

THE PRESIDENT'S WAIVER OF RESTRICTIONS ON THE VISA WAIVER PROGRAM

JOINT HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY
AND THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
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THE PRESIDENT'S WAIVER OF RESTRICTIONS ON THE VISA WAIVER PROGRAM

Wednesday, February 10, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, JOINT WITH THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 3:00 p.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the Subcommittee on National Security] presiding.

Present from Subcommittee on National Security: Representatives DeSantis, Mica, Duncan, Hice, Russell, Hurd, and Lynch.

Present from Subcommittee on Government Operations: Representatives Meadows, Jordan, Walberg, Massie, Mulvaney, Buck, Carter, Grothman, Connolly, Maloney, Norton, Plaskett, and Lynch.

Mr. DESANTIS. The Subcommittee on National Security and the Subcommittee on Government Operations will come to order. Without objection, the chair is authorized to declare a recess at any time.

The United States faces clear and present dangers from Islamic jihadists both at home and abroad. From the attacks in Paris to the massacre in San Bernardino, it is clear that militant Islamists are on the march. Identifying terrorists and stopping them before they can strike must be a priority for the United States and its allies. Certainly, the Federal Government has a duty to prevent terrorists and those sympathetic to their aims from entering the United States, a duty that it is not currently satisfying.

Almost 12 years ago, the bipartisan 9/11 Commission provided a roadmap for the government to follow in fulfilling these crucial responsibilities. It stated, "Targeting travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence operations and law enforcement and a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility."

Our consular officers abroad and the inspectors at our ports of entry are on the first line of defense in this strategy. Most foreign nationals who seek to enter the United States must apply to the State Department and meet with one of those consular officers to obtain a visa. Those officers are trained to separate bona fide travelers from those with malevolent intentions. Yet, as we have seen with the visa issued to San Bernardino terrorist Tashfeen Malik,

these officers have not always been successful at weeding out militant Islamists.

An exception to the rule that an individual who seeks entry to the United States must apply for and receive a visa before entering this country is the Visa Waiver Program. The Visa Waiver Program allows foreign nationals of 38 countries, mostly in Europe, to enter the United States as nonimmigrant visas for up to 90 days without having to obtain a visa or undergo an in-person interview at a U.S. consulate. Approximately 20 million foreign nationals enter each year under the program, constituting 37 percent of all visitors from overseas. And as this committee has shown in testimony, many have overstayed that 90 days without consequence.

The November 13, 2015, terrorist attacks in Paris made clear that there were vulnerabilities in the Visa Waiver Program. The terrorists in that massacre killed 130 people and caused over 350 injuries, and at least five of the attackers were French nationals, two of whom are living in Belgium, and one was a Belgian national. And nationals of both France and Belgium are able to enter the United States under the Visa Waiver Program. Accordingly, at least six of the Paris attackers could have attempted to enter this country under the Visa Waiver Program. All they would have needed was a plane ticket.

Those attacks highlight the fact that even within the borders of our closest international partners, there are insular communities sheltering militant Islamists bent on destroying our way of life. Many Islamic jihadists in places such as Syria are Western passport holders or dual nationals who could take advantage of the Visa Waiver Program. This exposes the American people to the possibility that these militants, after being trained and further radicalized in Syria and Iraq, could exploit the Visa Waiver Program to enter this country.

These concerns and others were understood by this committee in two hearings that we held in early December. In the first, we identified flaws in the Visa Waiver Program that could be exploited by terrorists and criminals. In the second hearing, which followed from the findings of the first, the full committee looked at potential defects in our nation's terrorist screening scheme as a whole.

In response to these concerns and others, Congress crafted a bipartisan measure that included several changes to the Visa Waiver Program intended to prevent terrorists from exploiting the program and to address other national security concerns, and those changes took effect or signed into law in December.

The bill responded to concerns that were raised about the risks related to visa-free travel by foreign nationals who carry both passports, a visa waiver of countries, and of other countries that are not friendly to the United States, as well as individuals who have traveled to countries of concern and state sponsors of terrorism, including Syria, Iraq, Iran, and Sudan. It did not prevent those individuals from entering our country, but it did require them to obtain a visa before coming to the United States. It gave the Secretary of State the authority to designate additional countries of concern. And finally, the bill gave the Secretary of Homeland Security very limited authority to waive these provisions for specific and targeted national security or law enforcement purposes.

As it has done in the past, however, this administration refused to abide by the limits placed on it by Congress. After these changes were signed into law, the Iranian Government objected that the restrictions would violate the nuclear agreement, the so-called Joint Comprehensive Plan of Action, which was adopted in October of 2015. The Iranians claimed that the JCPOA obliges the United States not to take any actions that will “adversely affect the normalization of trade and economic relations with Iran.”

In response, the administration moved to placate Iran. In a letter to the Iranian Foreign Minister dated one day after the President signed the visa waiver bill into law, the Secretary of State made clear that the administration would find ways to ensure that changes to Visa Waiver Program would not interfere with Iran’s “legitimate business interests.”

Subsequently, on January 21, 2016, the administration announced that it would use what was intended to be a limited law enforcement exception to allow foreign nationals who have traveled to Iran, Iraq, Sudan, and Syria as journalists, aid workers, military or government workers, or for unspecified legitimate business-related purposes to be issued waivers to the restrictions contained in the bill.

Travel for purported legitimate business-related purpose was exactly the type of travel that Congress sought to restrict. In the real world, espionage is as likely to involve transfer of restricted goods and technology by intermediaries who are putatively citizens of friendlier neutral nations as it is to be carried out in secret by foreign intelligence officers.

I am concerned about these actions both as chairman of the National Security Subcommittee and as a member of the House Judiciary Committee. The Judiciary Committee chairman Bob Goodlatte told the House Judiciary Committee that the administration’s decision to abuse their limited waiver authority and allow scores of people who have traveled to or are dual nationals of countries like Iraq and Syria flies in the face of the reason and congressional intent. The Obama administration, he says, “is essentially rewriting the law by blowing wide open a small window of discretion that Congress gave it for law enforcement and national security reasons. In fact, the categories of people that the Obama administration is exempting from the law were expressly rejected by Congress.”

This administration takes these actions in clear violation of the law and does so to favor a known state sponsor of terrorism. And I would add, businesses in Iran, many of them are controlled by the Revolutionary Guard Corps, which is a designated terrorist organization.

So I thank our witnesses for their testimony today, and I look forward to examining issues related to the impact of this executive action on the Visa Waiver Program.

Mr. DESANTIS. I now recognize the ranking member of the Subcommittee on National Security, Mr. Lynch, for his opening statement.

Mr. LYNCH. Thank you very much, Mr. Chairman. I want to thank you and also Chairman Meadows for their good work and Ranking Member Connolly for holding this hearing to examine the implementation of the Visa Waiver Program. And I would also like

to thank in advance our witnesses today for your willingness to help the committee with this work.

In December of 2015, Congress enacted and President Obama signed the Visa Waiver Program Improvement and Terrorist Travel Prevention Act as part of the recent omnibus appropriations bill. This bipartisan legislation to strengthen the Visa Waiver Program became law in the wake of the devastating terrorist attacks in Paris, France, in November of 2015, perpetrated by several attackers who were citizens of so-called Visa Waiver Program countries, including France and Belgium, and also followed the tragic mass shooting in San Bernardino, California, in December of 2015. That also evidenced the real and continued threat of a terrorist attack committed on U.S. soil.

The new act, which I voted for, generally provides that even if you are a citizen of one of the 38 allied nations that participated in the Visa Waiver Program, you are no longer eligible for temporary visa-free entry to the United States if you travel to Syria, Iraq, Sudan, or Iran since March 1, 2011. Similarly, dual nationals of any of these four countries are prohibited from Visa Waiver Program eligibility.

