A Scorecard on the Post-9/11 Port Worker Background Checks:

Model Worker Protections Provide a Lifeline for People of Color, While Major TSA Delays Leave Thousands Jobless During the Recession

National Employment Law Project

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NELP

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NELP is a non-profit research and advocacy organization that partners with local communities to secure the promise of economic opportunity for today's workers. This paper is the product of NELP's Second Chance Labor Project, which promotes the employment rights of people with criminal records and fairness in criminal background checks.

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Introduction

Shortly after the September 11th terrorist attacks, Congress imposed significant new background checks on the 1.5 million workers employed in the nation's ports. After four years of implementation delays, the Transportation Security Administration (TSA) process of screening for the Transportation Worker Identification Credential (TWIC) began in earnest late in 2007.

By April 2009, all workers were required by TSA to have their TWIC cards to enter the ports and continue working. Despite this hard and fast deadline, TSA has failed to issue TWIC cards for large numbers of workers who filed timely applications. Indeed, thousands of workers, largely African American and Latino men, have waited an average of seven months — unable to work and support their families in the midst of a devastating recession — while their petitions for review languish at TSA.

While these and other TSA implementation issues have plagued the TWIC program, there have also been some remarkable successes that speak to the critical importance of the worker protections that were built into the legislation. Most importantly, the law established a special process allowing workers to keep their jobs when they can demonstrate to TSA that they have been rehabilitated and do not pose a terrorism security risk, even if they have a disqualifying felony offense. Similarly, the law allows workers to correct the inaccurate information that is routinely generated by the FBI's criminal background check system and as part of immigration status determinations. Almost 100 percent of these TWIC challenges were decided in favor of the workers by TSA. Therefore, these model worker protections provide a lifeline to continued employment, especially for workers of color.

Many port workers have generations of experience in the industry, and all are committed to the safety and security of the ports on which they rely for their livelihood. The TWIC program was adopted out of a renewed concern about terrorism risks after 9/11, not because the nation's port workers presented any special cause for concern. Not unlike the once-thriving auto industry that helped produce a strong U.S. middle class, port work is often the best ticket to a good job for many communities, as well as the engine driving the local economy. Longshoremen, refinery workers, maritime workers, and port truck drivers, including many whose stories are featured in this report, work hard to support their families and often earn a living wage, especially where their jobs have been unionized. Thus, the TWIC is critical to the livelihood of large numbers of hard-working families who will be left out in the cold in this economy without it.

This report documents both the failings and accomplishments of the TWIC program's critical worker protections. The findings are based primarily on data collected by the National Employment Law Project (NELP) on hundreds of TWIC applicants NELP represented through the TWIC review process. No such data has been produced by TSA. Thus, this is the first evaluation of the TWIC program's procedures that were created to protect the rights of workers and ensure the integrity of the TWIC security threat assessment.

The Basics of the TSA Port Worker Background Checks

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.[1] Applicants for TWIC cards are subject to a criminal background check using the FBI's database, verification of their immigration status, and other security checks, all conducted by TSA.

As required by the MTSA and TSA's regulations, most felony convictions dating back less than seven years from the date of conviction or five years from release from incarceration, including standard drug dealing, sex offenses and some assaults, are disqualifying unless the individual successfully petitions TSA for a "waiver" proving that he or she is not a terrorism security risk. In addition to the waiver procedure, workers are entitled to "appeal" TSA decisions when the agency's negative determination is based on inaccurate information.

From application to final approval, these are the major steps involved in the TWIC process:

- **Step 1 (Application):** To begin the TWIC process, workers enroll at a local processing facility operated by Lockheed Martin, TSA's contractor. Although not required by law, TSA anticipated that the agency would produce a determination on the application within 30 days.
- **Step 2 (Initial Denial, Waiver & Appeal):** Workers who are found by TSA to have a potentially disqualifying record or an immigration status issue receive an "Initial Determination of Threat Assessment" (IDTA). If the record is accurate, within 60 days workers can seek a waiver of the disqualifying offense by producing evidence of rehabilitation. If TSA's records are inaccurate or incomplete, within 60 days workers can appeal the case to clear up the record. By regulation, TSA has 60 days to respond to the TWIC waiver and appeal petitions.
- **Step 3 (Final Approval or Denial):** When the workers are ultimately approved, they receive a notice that the TWIC card is ready to be picked up and activated. If the worker's waiver or appeal request is denied, then he or she can appeal that determination further. If the individual did not challenge the initial denial (IDTA) within 60 days, then TSA automatically denies the TWIC.

