



TESTIMONY OF

R. GIL KERLIKOWSKE
Commissioner

U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

United States House of Representatives
Committee on Homeland Security

ON

“VISA WAIVER PROGRAM SECURITY ENHANCEMENTS”

February 10, 2016
Washington, DC

Introduction

Chairman McCaul, Ranking Member Thompson, and distinguished Members of the Committee, thank you for the opportunity to testify on behalf of the Department of Homeland Security (DHS or the Department) and U.S. Customs and Border Protection (CBP) to discuss the Visa Waiver Program (VWP or “the Program”) and implementation of the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*, which was enacted as part of the *Consolidated Appropriations Act of 2016*.

On a typical day, CBP welcomes to the United States nearly one million travelers—including foreign nationals who travel to the United States under the VWP—at our air, land, and sea ports of entry (POEs), almost 300,000 of whom arrive by air. The VWP, which is managed by DHS in consultation with the Department of State (DOS), permits citizens of 38 countries¹ to travel to the United States for business or tourism purposes for stays of up to 90 days without a visa. That does not mean VWP travelers are able to board a plane or vessel with no security checks. Rather, DHS thoroughly vets all VWP travelers against U.S. law enforcement and intelligence holdings prior to departure for the United States and, if permitted to depart, at additional points throughout the travel continuum.

In addition to the vetting and eligibility requirements for individual travelers, to be eligible for the VWP, a country must first meet statutory requirements, and then maintain high security standards to retain its VWP status. Additionally, DHS, DOS, and our interagency partners, conduct robust, national-level risk assessments—at least once every two years—that assess the impact of each program country’s participation in the VWP on U.S. national security, law enforcement, and immigration enforcement interests. Far from being a security vulnerability, the VWP provides significant security benefits to the United States and its citizens. The VWP offers diplomatic and economic incentives to countries to further provide national security benefits to the United States, such as increased sharing of information on terrorists and criminals.

CBP’s multi-layered, intelligence-driven strategy is integrated into every aspect of our travel security operations at every stage along the international travel sequence. In concert with our international partners, DHS and CBP strive to ensure that travelers who present a potential risk are appropriately vetted and stopped before boarding a flight bound for the United States.

¹ With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

From Travel Program to Security Partnership

When Congress first authorized the VWP in 1986, the program was intended to facilitate low-risk travel to the United States, boost international trade and cultural links, and promote more efficient use of consular resources. Recognizing that global security threats have evolved dramatically since the 1980s, DHS and DOS have adapted the VWP to meet the challenges of the modern threat environment. These efforts have been most successful when working in concert with our partners in Congress.

For instance, DHS collaborated with Congress to develop and implement the provisions of the *Secure Travel and Counterterrorism Partnership Act of 2007*, which was included as part of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act). This legislation transformed the VWP from a program that evaluated security threats on a country-by-country basis to a program with the added capability to screen individual travelers for potential threats. Under the 9/11 Act, VWP countries are required to enter into bilateral information sharing agreements regarding whether citizens and nationals of that country intending to travel to the United States represent a threat to the security or safety of the United States or its citizens, as well as the sharing of lost and stolen passport information, among others.

The 9/11 Act also required DHS to develop the Electronic System for Travel Authorization (ESTA) to pre-vet prospective VWP travelers. Since January 2009, DHS has required all VWP travelers to obtain an ESTA authorization prior to traveling to the United States by air or sea. ESTA applicants must provide extensive biographic information, including their name, date of birth, place of birth, current residence, additional countries of citizenship, passport information, employment information, travel itinerary, and U.S. point of contact, among others. This information is vetted against DHS, DOS, Federal Bureau of Investigation (FBI), and Intelligence Community databases to determine if prospective VWP travelers pose a national security or law enforcement threat to the United States. If a prospective VWP traveler does not submit this information or is denied travel authorization, he or she may not board a plane or vessel bound for the United States.