The act also recognizes that, in select cases, the application of these new program restrictions could intentionally run contrary to national security interests by, for example, excluding U.N. personnel, inspectors with the IAEA, or humanitarian relief workers who have visited one of these countries of concern from the Visa Waiver Program.

In order to better ensure that such individuals are able to do their jobs, the act provides that the Secretary of Homeland Security may in some instances grant a waiver to a foreign national “if the Secretary determines that such a waiver is consistent with the law enforcement or national security interests of the United States.” It also requires the Secretary to submit to Congress an annual report on each instance in which the Secretary exercises that waiver authority.

Last month, the Department of Homeland Security explained the limited circumstances under which the Secretary may consider granting a national security waiver. In particular, the agency underscored that such waivers “will be granted only on a case-by-case basis.” The Department also noted that waiver eligibility travelers may include representatives of international and humanitarian organizations, as well as journalists who travel to Iran, Iraq, Sudan, or Syria in performance of their job duties. They may also include individuals who travel to Iraq and Iran for legitimate business-related purposes.

I strongly agree that we must conduct meaningful oversight of the implementation of this national security waiver authority. However, in analyzing the effectiveness of this provision, we must be mindful that our shared interest in national security does not exclude the goals of promoting humanitarian assistance, accountability, and economic stability in the four countries of concern. Quite the contrary, they can go hand-in-hand.

Last month, Chairman Chaffetz authorized Representative Steve Russell and myself to lead an oversight delegation to the Zaatari refugee camp on the Jordanian/Syrian border and the Oncunipar

refugee camp in Kilis Province on the Turkish/Syrian border. We met with representatives from several international and humanitarian organizations, including the Office of the United Nations High Commissioner on Refugees, the World Food Program, and Save the Children, and local humanitarian and relief health care groups. These officials repeatedly noted that humanitarian aid does not only provide dignified living for people in need it but also makes us all safer by de-incentivizing desperate populations from making desperate choices. This humanitarian aid keeps refugees near their home country, albeit on the other side of the border.

Similarly, conflict reporting by journalists in places like Aleppo, Syria, has proven critical to informing U.S. officials and the American public about the security and humanitarian facts on the ground. As noted by Professor Ellen Shearer, Co-Director of the National Security Journalism Initiative at Northwestern University, "The cost of getting the truth could be high, but the cost in not getting the full story is very real, too."

In Iraq, U.S.-led efforts to combat the Islamic State will only be complicated if the country cannot conduct legitimate business and dive deeper into the economic crisis and the social unrest caused by falling oil prices.

And in Iran, international efforts to ensure compliance with the robust nuclear inspection regime set forth in the Iran nuclear agreement would be undermined if an Iranian economy that is unable to refurbish a deteriorating domestic plane fleet used by IAEA inspectors, the International Atomic Energy Agency inspectors, to travel between inspection sites. And a number of those inspectors have indicated that that is probably the most dangerous thing they do in Iran is fly from city to city on the Iran Air because of the terrible condition of their air fleet. So we are going to have to consider that.

Again, now, I voted for tighter restrictions in the Visa Waiver Program, given the evidence that the Islamic State has adopted a tactic of feeding militant extremists into the stream of legitimate refugees and the wider diaspora created by the wars in Iraq and Syria. I do believe, though, that in affording the Secretary of Department of Homeland Security flexibility that he has been granted by statute, it should be prudently and rarely exercised.

Mr. Chairman, I look forward to further discussing these and other issues relating to the Visa Waiver Program with today's witnesses, and I yield back the balance of my time. And thank you for your indulgence.

Mr. DESANTIS. I thank the gentleman.

The chair now recognizes the chairman of the Subcommittee on Government Operations, Mr. Meadows, for his opening statement.

Mr. MEADOWS. Thank you, Mr. Chairman, and thank you, Mr. Lynch, for your accurate remarks. I certainly look forward to working with both of you on this particular issue.

It seems that every time we turn around, on the televisions we see unspeakable atrocities that are being committed by ISIS. You know, it has come now into the bedrooms and homes of many of us where we have to deal with this reality. The increased presence of ISIS in countries like Iraq and Syria highlight the concerns over the reports of thousands of citizens in Western countries traveling

to places like Iraq and Syria and then training with these terrorist groups and then returning home.

Even late last year, obviously, the people of Paris saw this practice manifest in a just horrific tragedy. Individuals with dual citizenship traveled to Syria and trained with these so-called fighters that fight against innocent civilians going about their everyday life, but it is really not a fight. This was an attack, an attack against fathers and mothers, daughters and sons. And these monsters who carried out this attack took advantage of rights granted to them as nationals of France and nationals of Belgium.

In an effort to help prevent individuals from similarly exploiting the advantages afforded to them by having a citizenship of those countries covered by the Visa Waiver Program, Congress, as Mr. Lynch put forth, passed a piece of legislation late last year that would require those individuals who travel to certain countries of concern, or who hold dual citizenship with those countries, to go through a more rigorous review before being admitted into the United States, a commonsense approach.

But since the President has signed that bill into law, it seems like the administration is starting to backpedal on some of those changes to expand that narrow exception for national security afforded to them by Congress. The administration's disregard for the congressional intent is intolerable, especially when we look at the action being done to appease a country like Iran. It is troubling.

I understand that there are many people affected by Congress's changes to the Visa Waiver Program that mean no harm to the United States. It is very obvious. What is important to understand is that being excluded from the Visa Waiver Program does not keep these people from coming to the United States. It just means that they have to apply for a visa like all other people around the world that are not included in that program. Somehow, we think that it is keeping them from coming to the United States.

That being said, we need to make sure that our visa screening process is effective, and I have been pressuring DHS for months, including in a hearing in December, to report to Congress on the number of individuals who have overstayed their visas.

While DHS finally released a report about 3 weeks ago, the report left much to be desired. For instance, the figure included only a couple of subsections of admissions, leaving incomplete the picture of visa overstays. DHS reports that only 1 percent of admissions overstayed their permissible period. However, when you start to look at this, the administration only counted the travelers each time they entered the country as a unique admission. Now, what I am saying there is, thereby, it lowers the overall numbers to suggest that we are doing a better job than we really are.

That figure that was reported by DHS suggested that there was some 500,000 foreign travelers who had overstayed their visas and remained in the United States illegally. As of January 4, that number had been brought down to 416,000 of these who had not left the country. As I said, this number does not give the full picture either. It does not include those who enter by land or those who have entered for other reasons other than business or pleasure such as students, guest workers, exchange visitors. In fact, of the over 70 specific types of nonimmigrant visas, DHS's report only

covers 2, 2 out of 70. This report is supposed to inform Congress. Not only is it missing critical information, the DHS will not even provide Congress with the background memos used to compile the report.

We have a DHS official here today, so I hope that hopefully you can answer some of these questions for us and start to illuminate both members of the majority and the minority. I also hope that you can help us understand the significance of a biometric exit system and actually putting that in so that we can start to track this system and have proper reporting for visa overstays because it is a critical function for our national security.

And I can tell you that I imagine everyone in this room agrees with this. I don't want to have an incident that happens here that could have been prevented by implementing the proper procedures to look at this. Far too often we look backwards. We say only if this had happened or only if that had happened, maybe this disaster could have been prevented. I know one thing for sure. We must get it right. We must get it right right away.

And I thank the chairman for his patience and his direction and his leadership on this, and I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes Mr. Connolly, the ranking member of the Subcommittee on Government Operations, for his opening statement.

Mr. CONNELLY. I thank the chair, and welcome to our panelists.