Despite the law's requirement that only felony convictions are disqualifying, 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 the local law enforcement authorities or the courts.[2] That is a serious concern given that 50 percent of the FBI's records are incomplete and out of date.[3] The problem is that the state law enforcement authorities are very efficient at providing the

William Ericson,
Seattle
Longshoreman

Mr. Ericson, a longshoreman at the Seattle port, applied for his TWIC in January 2009. He did not believe he would have any trouble getting approved for his TWIC as he had no convictions. He received an initial denial letter in April 2009 requesting information on an open disposition for the potentially disqualifying offense of forgery, dating back to 2004. Mr. Ericson was arrested for this offense but charges were never filed, and he was never prosecuted. Mr. Ericson provided TSA with documentation showing that charges were never filed nor had he been convicted, but he was still waiting to hear back from TSA as of July 2009. Mr. Ericson has been out of work for six months now because of this open disposition from 2004, has exhausted all his savings, and he is expected to foreclose on his home within the next two months.

FBI with the fingerprints necessary to generate an arrest record, but they routinely fail to update those records to reflect the outcome of the case. Thus, by issuing an IDTA based solely on an arrest without first verifying the information, TSA is placing the entire burden on the worker to navigate the system and produce the paperwork necessary to verify that the case was, in fact, dismissed or otherwise did not rise to the level of a disqualifying conviction.

TWIC enrollment began in October 2007, and rolled out on a staggered basis throughout the nation's ports, culminating in a final compliance deadline of April 14, 2009. As of April 14th, every worker is required to have a TWIC to enter the port and continue working. While at least 1.25 million workers have thus far enrolled in the program,[4] thousands of longshore workers, port truck drivers, and rail workers were still caught up in the screening process as of June 2009, waiting for their TWIC cards to be approved.

10,000 workers had lost their jobs while awaiting an initial decision by TSA on their TWIC cards after the April 14th compliance deadline passed.[5] A month after the TWIC deadline, TSA indicated that 8,800 workers had not yet been approved for their TWIC, and that number was reportedly reduced to 3,300 by June 2009. These figures do not account for the roughly 7,000 additional workers whose appeal and waiver petitions are still awaiting a decision by TSA.[6]

William Truxton, Philadelphia
Steamship Clerk

Mr. Truxton worked as a steamship clerk on the Philadelphia waterfront for twelve years. He applied for his TWIC in December 2008. He received an initial denial four months later, in April 2009. Upon receiving this notice from TSA, Mr. Truxton immediately submitted an appeal showing that all charges were dropped. He then continued to wait for TSA to process his appeal well into May, when he was finally approved after obtaining legal assistance. Mr. Truxton had been out of work since December 2008, when the Philadelphia port began requiring a TWIC for entry. During the five-month period he waited for TSA to process his application, Mr. Truxton and his family, including four children and a baby granddaughter, lost everything. They were forced to sell their furniture, and their car was repossessed. They survived on the few dollars a day that Mr. Truxton's mother earned from babysitting that she shared with him and his family so that they could buy food at the dollar store. They eventually received an eviction notice. Mr. Truxton was incredulous that the FBI records had not been updated to show that the charges against him had all been dismissed. He said, "I went from having everything to having nothing, it's devastating. I worked hard all my life to get to where I was, where I had a house, a car, my kids, and now everything is being taken from me because of government backlogs and missing information."

The TWIC Waiver and Appeal Procedures Are the Lifeline to the Jobs of Over 30,000 Port Workers, Especially African Americans and Latinos

In conspicuous contrast to most other federal and state criminal record screening laws, the MTSA waiver and appeal protections allow port workers to make their case to TSA that their criminal record should not disqualify them from employment and, if appropriate, that the records themselves are inaccurate.

