illegally in more than 25 states. Who will enforce our cabotage laws to prevent point-to-point movement of cargo within the United States? What happens if this occurs and a Mexican carrier is caught? Will the truck and cargo be seized? What happens to the driver? And is this a basis for disqualification from the pilot program?

Madam Chairwoman and Members of the Subcommittee, I have asked a lot of questions in my testimony and raised a number of issues that need to be addressed before any Mexican truck participates in any program that allows them to travel beyond the commercial zones. I would ask that you not permit this program to move forward. There are too many safety and homeland security issues that must be resolved before we can be assured that Mexican trucks and their drivers meet all U.S. safety requirements and that all of our national security concerns are addressed as well. I thank you for the opportunity to testify here today on this important issue, and I look forward to answering any questions you may have.

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