Last December, in light of the tragedies of San Bernardino and Paris, Congress came together and passed the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, passed as part of the omnibus spending bill. It will enhance VWP's information-sharing requirements to better assess travel's risk.

It also requires covered travelers to use an e-passport containing technology that stores travel information, a digital photograph, biographical information, and biometric identifiers. Such passports also included security layers that make it more difficult to alter or duplicate them compared to other forms of travel identification.

The bill also tightens eligibility restrictions for VWP participation but does not block international travel using the normal visa process. It would prohibit participation in that process, the VWP process, by anyone who has traveled to Syria, Iraq, Iran, Sudan, and other designated areas of concern within the past 5 years, and dual nationals of those countries.

It also empowers the Department of Homeland Security with the authority to waive these restrictions to support "the law enforcement and national security interests of the United States." The Department of Homeland Security recently announced that it would implement those waivers on a limited case-by-case basis, certain categories of individuals, including those who have traveled to Iran or Iraq for legitimate business, professional, and humanitarian purposes.

Of course, individuals who may fall into one of those accepted categories are not automatically allowed to enter via the program. They must undergo the same rigorous screening process as any other traveler prior to receiving approval to travel under that program.

Some of my colleagues, critics of the administration, claim that the Department's implementation is contrary to congressional intent and represents an overreach of executive authority as the legislative language did not expressly provide exceptions.

However, I believe the Department is taking a commonsense approach to implementing the waiver authority we granted them, and that it is not inconsistent with the requirements of the law. In fact, some argue that permitting individuals from waiver countries to travel to Iran or Iraq for legitimate business, professional, and humanitarian purposes serves to promote rather than undermine the law enforcement and national security interests of our country.

There is concern that this waiver was provided in the interest of reserving the JCPOA in a manner inconsistent with the commitments the U.S. made in the deal. That is the nuclear deal with the Iran. For one, the waiver specifies travel after the date the agreement was signed. Additionally, the only reason Iran is subjected to these reforms is its designation as a state sponsor of terror. We were assured that Iran's support for terrorism was firewalled—if one can make a verb out of that—from the JCPOA negotiations, and for good reason, as we do not want to re-litigate the nuclear issue every time we take up one of the myriad challenges Iran poses to regional and U.S. security.

In providing this waiver, the administration must answer these challenges and make crystal clear to Congress that it was not provided in the interest of addressing perceptions in Tehran. The grounds for this waiver must rest solely on a sincere interest to preserve the integrity of the Visa Waiver Program and its ability to serve as an incentive for implementing border security and surveillance best practices.

I certainly look forward, Mr. Chairman, to hearing from our witnesses as to whether they believe that allowing, in limited circumstances, Europeans who have traveled to Iran for legitimate business to participate in the Visa Waiver Program and whether that creates a security risk or actually enhances national security.

I look forward to hearing from our witnesses, Mr. Chairman, and I thank you for holding this hearing.

Mr. DESANTIS. Thank you. I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

I will now recognize our panel of witnesses. I am pleased to welcome the Honorable Gil Kerlikowske, Commissioner of Customs and Border Protection at the U.S. Department of Homeland Security; Ms. Hillary Batjer Johnson, Deputy Coordinator for Homeland Security, Screening, and Designations at the Bureau of Counterterrorism at the Department of State. Ms. Johnson is accompanied by Mr. Edward Ramotowski, Deputy Assistant Secretary for Consular Affairs at the U.S. Department of State, whose expertise may be needed during the questioning.

Ms. Jessica Vaughan, Director of Policy Studies at the Center for Immigration Studies; Mr. Emanuele Ottolenghi, Senior Fellow at the Foundation for Defense of Democracies; and Mr. Stephen Heifetz, partner at Steptoe and Johnson, LLP. Welcome all.

Pursuant to committee rules, all witnesses will be sworn in before they testified. We will also swear in Mr. Ramotowski. So if you can please rise and raise your right hand.

[Witnesses sworn.]

Mr. DESANTIS. Thank you. Please be seated.

All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record.

Now, my pleasure, Mr. Kerlikowske, you are up.

WITNESS STATEMENTS

STATEMENT OF GIL KERLIKOWSKIE

Mr. KERLIKOWSKIE. Chairman DeSantis, Chairman Meadows, Ranking Member Lynch and Ranking Member Connolly, and distinguished members of the subcommittees, I returned on Sunday morning from California where CBP had an integral role in safeguarding the Super Bowl. I witnessed the aspects of CBP's very broad and complex mission all in one place, providing security, surveillance on the ground, surveillance from the air, screening cargo and deliveries for weapons and dangerous items.

Well, Customs and Border Protection has a critical role in securing international travel against the threat of the terrorists and their supporters, while facilitating lawful travel and tourism. Every day, we process 1 million travelers. And as you know, when boarding a U.S.-bound flight, most foreign nationals must obtain a non-immigrant visa issued by a United States Embassy or consulate, or the traveler must apply for a travel authorization through CBP's Electronic System for Travel Authorization, or ESTA.

Through ESTA, CBP conducts enhanced vetting of these applicants in order to assess whether they are eligible to travel and whether they pose a potential risk to the United States. And over the past 15 months, CBP has worked with DHS to strengthen the security of the program through enhancements to ESTA in order to identify those who may pose a threat to the United States.

And we have introduced additional ESTA data fields that have increased the ability of CBP and the National Counterterrorism Center to identify applicants with potential connections to terrorism.

In addition to these enhancements, this past August, Secretary Johnson announced further security measures for the Visa Waiver Program countries, including increased traveler data collection, analysis, and reporting, and require the use of INTERPOL's Stolen and Lost Travel Document database and the required use of electronic passports, which contain additional security features.

And on December 18, 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. And with some exceptions for official military and government travel, the law prohibits VWP travel for individuals who have been present at any time on or after March 1, 2011, in Iraq, Syria, or countries designated as state sponsors of terrorism, which includes Iran and Sudan. It also prohibits VWP travel for individuals

who are dual nationals of one of these countries and a VWP country.

CBP quickly began implementing some of the changes required by the new law. For example, we revoked 17,000 ESTA travel authorizations. We established, in conjunction with our interagency partners, a terrorist travel prevention cell in our National Targeting Center, and the cell will enhance the Department's efforts to identify and prevent foreign terrorists' fighter travel, and a subset of the cell's mission will be to scrutinize individual waiver requests permitted by the new law.

Additionally, CBP will add new fields to the ESTA application by the end of this month that will ask additional questions to further improve our ability to vet individual travelers and make decisions about their eligibility in accordance with the recent changes.

Well, as terrorists change their methods and tactics, DHS will continue to work our Federal and international partners to counter foreign fighter threats to the homeland. We'll continue to strengthen our travel security programs and systems and enhance our capabilities to secure international air travel against terrorists and others who threaten the safety of the traveling public and the security of our nation.

Chairman DeSantis, Chairman Meadows, Ranking Member Lynch, Ranking Member Connolly, and members of the subcommittees, thank you for the opportunity to testify. Let me clarify that I came back before the Super Bowl. I did not stay for the Super Bowl.

[Prepared statement of Mr. Kerlikowske follows:]



TESTIMONY OF

R. GIL KERLIKOWSKE
Commissioner

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

BEFORE

United States House of Representatives
House Committee Oversight and Government Reform
Subcommittee on National Security
Subcommittee on Government Operations

ON

“VISA WAIVER PROGRAM SECURITY ENHANCEMENTS”

February 10, 2016
Washington, DC

Introduction

Chairmen DeSantis and Meadows, Ranking Members Lynch and Connolly, and distinguished Members of the Subcommittees, 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.

Chairmen DeSantis and Meadows, Ranking Members Lynch and Connolly, and distinguished Members of the Subcommittees, thank you for the opportunity to testify today. I look forward to answering your questions.