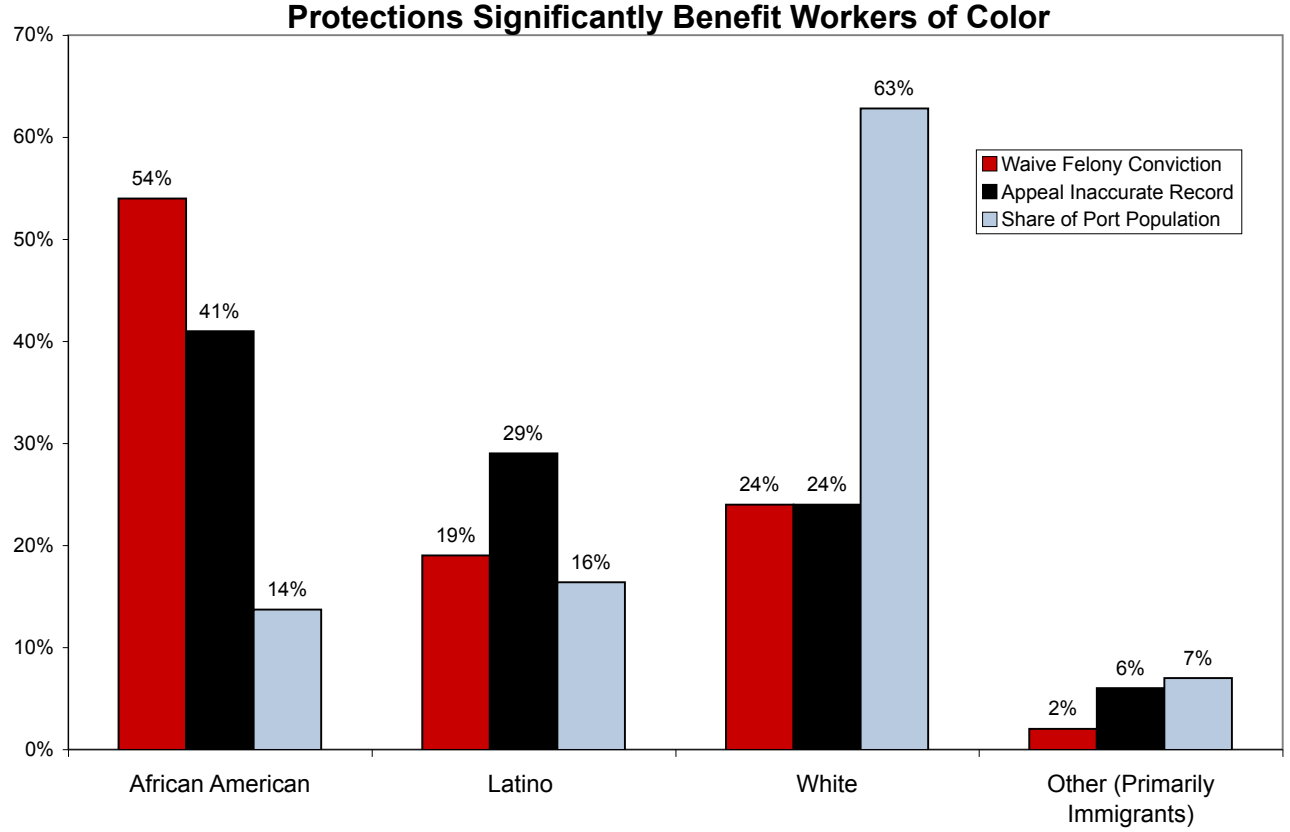
The TWIC program put these basic worker protections to the test over these last two years, and they have proven their weight in gold. Indeed, according to TSA, nearly 100 percent of waiver requests have been granted by TSA (totaling 2,000 thus far with 2,000 still pending).[7] Thus, those workers with a disqualifying felony conviction were able to prove to TSA's satisfaction that they were not, in fact, a terrorism security risk.

Absent these protections, workers of color would be disproportionately denied the TWIC, and thus their livelihood as a port worker in communities where good-paying port jobs are often the best ticket to the middle-class. According to data collected by NELP on almost 300 workers who filed criminal record challenges with TSA, 54 percent of all workers who applied for a waiver were African American (Table 1). In contrast, African-Americans make up just 14 percent of all port workers nationwide.[8] Thus, they are four times more likely to benefit from the TWIC waiver procedure compared to their share of the port population.

The high rates of initial denials in the African American community are mostly a function of the unprecedented surge of drug arrests and convictions in communities of color since the "War on Drugs." Indeed, drug "trafficking" is the single largest category of crime of the more than one million felony convictions handed down each year, representing over 20 percent of all felony cases.[9] These drug offenses also represented the majority of the 300 appeals and waivers NELP filed on behalf of TWIC applicants. Thus, by broadly disqualifying anyone with a record of a felony drug sale, even low-level offenders, the TWIC program has had a serious disparate impact on the African American community of port workers.[10]

Port workers of color were also the major beneficiaries of the TWIC appeal protections, when workers challenge the accuracy and completeness of the FBI rap sheet. TSA has granted almost 100 percent of all TWIC appeals (totaling 22,000, and more than 5,000 cases are still pending).[11] NELP's records indicate that nearly 41 percent of the criminal record appeals were filed by African Americans, or three times their share of the port population (Table 1). Significantly, Latinos represented 29 percent of the criminal record appeals, or nearly twice their share of the port worker population.

