



# **DEPARTMENT OF STATE**

**WRITTEN STATEMENT**

**OF**

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**DEPARTMENT OF STATE**

**BEFORE THE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON HOMELAND SECURITY HEARING**

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**WASHINGTON, D.C.**

Good morning Chairman McCaul, Ranking Member Thompson, and distinguished Members of the Committee. Thank you for this opportunity to testify today on implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015.

My written statement, which I request be put into the record, describes how the Department of State has worked closely with our Department of Homeland Security (DHS) colleagues to implement the new law while continuing to ensure that our first and utmost priority remains the protection of the U.S. homeland and America's citizens.

I know Congress worked closely with the Administration on this legislation to strengthen the Visa Waiver Program (VWP) in order to strike the appropriate balance between ensuring the security of the homeland and allowing for legitimate travel to the United States.

Under the new law, individuals who are dual nationals of – or on or after March 1, 2011 have traveled to – Iraq, Syria, a country designated as a state sponsor of terrorism (currently, Iran, Sudan, and Syria), or other countries of concern, are generally prohibited from using the VWP for travel to the United States. The law grants the Secretary of Homeland Security the authority to waive the travel or dual nationality restrictions if he determines that such a waiver is in the law enforcement or national security interest of the United States. No waivers have been granted to date.

The State Department has worked closely with DHS to identify several groups of potential VWP travelers that may be considered for waivers on an individual basis based on the national security interests of the United States.

It is important to clearly stress that these are not blanket waivers. Rather, the categories of travelers that DHS and State announced provide a framework to administer these national security waivers on a case by case basis.

We felt it was necessary to publicly outline categories in which a waiver *might* apply to provide guidance to citizens of Visa Waiver Program countries. There is a lot of confusion about this new law among some of our closest allies and trading partners. We need to let them know which of their citizens could potentially receive a waiver, and how the process for making those decisions would work. But it is important to stress that our guidance says specifically that each person would be considered on a case by case basis, and only if they fall under one of the identified categories. In no instance is travel under VWP guaranteed simply because an individual falls within one of the identified categories.

Before going into more detail, I'd like to note that all travelers coming to the United States undergo checks for ties to terrorism and are subject to multiple layers of security – regardless of how they enter, and regardless of whether they seek travel authorization through the VWP or have a visa issued by the Department of State. Specifically, the VWP leverages multiple layers of security to detect and prevent terrorists, serious criminals, and other potentially dangerous individuals from traveling to the United States.

Citizens of a VWP country need to apply for authorization to travel to the United States via the Electronic System for Travel Authorization (ESTA) program. CBP checks identifiers from ESTA forms against U.S. terrorist and criminal databases before travelers are allowed to

use the VWP. DHS recurrently vets ESTA information on a daily basis, meaning that each ESTA is continuously reviewed throughout its validity period for new derogatory information.

All travelers are screened by CBP's National Targeting Center before they board any flight bound for the United States. This vetting continues after they get on an airplane and after they are admitted into the U.S. In the case of VWP travelers, they are inspected by CBP officers and their biometrics are collected upon arrival.

Watchlisting, screening, and intelligence gathering are some of our best tools for countering the threat of foreign terrorist travel. We require all VWP countries to share with the United States information about terrorists, serious criminals, and other *mala fide* individuals. These tools are most effective when we're working in collaboration with our VWP partners. And, that's what the VWP is, a security partnership.

The 38 countries that are part of the VWP include many of our closest allies. They are proud of their status. In fact, VWP designation is so prized that many countries that are not in the VWP complete program requirements merely in the hope of one day joining. Therefore, we are able to use the benefits of VWP membership as a way to encourage greater information sharing and more systemic screening by our allies.

VWP requirements provide our allies with the impetus to implement security measures that can sometimes be politically challenging for them, like amending legislation and updating their data privacy frameworks. DHS, in cooperation with interagency partners, assesses each VWP country's compliance with program requirements at least once every two years. This assessment includes rigorous and thorough inspection of airports, seaports, land borders, and passport production/ issuance facilities as well as continuous monitoring. No other program enables the U.S. Government to conduct such broad and consequential assessments of foreign partners' border security standards and operations.

Because effective watch listing and screening are among our most effective counterterrorism tools, we continue to take advantage of the strong partnerships that the VWP gives us to improve terrorist screening by other countries and prevent threats to our country outside of our borders.

Returning to the waivers, I'd like to take this opportunity to provide insight into the factors that led the Department of State to propose these specific national security waivers by outlining their importance:

**1) International and Regional Organization Employees:** As a general matter the United States has a strong national security interest in supporting the work of the United Nations and other international organizations, like the International Atomic Energy Agency, as well as the work of elected officials from regional, sub-national, or federal governments of Visa Waiver Program countries and officials of the EU institutions or members of the European Parliament. We would likely lose influence with these organizations were we to tell them and the world that we see their employees as security risks solely because of the official work they do in some of the world's toughest places.

**2) Humanitarian Non-Governmental Organization (NGO) Workers:** As a general matter it is in the U.S. national security interest to support NGOs doing vital humanitarian work to alleviate human suffering, to address basic needs of civilians in those countries such as delivering food and medicine in conflict zones, and to identify serious human rights abuses. Humanitarian assistance is also critical to meeting the urgent needs of vulnerable civilians who are targets for extremist groups, and maintaining regional stability.

**3) Journalists:** As a general matter the United States has a national security interest in promoting the free flow of information regarding events and activities in Iran, Iraq, Sudan, and Syria. For example, we rely on such reporting for information on serious violations of human rights, allegations of chemical weapons use, and terrorist propaganda.

**4) VWP Country Nationals who Traveled to Iran for Legitimate Business Following the Conclusion of the JCPOA (July 14, 2015)**

Our unified diplomatic efforts with our partners were essential in setting back Iran's nuclear program, something we can all agree is in our national security interest. In some cases, treating an otherwise eligible businessperson from a VWP partner country in Europe or elsewhere as a heightened security risk because of their otherwise legitimate business in Iran may warrant a waiver to avoid driving an unnecessary wedge between the United States and our partners at a time when we need to maintain a united front.

These are businesspeople from our closest European allies and other partners who are often trying to travel to the United States to work with American businesses, which will benefit our economy.

**5) Visa Waiver Program Country National who Traveled to Iraq for Legitimate Business-related Purposes**

The United States has a national security interest in ensuring the political stability of Iraq and enabling the government to effectively counter ISIL. One of the best ways to achieve these goals is to support the country's weak economy; this would include promoting commercial activities that support the Iraqi government's revenue generation and directly impacts its ability to fund its fight against ISIL. That is why since soon after the fall of the Saddam regime in 2003, it has been the policy of the United States to encourage Western companies to do business in Iraq to help stabilize and rebuild that country's economy. Disadvantaging people who traveled to Iraq expressly for that purpose would therefore be counterproductive to long-standing U.S. policy.

I want to stress that none of these waivers would be administered in a blanket fashion. Every VWP traveler potentially eligible for one of these waivers would be closely and individually examined to determine whether they are eligible to receive a waiver. And a national security waiver would be carefully reviewed and only administered on a case by case basis.

The law itself provides the Secretary of Homeland Security the authority to waive the travel or dual nationality restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. As I've outlined here today, we believe there are significant national security interests for the United States to utilize this waiver

authority without compromising the safety of our fellow citizens at home and overseas, and the security of the traveling public.

Mr. Chairman, Ranking Member Thompson, and distinguished Members of the Committee, thank you for the opportunity to testify. I look forward to your questions.