ESTA applicants are vetted against the same biographic databases as visa applicants. DHS vets all ESTA application information immediately and automatically against DHS TECS records, the FBI's Terrorist Screening Database (TSDB), and the DOS's Consular Lookout and Support System, as well as international databases, such as INTERPOL's Stolen and Lost Travel Document database. All ESTA applications are also vetted by the National Counterterrorism Center. This comprehensive vetting approach helps to ensure that travel authorizations are not issued to prospective VWP travelers who pose a threat to U.S. national security. Any would-be VWP traveler whose ESTA application is denied is referred to a U.S. Embassy or Consulate, where he or she would have to undergo the normal process to apply for a visa, including an interview by a consular officer and biometric screening.

DHS recurrently vets ESTA data on a daily basis, which means that even though an applicant has an initially approved authorization for travel, the authorization is continuously screened throughout its validity period against new derogatory information and is subject to further review and subsequent denial if necessary. This includes recurrent vetting against the TSDB (also known as the “Terrorist Watchlist”). CBP adjudicates every ESTA application and subjects those that raise counterterrorism or admissibility concerns to additional scrutiny.

ESTA has been a highly effective security and vetting tool that has enabled DHS to deny travel authorizations under the VWP to thousands of prospective travelers who may pose a risk to the United States, prior to those individuals boarding a U.S. bound aircraft or vessel. Since ESTA’s inception, CBP has approved more than 90 million ESTA applications and has denied more than 5,900 ESTA applications as a result of national security concerns. During that same period, CBP has also denied more than 165,000 ESTA applications for individuals who applied for an ESTA using a passport that had been reported as lost or stolen.

In addition to ESTA screening, U.S. law requires all private and commercial air carriers operating routes to, from, or through the United States to provide Advance Passenger Information (API) and Passenger Name Records (PNR) data to CBP. These data, which include travelers’ biographic and travel reservation information, are screened against U.S. and international law enforcement and intelligence databases to identify high-risk individuals before they depart for the United States and, if they have somehow entered, when they travel by air within the United States. All VWP travelers are subject to this screening.

VWP travelers are also subject to additional layers of screening and inspection upon arrival at U.S. POEs. CBP collects biometric information from all VWP travelers and screens it against U.S. law enforcement and intelligence databases. Moreover, CBP screens the biographic information from VWP travelers’ passports against additional U.S. holdings. No VWP traveler who fails to clear these checks will be admitted to the United States.

Recent Enhancements to the VWP

Over the last 15 months, DHS, DOS, the Administration, and Congress have initiated a series of changes to the VWP designed to strengthen its security and ensure that the Program’s requirements are commensurate with the growing threat from foreign terrorist fighters, especially those who are nationals of VWP countries. These recent changes complement traveler vetting and the longstanding, statutory and policy requirements that VWP countries must meet to maintain their Program status.

Policy Enhancements

In November 2014, DHS introduced additional data fields to the ESTA application that all VWP travelers must complete before boarding a plane or ship to the United States. The enhanced ESTA data fields have enabled CBP and the National Counterterrorism Center to identify a larger number of applicants with potential connections to terrorism who would not otherwise have been known.

On August 6, 2015, DHS introduced a number of additional security enhancements to the VWP, including enhanced traveler vetting, information sharing, and other security requirements for VWP countries to further address any potential threat. Specifically, the August 2015 VWP enhancements require Program countries to:

- Implement the Homeland Security Presidential Directive-6 arrangements and Preventing and Combating Serious Crime Agreements by sharing terrorist and criminal information and utilizing such information provided by the United States;
- Collect and analyze travel data (API/PNR), consistent with United Nations Security Council Resolution 2178, in order to identify high-risk travelers, especially foreign fighters, before they board inbound planes and thereby keep such travelers as far as possible from U.S. shores;
- Use the INTERPOL Stolen and Lost Travel Document database to screen travelers crossing the VWP country's external borders to prevent the fraudulent use of passports by terrorists and serious criminals;
- Report foreign fighters to multilateral security organizations such as INTERPOL or EUROPOL to enhance our collective efforts to identify and disrupt terrorist travel; and
- Cooperate with the United States in the screening of refugees and asylum seekers to ensure that terrorists and criminals cannot exploit our system.