Table 1: TWIC's Criminal Record Waiver and Appeal Protections Significantly Benefit Workers of Color



The extraordinarily high rates of successful TWIC waivers and appeals make a convincing case for why these protections are a model that, if carried out effectively, could be replicated whenever employment background checks are required by other federal or state laws. These protections create a safety net for all workers, while also reducing the disproportionate impact of background checks on people of color.

However, TSA's insufficient staffing and screening protocols have resulted in significant delays in the processing of applications, appeals and waivers. As described in more detail below, these fundamental flaws in the administration of the TWIC program have seriously undermined the effectiveness of the model MTSA worker protections.

Hector Arana, Oakland
Truck Driver

Mr. Arana has worked as a port truck driver for over 25 years in Oakland. He is originally from El Salvador. He applied for his TWIC in December 2008 and was told by the Lockheed Martin agent at the enrollment center that he did not need to collect his green card for TWIC purposes. He then waited for months without hearing anything from TSA. After obtaining legal assistance, he was advised that foreign-born TWIC applicants are often denied initially and have to provide their immigration or citizenship documents to TSA, even though those documents should have been collected during enrollment. Mr. Arana then submitted his green card proving his lawful permanent resident status to TSA on May 1, 2009. Mr. Arana has limited English proficiency, and turned to union organizers working with port truck drivers for assistance in understanding the initial denial letter he finally received from TSA after he submitted his appeal. As of July 2009, Mr. Arana has still not been approved for the TWIC. He has been out of work since the Oakland port went into compliance on February 28, 2009, and has not been able to keep up with his rent and other bills with the few hours of part-time driving work he has been able to pick up outside the port.

Major TWIC Delays Leave Port Workers Jobless, Especially Workers of Color, While Appeals and Waivers Languish at TSA

At a time when workers and employers can ill-afford a disruption in their work, the incomplete criminal records that plague the FBI's database and the routine errors in reviewing immigration status determinations have generated major TWIC processing delays for all workers, but especially people of color. These findings are based on data collected from over 450 workers who were provided various levels of TWIC assistance by NELP over the past two years.[12]

- **Workers Left Jobless 69 Days During Lengthy TSA Delays:** On average, the workers who were left unemployed because their port went into compliance before they were approved waited 69 days as their TWIC applications, appeals or waivers languished at TSA. As a result, more than 10,000 were left unemployed without their TWIC card in the midst of a devastating recession, causing severe economic and family hardships of the sort detailed in the compelling worker stories that accompany this report.
- **Workers Wait Nearly Four Months for the Initial TWIC Decision:** Although not required by law, TSA has indicated that workers would receive their initial decision on the TWIC within 30 days. However, on average, it has taken almost four months (112 days) for TSA to issue an initial denial.
- **Workers Challenging Initial Denials Waited Seven Months for their TWIC:** Not until the workers receive the initial denial can they gather the necessary materials for a waiver or appeal and await TSA's final determination. Thus, the delay in processing initial applications has led to significant