Mr. DESANTIS. Thank you. Ms. Johnson, you are up for 5 minutes.

STATEMENT OF HILLARY BATJER JOHNSON

Ms. JOHNSON. Thank you. Good afternoon, Chairman Meadows, Chairman DeSantis, Ranking Member Connolly and Ranking Member Lynch, and distinguished members of the committee. I did not go to the Super Bowl either.

Thank you for this opportunity to testify today on implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. It's a pleasure to be here today with Commissioner Kerlikowske.

My written statement describes how the Department of State has worked closely with the Department of Homeland Security to implement this new law, while ensuring our top priority remains the protection of the U.S. homeland. As a deputy coordinator for Homeland Security in State's Counterterrorism Bureau, the security of the homeland and the safety of our citizens is my constant focus.

I welcome this legislation to strengthen the Visa Waiver Program. The VWP is a key counterterrorism tool that helps protect our homeland every single day. Our VWP partners must uphold strict security standards such as sharing information on known and suspected terrorists and criminals, and reporting lost and stolen passports to INTERPOL. We use VWP benefits to encourage greater information-sharing and more systemic screening by our allies. VWP requirements give our partners the impetus to tighten securities in ways that can be politically challenging for them.

The U.S. Government assesses each VWP country's compliance at least once every 2 years, inspecting airports, seaports, land borders, and passport production and issuance facilities. No other program enables the U.S. Government to conduct such broad and consequential assessments of foreign partners' security operations.

I'd also like to underscore that the VWP is not a free pass to travel to the United States. All travelers coming to the United States undergo checks for ties to terrorism and are subject to multiple layers of security, regardless of whether they have a visa or they enter under the VWP.

As the Commissioner has noted, citizens of VWP countries apply to the United States via the ESTA, and CBP checks ESTA forms against U.S. terrorist and criminal databases before travelers are allowed to travel under the VWP. And that information our partners provide us as part of the VWP is a vital component of our terrorist and criminal databases.

The layered security continues beyond this step. All travelers are screened by CBP's National Targeting Center before they board an airplane and after they're admitted into the U.S. And ESTAs are continuously reviewed and revoked immediately if new intelligence comes to light.

Watch listing and screening and intelligence gathering are some of our best tools for countering terrorist travel. These tools are most effective when we're working in collaboration with our VWP partners, and that's an important counterterrorism partnership, the VWP.

The 38 countries that are part of the VWP include many of our closest allies, and they're proud of their status. VWP membership is so prized that many countries not in the VWP complete program requirements in the hope of joining the program.

I'd like to speak to the national security waivers authorized under the law. Under the new law, the Secretary of Homeland Security has the authority to waive restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. We understand that Congress did not want to create blanket exemptions to the law, and that is why these waivers will be implemented on a case-by-case basis.

After consulting with the Secretary of State, the Secretary of Homeland Security has determined that, as a general matter, it is in the national security interests of the United States to administer waivers on a case-by-case basis for certain types of ESTA applicants. I want to stress again that these are not blanket waivers. Again, the waivers would be administered on a case-by-case basis and are narrowly tailored to specific national security interests.

We publicly outline these categories in which a waiver might apply to provide guidance to citizens of VWP countries. There's a lot of confusion about this law among some of our closest allies and trading partners. We need to let them know which of their citizens might receive a waiver and how that process would work. We noted in our guidance that each ESTA applicants would be considered on a case-by-case basis. In no instance is travel guaranteed under the VWP if a person falls into one of these identified categories.

I'd like to share quickly some examples of why we think these narrowly tailored waivers are in our national security interests. For instance, we rely on employees at the International Atomic Energy Agency for the technical expertise to fight the spread of nuclear weapons around the world. Yet without a waiver, IAEA employees who went to Iran to pursue our national security objective of preventing Iran from obtaining a nuclear weapon will be considered security risks.

Without waivers, UNHCR and World Food Program staff who do critical work helping refugees in Iraq or feeding starving children in Darfur, Sudan, would be unable to travel to the United States under the VWP.

The European Union is an essential partner to us around the world, but without a waiver, representatives from the E.U., including E.U. parliamentarians, would be ineligible to travel to the U.S. under the VWP.

Additionally, we work closely with officials of the E.U. Counterterrorism Coordinator's Office, who travel frequently to Iraq. Without waivers, they would be denied ESTAs. And these waivers would allow us to maintain and build our relationships and cooperations with these institutions to work shared counterterrorism goals.

Business representatives or NGO employees who have traveled to Iraq to help with schools, roads, and hospitals would be denied travel under VWP even though they're only doing work we have encouraged to help stabilize and rebuild that country's economy.

In Syria, the world relies on journalists facing great danger to report human rights violations, allegations of chemical weapon use,

and brutality of that ongoing conflict that we might otherwise not know about. Yet without waivers, they, too, would be denied travel under the VWP.

I recognize that participating in the VWP is a privilege and not a right, but denying VWP participation to citizens of member countries who are doing work we promote and support is counter to our national security interests.

I want to stress again that every VWP traveler considered for a waiver will be closely examined to see if they meet the stringent requirements to travel under the VWP. A case-by-case application of waivers in these narrow instances allows us to advance our national security interests and direct our resources to higher-risk threats.

As I've discussed, we believe there are significant national security interests for the United States to utilize its waiver authority, and we can do so without compromising the safety of our fellow citizens at home and overseas and the security of the traveling public.

Mr. Chairman, Ranking Member DeSantis, Ranking Member Connelly, and Ranking Member Lynch and distinguished members of the committee, thank you for your time. I look forward to your questions.

[Prepared statement of Ms. Johnson follows:]



DEPARTMENT OF STATE

WRITTEN STATEMENT

OF

HILLARY BATJER JOHNSON

DEPUTY COORDINATOR

BUREAU OF COUNTERTERRORISM

DEPARTMENT OF STATE

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON HOUSE OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON GOVERNMENT OPERATIONS AND

SUBCOMMITTEE ON NATIONAL SECURITY

HEARING

FEBRUARY 10, 2016

3:00 P.M.

2154 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

Good morning Chairman Meadows, Chairman DeSantis, Ranking Member Connolly and Ranking Member Lynch, 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.

Mr. DESANTIS. Thank you.
The chair now recognizes Ms. Vaughan for 5 minutes.

STATEMENT OF JESSICA M. VAUGHAN

Ms. VAUGHAN. Thank you for the opportunity to testify today.

Last year, Congress passed the first meaningful improvements to the Visa Waiver Program in some time, an acknowledgment of the elevated threat we face now from terrorism, espionage, and the inappropriate transfer of technology. These sensible and modest changes will allow for more scrutiny of certain travelers coming from Visa Waiver Program countries based on their dual nationality or their travel history by requiring them to get a visa.

This is important because the visa application process is not overly burdensome, but it does offer the opportunity for much more review than is possible under the Visa Waiver Program for several reasons because the visa process gives the government the time and the opportunity to ask questions and to ascertain more about the applicant's credibility and purpose for travel. The ESTA on the other hand is filled out online and people can submit it just hours before departure. The opportunity is for other agencies to help review these applications if needed, whether it's through the security advisory opinion process or other consultation with experts at post in which DHS, FBI, intelligence agencies, Treasury officials, Department of Commerce, and others can review the applications if the consular department feels it needs that additional consultation.

The ink from the President's signature on the law was barely dry when the Obama administration significantly undermined these reforms by unilaterally offering waivers that were not explicitly authorized in the law. This is a problem not only because it is a flagrant abuse of executive authority and a breach of the agreement with Congress, but because the administration's plan will expose our nation to real threats.