The August 2015 enhancements also introduced a requirement for all VWP travelers to use electronic passports (e-passports) for travel to the United States.²

Finally, in November 2015, the White House announced additional steps it would take to further strengthen the VWP, to include, but not limited to: DHS introducing further improvements to the ESTA application that will grant the Department even greater insight into prospective VWP travelers who have been to Syria, Iraq, and other conflict zones; identifying possible pilot programs to assess the collection and use of biometric information to effectively improve the security of the VWP; and working with Congress to seek authority to increase the Advanced Passenger Information System fines from \$5,000 to \$50,000 for air carriers that fail to verify a traveler's passport data.

Legislative Enhancements

On December 18, 2015, the President signed into law the *Consolidated Appropriations Act of 2016*, which includes the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*. The new law codifies some of the August 2015 enhancements noted above (such as the requirement for countries to fully implement agreements to share information concerning travelers who might pose a threat to the United States and for all VWP travelers to use e-passports) and puts in place new requirements, most notably travel restrictions.

² Currently, citizens of the 27 countries designated into the VWP before 2007 may use a machine-readable non-biometric passport if that passport was issued before October 26, 2006 and is still valid.

The law generally restricts VWP travel for nationals of Program countries who are dual nationals of, or who have been present at any time on or after March 1, 2011 in, Iraq, Syria, countries designated as state sponsors of terrorism (currently Iran, Sudan, and Syria), or other countries or areas of concern as designated by the Secretary of Homeland Security. The physical presence-related VWP travel restriction is subject to exceptions for individuals who the Secretary of Homeland Security determines were present in Iraq, Syria, Iran, or Sudan in order to: (1) perform military service in the armed forces of a program country, or (2) carry out official duties as a full time employee of the government of a program country. These exceptions do not apply to the dual nationality-related VWP travel restriction.

Under the new law, the Secretary of Homeland Security may waive these restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. On January 21, DOS and DHS announced categories of travelers that provide a framework to administer national security waivers on a case-by-case basis. DOS worked closely with DHS to propose categories for which individuals may be eligible. No waivers have been granted to date. As Secretary Johnson has emphasized, determinations of whether an individual ESTA applicant will receive a waiver will be based on a case-by-case review.

DHS has taken several steps to implement the changes required by the December 2015 law. In coordination with DOS, DHS has increased outreach to all VWP partners to stress the importance of swiftly implementing the required VWP information sharing agreements. DHS has also submitted to Congress two ESTA-related reports called for in the legislation. Additionally, on January 21, 2016, CBP began to deny new ESTA applications and revoke valid ESTAs for individuals who have previously indicated holding dual nationality with Iran, Iraq, Sudan, or Syria. More than 17,000 ESTAs have been denied or revoked to date. Beginning January 13, 2016, CBP also initiated a protocol to identify ESTA holders with travel to one of the four countries, to conduct secondary screening and revoke ESTAs for future travel if travel is confirmed and the government and military exceptions do not apply. Finally, CBP began notifying VWP travelers of the e-passport change in November 2015 and will enforce the mandatory use of e-passports for all VWP travel by the legislative deadline of April 2016.

An updated ESTA application with additional questions is scheduled to be released early this year, to address exceptions for diplomatic- and military-related travel provided for in the new law, and other issues.

The new law does not ban travel to the United States, or admission into the United States, and the vast majority of VWP travelers will not be affected by the legislation. Any traveler who receives notification that they are no longer eligible to travel under the VWP may still be eligible to travel to the United States with a valid nonimmigrant visa issued by a U.S. Embassy or Consulate.

Conclusion

The VWP is a rigorous, multi-layered risk assessment program that promotes secure travel to the United States. VWP countries are required to meet stringent security standards and to share extensive counterterrorism and law enforcement information with the United States in order to remain in the Program. VWP travelers are subject to rigorous screening before departure to the United States and throughout the travel continuum.

DHS, in concert with DOS, the Administration, and Congress, continues to strengthen its efforts to ensure that the VWP provides for the security and prosperity of the American people. Consistent with those efforts, DHS is taking good faith measures to implement the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act* expeditiously and in keeping with Congressional intent.

As terrorists change their methods and tactics and technologies continue to evolve, DHS and CBP will work with federal and international partners—as well as commercial carriers—to adapt and respond swiftly and effectively to new and evolving threats. We will continue to collaborate to strengthen ongoing efforts and facilitate the development of new innovative tools to secure international travel against terrorists and others who threaten the safety of the traveling public and the security of our Nation.

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