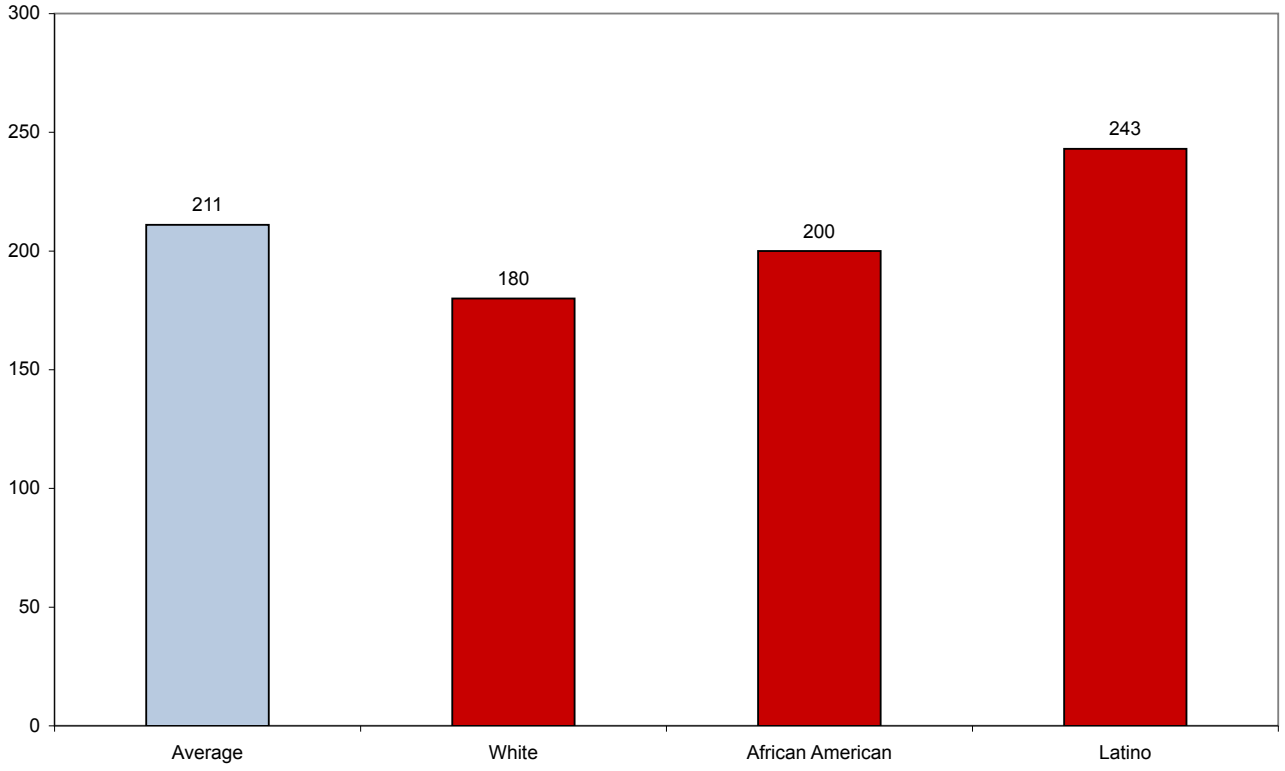
downstream delays in the adjudication process. As a result, it took an average of over seven months (211 days) until the TWIC was approved for those workers who had a criminal record or immigration/citizenship issue that triggered an initial denial by TSA (Table 2).

- **Workers of Color Wait Longest for TSA Approval of their TWIC:** There were serious racial disparities in the delays associated with the TWIC application, appeal and waiver process. On average, White applicants were approved for their TWIC within six months (180 days). That compares with almost seven months (200 days) for African Americans and over eight months (243 days) for Latino port workers (Table 2). These delays for people of color may well be associated with the lack of targeted outreach and education to these communities and the conspicuous absence of translation and interpreter services.

- **TSA Requests for Additional Information Compound Delays:** In about 10 percent of the TWIC appeal and waiver cases handled by NELP, TSA requested additional information after the petitions were filed. Further exacerbating the delays, these requests for additional information were not made on average until 80 days after the waivers and appeals were filed with TSA. This finding raises serious questions about TSA's attention to the appeals during the 80 days preceding the request for additional information.

- **One in Four Workers Receiving an Initial Denial Failed to Challenge the TSA Determination:** In total, TSA has thus far issued almost 54,000 initial denials (IDTAs). However, 25 percent of these initial denials (13,148) never resulted in a waiver or appeal filed by the worker.[13] Thus, the workers' IDTAs expired and they were officially denied the TWIC. Given that almost 100 percent

Table 2: Number of Days from TSA Application to TWIC Approval



of workers who file appeals and waivers are successful, it is likely that these 13,000 denials could have been reduced with more targeted outreach about the waiver and appeal process to those communities hardest hit by criminal records and immigration issues.

- **Prevalence of Immigration Issues Raises Special Cause for Concern:** While TSA has not reported data on immigration appeals specifically, more than 40 percent of the cases filed by NELP were related to immigration and citizenship background checks. Due to the absence of language accommodations made by TSA and Lockheed Martin (the contractor largely responsible for TWIC outreach and enrollment), it is likely that many of the workers who failed to take advantage of their rights to challenge the initial determination had limited English proficiency and were unable to effectively navigate the TWIC process.

Johnny Johnson,
Baton Rouge
Refinery Worker

Mr. Johnson worked on the docks in Baton Rouge for two years, loading and unloading barges. He applied for his TWIC card and was denied by TSA months later, based on a battery arrest for which there was no disposition on his FBI rap sheet. Mr. Johnson promptly submitted an appeal to TSA with a letter from the District Attorney's office that had declined to file charges against him, but then had to wait over two months more for TSA to grant his appeal and approve his TWIC card. During that time, Mr. Johnson lost his job because he was unable to access the petroleum plant where he worked without a TWIC card. As he was waiting for TSA to review his appeal, he remarked, "Soon, I will lose everything I have worked hard for if this doesn't get resolved. This is extremely unfair, especially with the way the economy is at this time. I have nowhere to turn."