One of the categories of travelers the administration has carved out for waivers, dual nationals traveling to Iran and Iraq for business purposes, is precisely the category of travelers that needs to be scrutinized more closely because of past cases of espionage and illegal technology transfer.

The risks inherent in the Visa Waiver Program are compounded by the President's tendency to allow the admission of increasing number of foreign visitors, to gloss over the threats, to oversell his agency's ability to screen out risks, and to suppress the enforcement of immigration laws in the Interior.

I believe there were sound reasons to impose these restrictions. The immigration systems of Europe and the United States have already been exploited by terrorists with European citizenship and other dual nationalities linked to terrorism and other illicit activity that threatens national security.

Congressional leaders are rightfully angry about this move. The law provided the executive branch with the authority to issue waivers only for those dual nationals who were serving in military or civilian government jobs, not for journalists, aid workers, or business travelers necessarily.

One of my main concerns is that the Visa Waiver Program is already a major national security vulnerability that needs to be ad-

dressed. There are thousands of individuals who were involved with or sympathetic to terror groups and countries that sponsor terror who also hold passports of countries that participate in the Visa Waiver Program who can travel to the U.S. without undergoing the scrutiny of a visa interview.

Since 2014, there have been more than 100 foreign-born individuals who've been arrested for involvement in a terror operation after being admitted to the U.S. And DHS has yet to disclose the manner of entry for most of them, but we do know that terrorists have used the VWP to enter in the past.

My organization has identified more than 50 naturalized U.S. citizens who have been charged with serious national security-related offenses such as terrorism, spying, and theft of sensitive information and technology. Many were already associated with terror groups or foreign intelligence when they naturalized. Eight were born in Iran, and their crimes included exporting sensitive equipment, military equipment, satellite technology, and so on. So, clearly, dual nationality is a vital and frequently used tool for terror and espionage operations.

The number of Visa Waiver Program entries has been rising significantly. In 2014, more than 20 million visitors were admitted under that program, which is a 24 percent increase since 2008, and that means many more people who need to be vetted by our screening systems and by CBP inspectors.

We know that the Visa Waiver Program is frequently abused. In fact, visa waiver overstays make up 29 percent of the total number of overstays by visitors who were admitted under the short-term B-1/B-2 category in 2015. The total number of Visa Waiver Program overstays just in 2015 was more than 150,000, and these overstayers, we also know, are not a high priority for ICE. Only about 1 percent are ever investigated, and few are deported.

The other main concern I have is that one of the categories of travelers carved out for waivers is dual nationals traveling to Iran and Iraq for business purposes, and that's a category of travelers that present a significant national security risk because Iran has a comprehensive, effective, and aggressive intelligence program that expends substantial time and resources targeting U.S. military equipment, plans, and programs, as well as dual-use technology.

It's not just reasonable but urgent that our government take the steps to address this vulnerability, and Congress has come up with a tool that, if anything, should be expanded, not scaled back.

Thank you.

[Prepared statement of Ms. Vaughan follows:]

The President's Waiver of Restrictions on the Visa Waiver Program

U.S. House Committee on Oversight and Government Reform
 Subcommittee on National Security and Subcommittee on Government Operations
 February 10, 2016

Statement of Jessica M. Vaughan
 Center for Immigration Studies

Last year Congress passed the first meaningful improvements to the Visa Waiver Program (VWP) in some time, in acknowledgement of the elevated threat we face now from terrorism, espionage and the inappropriate transfer of technology to our enemies. These sensible and modest changes will allow for more scrutiny of certain travelers coming from VWP countries, based on their dual nationality or their travel history, by requiring them to get a visa.¹ The ink from the President's signature on the law was barely dry when the Obama administration significantly undermined these reforms, by unilaterally offering waivers that were not authorized in the law.² This is a problem – not only because it is a flagrant abuse of executive authority and a breach of the agreement with Congress, but because the administration's plans will expose our nation to real threats. One of the categories of travelers the administration has carved out for waivers -- dual nationals traveling to Iran and Iraq for business purposes -- is precisely the category of travelers that needs to be scrutinized more closely, because of past cases of espionage and illegal technology transfer. The risks inherent in the VWP are compounded by the President's tendency to allow the admission of increasing numbers of foreign visitors, gloss over the threats, over-sell his agencies' ability to screen out risks, and suppress the enforcement of immigration laws in the interior.

Impact of VWP Changes. The new rules spelled out for the VWP are sensible and narrowly focused. They affect only those travelers from VWP countries who have traveled to Syria or Iraq in the last five years, or who are dual nationals of Syria, Iraq, or countries on the official list of states that sponsor terrorism (currently Iran, Sudan and Syria). These travelers are not barred from entering the United States; they simply have to apply for a visa to travel here, just like travelers from most of the rest of the world.

There were sound reasons to impose these restrictions, as shown by the examples described below. The immigration systems of both in Europe and the United States already have been exploited by nationals of such countries linked to terrorism who, when undetected, go on to become citizens of their new homes even when they actively work against them as agents of their prior government, or as terrorist operatives or supporters, whether by fighting abroad or attacking the countries in which they reside. These are the "dual nationals" to whom the new proviso was directed. While we can do nothing about dual nationals of mal-intent who have

¹ See Dan Cadman, "A Brief Analysis of H.R. 158, the "Visa Waiver Program Improvement Act of 2015," Center for Immigration Studies, December 2015, <http://www.cis.org/Brief-Analysis-HR-158-Visa-Waiver-Program-Improvement-Act-2015>.

² U.S. State Department, "United States Begins Implementation of Changes to the Visa Waiver Program," January 21, 2016, <http://www.state.gov/r/pa/prs/ps/2016/01/251577.htm>.

infiltrated our own system until they are detected, there is no reason to take unnecessary risks with foreign dual nationals emanating from the countries specified; thus the new consular interview requirement.

Support was Broad and Bipartisan. These provisions were first passed in the form of U.S. House bill H.R. 158 on a lopsided bipartisan vote of 407-19 on December 9, 2015, before they were incorporated into the omnibus spending bill and then signed by the president. As a group of House leaders observed, because the White House participated actively in negotiating the final text of the bill and expressed support for it, it was reasonable to expect that the provisions would be faithfully enforced.³

Obama Administration Immediately Caves To Iranian Demands. Within weeks of the passage of the new rules, the government of Iran formally declared its objections, suggesting that the new rules violate the recently-concluded and highly controversial nuclear "non-treaty" agreement between Iran and the United States and other nations, and that they will adversely affect "economic, cultural, scientific and tourism relations." Presumably they meant that Iranian dual nationals or other VWP country citizens who wish to travel to Iran might be discouraged from doing so because they would then lose their VWP privileges for the United States. This is, at best, highly speculative.

Yet on December 19, Secretary of State John Kerry sent a letter to his Iranian counterpart, Minister of Foreign Affairs Mohammad Javad Zarif, assuring him that the administration would adhere to its treaty commitments and pledging to use a variety of immigration "tools" to facilitate travel to Iran, including the authority to waive the new VWP restrictions.

When the State Department formally announced the implementation of the new rules on January 21, it also announced that waivers would be offered to five categories of travelers who would otherwise be subject to visa requirements, including individuals who traveled to Iran and Iraq for "legitimate business-related purposes." The announcement said that, in addition, the administration would "continue to explore whether and how the waivers can be used for dual nationals of Iraq, Syria, Iran and Sudan."

Congressional Displeasure is Justified. Congressional leaders are rightfully angry about this move. The law provided the executive branch with the authority to issue waivers only for those dual nationals who were serving in military or civilian government jobs – not for journalists, aid workers, or business travelers.