Recommendations for TWIC Reform

Over the last several years, as the TWIC program was being rolled out, Congress and interested groups provided TSA with detailed input and specific recommendations for reform of the TWIC application, waiver and appeal process.[14] Unfortunately, TSA missed the opportunity to get many of these critical protections right when it counted most these last two years, and thousands of workers are paying the price today.

Now that the port deadlines have passed and over a million workers have been enrolled in the program, TSA's immediate priority should be to process the thousands of cases of workers who have been shut out of their port jobs due to the serious delays in reviewing the TWIC applications, waivers and appeals. TSA is now also in a position to ensure that those who have fallen through the cracks of the TWIC system find their way back to their port jobs. In addition, fundamental reform of the TWIC program is still necessary to serve those who continue to apply for the TWIC in order to start new jobs at the port, and all workers who will be required to renew their TWIC cards in five years.

The following recommendations for legislative and agency reform of the TWIC program are intended to address the key deficiencies that have been documented from the data collected for this report, and ensure that the model worker protections are implemented to comply fully with the letter and spirit of the federal law.

AGENCY REFORM PRIORITIES

1. **TSA Should Expedite Those Cases of Workers Shut Out of the Ports:** TSA's first priority should be to process as expeditiously as possible those applications, waivers and appeals filed by workers who are now unemployed because their port compliance deadline passed before they were issued their TWIC. To do so, TSA should first move additional staff into positions to process these pending applications, waivers and appeals.

   Within 30 days, TSA should identify those cases that require additional necessary information, and directly contact those individuals in writing and by phone to collect the material. Rather than requiring these workers to mail in their documents, TSA should also make available a fax number and email address to speed up the process. Especially important, TSA should immediately provide all workers with the contact information of the adjudication staff assigned to their case, thus allowing the individual to obtain updates on the case and quickly resolve any outstanding questions.

2. **Before Issuing an Initial Denial, TSA Should Marshal Its Resources to Track Down Missing Information that Produces Appeals:** The federal law was clearly intended to only disqualify workers who have been convicted of a felony, not those who have arrests that did not lead to conviction or misdemeanor records. That fundamental protection is undermined by TSA's practice of issuing initial denials to all workers whose FBI rap sheet includes an arrest record or a conviction that may not be a felony, thus placing the entire burden on the workers to locate and produce the court records necessary to successfully navigate the appeal process.

   To adhere to the law, TSA should prioritize old arrests where the agency is in a reasonable position to track down the missing dispositions before issuing an initial denial, especially old drug crimes and other offenses that routinely result in non-felony convictions. Similarly, TSA should develop contacts with each state criminal history repository and investigate the offense levels of potentially disqualifying criminal offenses before erroneously issuing an initial denial based on a misdemeanor.

3. **TSA Should Adopt Strict Timeframes to Process Applications, Waivers and Appeals:** To prevent future delays that produce severe hardships on workers and their families, TSA should issue regulations creating strict timeframes to process TWIC applications, appeals and waivers. That includes producing an initial denial within 30 days, reviewing all appeals and waivers within 30 days to determine if additional documentation is required, and adjudicating all appeals and waivers within 30 days. TSA should also publish data documenting the agency's compliance with these new timeliness standards governing each stage of the TWIC threat assessment process.

4. **TSA Should Reopen the 13,000 Initial Denials that Never Produced an Appeal or Waiver Petition:** Without receiving any final notification from TSA, one in four workers who were issued an initial denial were eventually denied the TWIC because they did not file an appeal or waiver challenging the IDTA. Given the nearly 100 percent success rate of TWIC appeals and waivers, and the disproportionate impact of denials on workers of color, TSA should immediately reopen these cases, notify the applicants of their special status (in English and Spanish with a "tagline" in multiple languages), and assign them priority to help the workers navigate the TWIC appeal and waiver process.

5. **Lockheed Martin Should be Required to Train Its Enrollment Staff to Properly Process Applications from Foreign-Born Workers:** Lockheed Martin, TSA's contractor in charge of the enrollment process, must effectively train its "trusted agents" to accept the necessary immigration documents during enrollment, and TSA must take more proactive steps to ensure that the documents needed by foreign-born applicants are brought to the enrollment center and sent to TSA. TSA has denied TWICs to large numbers of foreign-born U.S. citizens and other qualified workers due to poor outreach and communication with applicants regarding these critical citizenship and immigration documents, and the failure to obtain necessary documents through the enrollment process.

6. **TSA and Lockheed Martin Should Translate Vital Documents and Provide Interpreter Services:** Contrary to civil rights laws requiring federal agencies to provide translation and interpreter services,[15] these critical services have not been provided by TSA and Lockheed Martin. As a result, large numbers of immigrant workers who already have a hard time navigating the TWIC process are unfairly denied access to the TWIC and their livelihood as port workers. Of special significance, the initial denial letters, informing the workers of their appeal and waiver rights, should be translated into Spanish and other languages spoken by large numbers of port workers.

Lyndon Ward,
Texas
Longshoreman

Mr. Ward, a longshoreman from Freeport, Texas, applied for his TWIC in September 2008. He received an initial denial letter from TSA in October 2008, based on a conviction for a false vehicle certificate. He immediately provided TSA with court documents proving that this was a misdemeanor offense. In November 2008, TSA returned the original court documents to him, but did not rule on his appeal. Mr. Ward grew increasingly worried and stressed as the months wore on and he still heard nothing from TSA. Finally, after obtaining legal assistance, TSA approved his TWIC, just before his port went into compliance in April 2009 – six months after he initially applied, and five months after he submitted an appeal regarding this non-disqualifying offense.

7. **TSA Should Immediately Publish Data Evaluating the TWIC Process:** TSA should immediately publish all available data evaluating the operation of the TWIC application, waiver and appeal process (including information on processing delays, the number of workers still waiting for their TWIC after their port compliance dates passed, the numbers of initial denials broken down by disqualifying offenses, the number of appeals that are immigration related, and the success rates of appeals and waivers). Based on the demographic data now produced on the FBI rap sheets and provided during the enrollment process, TSA should also report on the race and ethnicity of TWIC applicants to evaluate the impact of the TWIC criteria and procedures on people of color.

8. **TSA Should Prepare for the Five-Year Renewal of the TWIC to Avoid Needless Denials:** When the time comes for all the port workers to renew their TWIC cards in the next five years, TSA should take steps to avoid needless denials by streamlining the TWIC process. Specifically, TSA should only produce initial denials in those cases where a disqualifying offense has occurred in the last five years. TSA should also automate their records to ensure that those workers who renew their TWICs are not denied for the same reasons already resolved during the initial enrollment.

LEGISLATIVE REFORM PRIORITIES

1. **Enact Pending Legislation Creating Strict Deadlines to Process the TWIC:** As part of the TSA Reauthorization bill, the House of Representatives passed legislation (H.R. 2200), proposed by Chairman Bennie Thompson of the House Homeland Security Committee and Chairwoman Loretta Sanchez of the Subcommittee on Border, Maritime and Global Counterterrorism, creating strict deadlines for TSA to process the TWIC, including 30 days to issue an initial response and 30 days to issue the results of an appeal or waiver. The legislation, which is still pending in the Senate, should be immediately enacted into law, thus significantly reducing the TWIC delays.

2. **Enact the Fairness and Accuracy in Employment Background Checks Act:** Congressman Bobby Scott, the Chair of the House Subcommittee on Crime, Terrorism and Homeland Security, has sponsored legislation with bipartisan support (H.R. 7033) that requires the FBI to track down and update the open arrests listed on rap sheets before the information is released to employers and government agencies, including TSA. If enacted into law, this bill will significantly reduce the number of problem rap sheets resulting in initial denials by TSA. It will thus cut down significantly on the TWIC appeals filed by workers, while conserving valuable time and resources that TSA can devote to waivers and other priority activities.

3. **Eliminate Drug Offenses from the List of TWIC Disqualifying Crimes:** Given the significant disparate impact on people of color resulting from drug offenses that produce a significant percentage of all initial TWIC denials (drug offenses are associated with more than half of all the NELP appeals and waivers), Congress should eliminate drug crimes from the list of TWIC disqualifying offenses. Unlike many of the violent offenses and terrorism-related offenses that constitute disqualifying crimes under the law, routine low-level drug transactions are not probative of a terrorism security threat.