House Homeland Security Chairman Michael McCaul and Rep. Candice Miller, the author of the bill, issued a strongly worded statement, saying, "The Obama administration is blatantly breaking the law, a law the president himself signed.... [He] is again putting his relationship with Iran's supreme leader over the security of Americans." House Judiciary Chairman Bob Goodlatte said, "The Obama Administration is essentially rewriting the law by blowing wide open a small window of discretion that Congress gave it for law enforcement and

³ Letter to administration officials from five House committee chairs, December 22, 2015.

national security reasons....In fact, the categories of people that the Obama Administration is exempting from the law were expressly rejected by Congress.”

Besides the concerns about breach of trust and abuse of authority that have been raised by members of Congress, I have additional concerns about the administration’s moves:

- 1) The VWP is a major national security vulnerability, and any move to undercut sensible reforms is a step backwards;
- 2) One of the categories of travelers that the Obama administration says it wants to allow to receive waivers – dual nationals traveling to Iran and Iraq for business purposes -- is a category of travelers that presents a significant national security risk;
- 3) The administration’s assertion that waivers will be offered on a “case by case basis” should be met with some skepticism based on past application of this phrase.

General VWP Risks. There are some benefits to the United States in offering visa waivers. These include the decreased workload for U.S. consular offices and the increased convenience of foreign travel to the United States, which benefits the travel and tourism industry, and the businesses that support it. But these benefits have to be weighed against the risk of facilitating the admission of travelers who pose a threat. This threat is at an elevated state today. Terror organizations such as ISIS are openly waging jihad on western nations, and have succeeded in carrying out and inspiring sympathizers to carry out attacks in Europe and the United States. Many of these warriors are citizens of countries that participate in the VWP and may travel to the United States without undergoing the scrutiny of a visa interview.

In addition, there are three nations designated as state sponsors of terrorism (Iran, Sudan, and Syria) and others, such as Iraq, where terrorists and sympathizers operate. Agents for these nations and groups sometimes have or obtain citizenship (and passports) from countries that participate in the VWP, in order to facilitate their international travel and conceal travel to countries of concern.

The threat is not theoretical. Since 2014, there have been more than 100 foreign-born individuals who have been arrested for involvement in a terror operation after being admitted to the United States, according to the findings of two members of the Senate Judiciary Committee.⁴ The Department of Homeland Security (DHS) has yet to disclose the manner of entry for most of these individuals, but we do know that terrorists have used the VWP to enter in the past.⁵

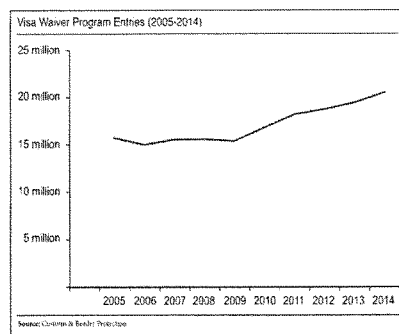
In addition, my organization has identified more than 50 naturalized U.S. citizens who have been charged with serious national security-related offenses such as terrorism, spying, and

⁴ Letter from Sens. Jeff Sessions and Ted Cruz to Obama administration officials on January 11, 2016: <http://www.sessions.senate.gov/public/cache/files/89e5265a-c9aa-47ee-9710-1fa1d3510e83/01-11-16-sessions-cruz-to-dhs-doi-state-re-terrorism-immigration.pdf>.

⁵ Examples include Zacarias Moussaoui, one of the 9/11 plotters; Richard Reid, the shoe bomber; Ahmed Ajah, a thwarted Al Qaeda bomber; and Ramzi Yousef, who organized the 1993 World Trade Center bombing, among others.

theft of sensitive information and technology.⁶ These individuals came from countries such as Iran, Iraq, Yemen, China, Libya, Pakistan, Somalia, Kazakhstan, among others. Many were already associated with terrorist groups or foreign intelligence organizations when they naturalized. Eight of the individuals we identified were born in Iran, and their crimes included violating the U.S. embargo, plotting an assassination, exporting equipment related to uranium enrichment, operating an unlicensed money wiring business between the U.S. and Iran, conspiracy to export military aircraft parts to Iran, illegally providing satellite technology to Iran, and exporting missile components to Iran. Clearly, dual nationality is a vital and frequently-used tool for terror and espionage operations.

Number of VWP Entries Has Been Rising. According to data from U.S. Customs and Border Protection, in 2014, the most recent year for which data is available, more than 20 million visitors were admitted under the VWP. Use of the VWP has increased 24 percent since 2008 (see chart below). This represents an additional 4.8 million admissions in 2014 over 2008. That is a very significant increase in cases that need to be vetted by our screening systems and by CBP's immigration inspectors at the ports of entry.



According to other data in the recently-released 2015 DHS Entry/Exit Overstay Report⁷ (see table below), approximately 14 million, or 68 percent of the VWP visits were from people who entered using passports of European Union member nations. These are the nations in Europe that have been most affected by the recent flood of migrants from trouble spots in the Middle East, and where terror groups have already had success in recruiting new operatives. Any country on the VWP participant list could have dual nationals of concern who are taking advantage of lax VWP entry rules, though.

⁶ W.D. Reasoner, "Upholding the Value of Our Citizenship," Center for Immigration Studies, January, 2013, <http://www.cis.org/Upholding-the-Value-of-Our-Citizenship-Threats-Should-Be-Denaturalized>.

⁷ U.S. Department of Homeland Security, "Entry/Exit Overstay Report," Fiscal Year 2015.

Country of Citizenship	Expected Departures	Total Overstays	Total Overstay Rate
Andorra	1,221	5	0.41%
Australia	1,306,352	4,842	0.37%
Austria	210,854	2,813	1.33%
Belgium	290,103	1,635	0.56%
Brunei	1,143	11	0.96%
Chile	306,598	7,137	2.33%
Czech Republic	97,708	1,608	1.65%
Denmark	326,334	1,970	0.60%
Estonia	20,247	234	1.16%
Finland	153,136	838	0.55%
France	1,767,377	13,407	0.76%
Germany	2,107,035	22,554	1.07%
Greece	71,430	1,653	2.31%
Hungary	75,904	2,216	2.92%
Iceland	51,231	235	0.46%
Ireland	453,597	2,113	0.47%
Italy	1,184,715	18,997	1.60%
Japan	3,014,769	6,058	0.20%
Korea, South	1,121,890	8,472	0.76%
Latvia	18,698	359	1.92%
Liechtenstein	2,048	14	0.68%
Lithuania	26,502	582	2.20%
Luxembourg	14,279	82	0.57%
Malta	5,504	47	0.85%
Monaco	1,136	5	0.44%
Netherlands	709,633	8,184	1.15%
New Zealand	298,093	1,451	0.49%
Norway	312,600	1,423	0.46%
Portugal	165,533	3,822	2.31%
San Marino	702	16	2.28%
Singapore	127,804	481	0.38%
Slovakia	44,274	1,043	2.36%
Slovenia	23,669	278	1.17%
Spain	896,833	12,559	1.40%
Sweden	576,422	2,782	0.48%
Switzerland	438,910	2,402	0.55%
Taiwan	356,225	1,888	0.53%
United Kingdom	4,393,881	18,950	0.43%
Total	20,974,390	153,166	0.73%

Source: Customs & Border Protection

New DHS Report Confirms Widespread Abuse of VWP. The aforementioned DHS overstay report confirms that the VWP is frequently abused; in fact, VWP overstays make up 29 percent of the total number of overstays by visitors admitted for a short-term visit (B-1/B-2 category) in 2015. The total number of VWP overstays in 2015 was 153,166.

Proponents of the expansion of the VWP point to the very low-sounding overstay rate reported by DHS for VWP visitors (0.73%). But the DHS methodology for calculating the rate is set up to produce a deceptively low rate, because it is based on entries, not individuals, and this rate understates the true magnitude of the problem. Under this methodology, the frequent visits by millions of compliant travelers have the effect of suppressing the overall overstay rate, because overstayers are most likely to do it on their first visit. For example, if 10 people are admitted to the United States for three visits each and all are compliant, that is counted as 30 admissions. If in addition one person is admitted and overstays, that is counted as one admission. Using the DHS methodology, in this case the overstay rate would be 1/31 or 3 percent, not 1/11 or 9 percent. DHS has established that the business/pleasure categories include many individuals who are admitted multiple times in one year, and it is their compliance that is reflected in the low-sounding overstay rate.⁸

VWP Creates an Enormous Haystack of Visitors to Track. The huge number of visitors entering under VWP, with a large number overstaying, is an enormous pool of foreign visitors to try to screen and track, and really is beyond the capacity of our homeland security and counter-terrorism agencies.

According to testimony last month before the Senate Judiciary Committee, DHS devotes very few resources to monitoring or enforcing the law against overstayers. At the hearing, Craig C. Healy, the assistant director for national security investigations at ICE, testified that only about one percent of the suspected overstays are ever investigated. Currently there are only about 3,000 overstay cases being investigated, and in 2015 only 1,910 overstayers were arrested by ICE.

Existing Screening Tools for VWP Travelers Are Inadequate to the Threat. The last major improvement to the VWP was fully implemented in March, 2010, when DHS began enforcing a requirement that all travelers complete a pre-travel electronic screening application, known as an ESTA (Electronic System for Travel Authorization). This pre-travel screening collects important information on VWP travelers and has enabled officials to do database and watch list checks on them prior to arrival in the United States.

Very little information has been disclosed to the public about the effectiveness of ESTA in preventing the travel of individuals who pose a threat. We know from a GAO report⁹ and other sources that tens of thousands of travelers are denied ESTAs each year, but we do not know the reasons, their countries of origin, or reasons for travel, and we do not know how many were subsequently allowed to obtain a visa, or how many abused their admission to the United States. So neither lawmakers nor the public really have any way of knowing how effective this screening is. DHS did recently add a number of useful new questions to the application as the

⁸ For more on the DHS report, see Jessica Vaughan, "DHS Reports Huge Number of Visitors Overstayed in 2015," Center for Immigration Studies, January 20, 2016, <http://cis.org/vaughan/dhs-reports-huge-number-visitors-overstayed-2015>.

⁹ Government Accountability Office, "Visa Waiver Program: DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks," GAO-11-335, May 5, 2011, <http://www.gao.gov/products/GAO-11-335>.

threat from westerners who fought in Syria and Iraq became more apparent, but still we lack good information on how well the ESTA is working.

We do know that the ESTA screening relies on the same sources of information, intelligence, and records as the rest of our immigration system, and we know that those systems have major gaps. Notwithstanding the confident claims of Obama administration officials about the thoroughness of our vetting, in fact virtually every visa or immigration program we operate has been used by terrorists or criminals. San Bernardino terrorist Tashfeen Malik, Iraqi terrorists admitted as refugees, and the Nigerian "underwear bomber" are some of the most recent concerning examples.

Questions have been raised following the Boston Marathon bombing, the San Bernardino attack, and in the debate over the admission of refugees from Syria, about the adequacy of DHS intelligence gathering, analysis and sharing in identifying threats and preventing terrorist activity. It has been reported that some of the terrorists who participated in the November Paris attacks would have been able to use the VWP because they were French and Belgian citizens, and they likely would have made it through our screening process because even though some were known to counter-terrorism officials in those countries, they were not on U.S. watch lists. It has also been reported by former DHS agents that information on possible national security threats has sometimes been scrubbed from government databases, allegedly for political reasons. Given this backdrop, it is not clear why the administration has so much confidence that it will be able to detect threats among the Iranian travelers for whom it will waive the interview rules.

Specific Risk of Dual National Business Travelers. Iran's official objections to the new rules were based on concerns about the economic impact. It is more likely, in my opinion, that Iran's concerns stem from the fact that it has an extremely comprehensive, effective, and aggressive intelligence program which expends substantial time and resources targeting U.S. military equipment, plans, and programs, as well as "dual use" technology whose export is restricted. As noted above, several naturalized U.S. citizens and natives of Iran have been arrested, convicted, and sent to prison in recent years after stealing or attempting to steal defense or technological equipment or secrets for export to Iran. Iranian officials refer to these convicted spies as "Iranians" and "ours", despite their U.S. naturalization. There were 14 Iranian citizens who were let off charges as part of the swap negotiated last month trading Iranians arrested in the United States for espionage and technology transfer for Americans imprisoned in Iran.

As one of my colleagues, CIS Senior Fellow Dan Cadman, has written, in the world of espionage, handing off stolen material and other secrets is tricky business, and one of the times when spies are most vulnerable to discovery. Continental Europe, with its freedom of travel for European Union (EU) passport holders, is one transshipment center for the military and dual technology equipment, and no doubt also for plans and technical schematics. What better way for the U.S.-based foreign intelligence agent to get rid of the goods than through dead drops and brush-passes with EU-based operatives coming here via the VWP, who then take on the burden of getting them out of the United States and into Europe on their departure? In our country, immigration and customs exit controls are nearly nonexistent.

Subjecting Iranian spies who have naturalized in EU countries to a new procedure of visa interviews, background checks, and other intrusive vetting methods is the last thing Iran would want, because it risks throwing a monkey wrench into an otherwise excellent espionage system.¹⁰

“Case by Case” Consideration of Waivers. The administration’s announced policy on the granting of waivers clearly goes beyond what is proscribed in the new law, which provides for waivers only if it is “in the law enforcement or national security interests of the United States,” and only on an individual basis, not for an entire group of individuals defined by the administration.

The announcement also said that waivers would be granted on a “case-by-case basis,” a phrase familiar to all observers of previous episodes of the Obama administration’s abuse of executive authority. Whether in the context of the Deferred Action for Childhood Arrivals program, or the mass issuance of work permits, or the exercise of “prosecutorial discretion,” this phrase, when employed by the Obama administration, has usually meant “the default decision will be approval and only the most obviously and egregiously unqualified applicants will be refused.”

Objections from Iranian American Dual Nationals. The administration may also have been swayed to undermine the new VWP rules by pressure from Iranian American activists. A number of groups and individuals objected that requiring Iranian dual nationals in other countries to get visas might mean that Iranian American dual nationals might have to get visas to travel to these VWP countries. Some opponents said that potentially losing the privilege of visa-free travel amounted to “second class citizenship” for Iranian Americans and characterized the new rules as illegal ancestry-based discrimination. Jamal Abdi, a spokesman for the National Iranian American Council blamed it on presidential candidate Donald Trump: “This bill is a direct response to the rhetoric of GOP leaders like Donald Trump and others who have called for restricting people coming to the United States based on national origin ... now as a consequence of the environment he’s helped create, we’re actually seeing Congress take steps to turn such xenophobic ideas into law.”¹¹

These objections are unfounded. Visa waiver privileges are neither an entitlement nor a human right, and the U.S. government ought to be weighing national security needs as a higher priority than the convenience of travelers. The government need not apologize for differentiating between groups of travelers based on factors such as country of origin or where they have traveled.

The real issue here is dual nationality, not “second-class citizenship.” The fact is that people who retain more than one nationality are indicating that they have not fully renounced their allegiance to their country of origin despite attaining citizenship in another country. Some people have dual nationality for sentimental reasons, others for the convenience of having

¹⁰ Dan Cadman, “Is Iran Dictating Terms of the New Visa Waiver Restrictions?,” Center for Immigration Studies, December 28, 2015, <http://www.cis.org/cadman/iran-dictating-terms-new-visa-waiver-restrictions>.