Hector Rivera, Baltimore
Boilermaker

Mr. Rivera worked as a boilermaker at the Baltimore port, which went into compliance for the TWIC on December 30, 2008. He applied for his TWIC in November 2008. In January 2009, he received an initial denial from TSA based on a 1980 conviction for "breach of peace." Mr. Rivera immediately provided TSA with court documents proving that the conviction was a misdemeanor, not a disqualifying felony, but did not hear back from TSA for months and months, despite repeated calls and requests for updates. Mr. Rivera and his family struggled to make their mortgage and car payments, and to otherwise support the family during the months he was out of work. After obtaining legal assistance, Mr. Rivera was finally approved in April 2009, almost four months after he submitted his appeal regarding this 28 year-old non-disqualifying offense, and five months after he initially applied.

Endnotes

[1] 46 U.S.C. Section 70105.

[2] The sole exception to the rule that only convictions can result in disqualification for the TWIC involves those cases where there is, in fact, an open arrest. Thus, the MTSA states that only those individuals whose cases are still open for a potentially disqualifying offense (i.e., "Under want, warrant, or indictment") can be denied the TWIC, not those workers whose cases have been dismissed or otherwise disposed of by law enforcement or the courts. 46 U.S.C. Section 70105(c)(1)(C).

3 U.S. Attorney General, The Attorney General's Report on Criminal History Background Checks (June 2006), at page 3 (available at http://www.usdoj.gov/olp/ag_bgchecks_report.pdf).

[4] Department of Homeland Security, TWIC Dashboard (dated June 18, 2009).

[5] "Delegate Christensen Investigates Stalled Transportation Worker Identification Credential Applications," U.S. Fed News (May 16, 2009).

[6] These figures were reported at the monthly meetings of the "TWIC Stakeholder Communication Committee" held by TSA, Lockheed Martin, and the U.S. Coast Guard (Meetings dated May 18, 2009, and June 16, 2009); Department of Homeland Security, TWIC Dashboard (dated June 18, 2009).

[7] According to the latest data released by TSA, about 27,000 workers have filed appeals with TSA and another 4,000 workers have filed waiver requests. Although about 7,000 appeals and waivers are still pending, thus far only 241 notices have been issued by TSA indicating that the workers were denied their waiver or appeal request. Thus, while data are not available separating out the success rate of waivers versus appeals, even if all the cases denied were waivers, the success rate for waivers would be over 94 percent of all the waivers requests thus far filed with TSA.

[8] The racial breakdown of the population of workers seeking TWIC waivers and appeals is based on the TSA petitions filed by NELP on behalf of 300 workers, which is a broadly geographic sample of mostly longshore workers and smaller percentage of truck drivers. The racial breakdown of the U.S. ports is based on data provided by the Equal Employment Opportunity Commission's EEO-1-2007 Aggregate Report on National Support Activities for Water Transportation NAICS (4882). The EEOC's data do not report on port companies that employ fewer than 100 employers. Thus, they exclude large numbers of truck drivers, often immigrant workers, who routinely operate as "independent contractors." Although the EEOC data provide the best available information on the racial profile of the nation's port workers, they may understate the ethnic diversity of port workers by failing to count many truck drivers. See, e.g., East Bay Alliance for a Sustainable Economy, "Taking the Low Road: How Independent Contracting at the Port of Oakland Endangers Public Heath, Truck Drivers, and Economic Growth" (September 2007).

[9] U.S. Bureau of Justice Statistics, Felony Sentences in State Courts, 2002 (December 2004), Table 1.

[10] While drug possession is not disqualifying, most other drug offenses are captured by the broad language of the statute, which disqualifies anyone with a conviction for "distribution of, possession with intent to distribute, or importation of a controlled substance." 46 U.S.C. Section 70105(c)(1)(B)(vii).

[11] See footnote 7.

[12] NELP's findings on the TWIC delays may indeed underestimate the severity of the problem because the workers were provided direct representation by NELP to help navigate the TWIC system, which may have sped up TSA's determination process.

[13] Department of Homeland Security, TWIC Dashboard (dated June 18, 2009).

[14] Testimony of Laura Moskowitz, National Employment Law Project, Before the House of Representatives, Committee on Homeland Security, Subcommittee on Border, Maritime, and Global Counterterrorism (September 17, 2008); Testimony of Maurice Emsellem, National Employment Law Project, Before the House of Representatives, Committee on Homeland Security, Subcommittee on Border, Maritime, and Global Counterterrorism (October 31, 2007); Comments of the National Employment Law Project, Before the Transportation Security Administration and the U.S. Coast Guard, On the Notice of Proposed Rulemaking on the Transportation Worker Identification Credential (Docket Numbers TSA-2006-24191, USCG-2006-24196) (dated July 6, 2006).

[15] Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000); U.S. Department of Justice, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 Fed. Reg. 41455 (June 18, 2002).