¹¹ Murtaza Hussain, “Congress just put Iranian Americans and others at risk for becoming second-class citizens,” The Intercept, December 18, 2015, <https://theintercept.com/2015/12/18/congress-just-put-iranian-americans-and-others-at-risk-for-becoming-second-class-citizens/>.

multiple passports, and some do it to facilitate illicit activity, including espionage and terror. But it is fundamentally a personal choice. And it is not reasonable for those who choose dual nationality to be able to pick and choose which nationality will apply in which circumstance; if Iranian Americans still want to be Iranian citizens, then they cannot legitimately object when other countries treat them like Iranian citizens who live in Iran. And, frankly, this is not a matter of life or death; the issue here is the *possibility* that VWP countries will now require them to obtain visas for travel to those countries.

Others have argued that there is no basis for the VWP changes because no Iranian Americans have “become radicalized or committed acts of terror.” But there have been Iranian Americans involved in terror plots. In October, 2011, Manssor Arbabsiar, a naturalized U.S. citizen who was a native of Iran, was arrested and charged for plotting with an Iranian co-conspirator to assassinate the Saudi Arabian ambassador to the United States. U.S. officials have alleged that the plot was masterminded, or at least approved by, the Iranian government. In addition, there are a number of Iranian Americans who have been convicted of technology transfer and espionage; these individuals are no less a threat to national security than those involved in violent terrorism. Indeed, when foreign nationals are prosecuted for nuclear technology transfer crimes, they are often described as terror-related.

Finally, some Iranian American dual nationals have argued that the new rules unfairly “scapegoat” Iranians, when there have been more terror attacks carried out by citizens of other countries, including Saudi Arabia, Pakistan and Egypt. They have a point; not about “scapegoating,” but about the threat from jihadists from other countries. It would be wise for our government to consider similar restrictions for VWP dual nationals from these countries too – and the legislation provides some opportunity for the executive branch to do that.

Attachment to Vaughan Testimony on Visa Waiver Program Changes

U.S.-Iranian Dual Citizens Charged With Serious National Security-Related Offenses

Ali Amirnazmi – Sentenced in January, 2010 for violating the U.S. embargo on Iran, making false statements, and bank fraud; he was allegedly personally recruited by Iranian president Ahmadinejad.

Manssor Arbabsiar – Arrested in October, 2011 with an Iranian co-conspirator and charged with plotting to assassinate the Saudi Arabian ambassador to the United States, a plot allegedly masterminded by the Iranian government.

Jirair Avanesian – AKA Jerry Avanes, Pled guilty in July, 2010 to exporting to Iran in violation of law, vacuum pumps and pump-related equipment required for uranium enrichment.

Mahmoud Reza Banki – Sentenced in August, 2010 to 30 months in prison for violating the Iran trade embargo, operating an unlicensed money transmittal business between the U.S. and Iran, false statements and conspiracy.

Hassan Kesharui – Sentenced in May, 2009 to prison for conspiracy to export military aircraft parts to Iran.

Nader Modanlo – Indicted in June, 2010 by a federal grand jury for money laundering, and conspiring to illegally provide satellite hardware and technology to Iran.

Hamid “Hank” Seifi – Sentenced in June, 2011 to 56 months in federal prison for conspiring to export parts for attack helicopters and fighter jets to Iran.

Andro Telemi – Pled guilty in May, 2011 to conspiracy to illegally export technology and defense items, including TOW missile components and radio test sets, to Iran.

In another example of transnational conspiracies to obtain U.S. technology to assist Iran’s nuclear program, Iranian national Sayued Abolfazl Shahab Jamili was indicted in 2013 along with Chinese citizen Sihai Cheng on charges of illegal exports to Iran for shipping US-manufactured transducers (sensors used to enrich uranium and produce weapons-grade uranium) to two Iranian companies, which then supplied them to a company that is an arm of the Iranian government. The U.S. government has since lifted the arrest warrant for Jamili as part of the prisoner exchange deal recently negotiated with Iran, while Cheng remains jailed, awaiting sentencing in Boston, MA.

Mr. DESANTIS. Thank you.
The chair now recognizes Mr. Ottolenghi for 5 minutes.

STATEMENT OF EMANUELE OTTOLENGHI

Mr. OTTOLENGHI. Chairmen DeSantis and Meadows, Ranking Members Lynch and Connolly, members of the committee, on behalf of the Foundation for Defense of Democracies, thank you for the opportunity to testify.

Entry into the United States under the Visa Waiver Program is a privilege, not a right, bestowed on a select group of countries. Today, we discuss whether it is reasonable to require greater due diligence for a select group of visitors from visa waiver countries on the basis that they are dual nationals of Iran or a handful of other countries.

Greater due diligence is, in my view, a sound and not unduly burdensome measure. Dual nationals can continue to travel to the United States provided they first apply in person and receive a visa. Many of us in this room have had to apply for visas to travel to other countries. While an annoyance, it is not an overly onerous exercise.

In the case of Iranian dual nationals, this added layer of due diligence is critical to the national security of the United States. Tehran has long relied on dual nationals to pursue illegal activities. Clearly, not every dual national is a government agent, but virtually all agents of the Iranian regime who are involved in conspiracies to commit acts of terrorism or nuclear and ballistic procurement were dual passport holders.

With effective enforcement, the visa waiver exception will make it more difficult for them to engage in criminal activities on American soil. Tehran relies on dual nationals because a non-Iranian passport generally draws less scrutiny at border crossings. It also makes it easier to open foreign bank accounts and corporate companies and conduct financial operations overseas.

My written testimony provides five recent examples of dual nationals' critical role in Iran's terror plots. Here are examples of cases in which Tehran relied on dual nationals for other illicit activities and to obscure the Iranian ownership of companies.

Slide 2, please.

[Slide.]

Mr. OTTOLENGHI. MCS Systems was a German gas-cylinder factory owned by EIKO, the supreme leader's holding company, which the U.S. Treasury sanctioned in 2013. EIKO obfuscated its ownership by transferring it to two Iranian-Canadian dual nationals who then reported directly to EIKO, the goal, to attempt and evade sanctions.

In 2010, Treasury sanctioned IFIC Holding, the German-based subsidiary of Iran's Foreign Investment Company. Commercial extracts for SWIFIC Holding, its Swiss branch, show its owners were Canadian and a German dual national. The goal again, avoid sanctions.

Iran's airline Mahan Air provides more evidence of the role of dual nationals. Treasury designated Mahan Air in 2011 "for providing financial material and technological support to the Quds Force, including transporting personnel and weapons to Syria's re-

gime. Mahan relies on dual nationals to run its front companies in Europe while continuing to facilitate ethnic cleansing and other crimes against humanity in Syria.

In most waiver countries, obtaining citizenship is a lengthy process with stringent requirements. Some countries, however, are making their citizenship readily available through investment. Iranian nationals, among others, are exploiting this. In 2014, the U.S. Treasury issued an advisory that certain individuals were abusing the Citizenship-by-Investment program of St. Kitts and Nevis to obtain passports for the purpose of engaging in illicit financial activity. The advisory made particular reference to Iranian nationals.

Three Iranian businessmen with quickly obtained St. Kitts citizenship built a complex financial sanctions evasion network spanning the globe, including the United States. Despite Treasury sanctions, they moved across borders easily and reconstituted sanctioned companies under new names thanks to their St. Kitts passport, and for one of them, a Canadian permanent residency.

This is not an isolated case. New programs from visa waiver countries are now available to wealthy investors, including Iranians in search for a second passport. Such programs may become a gateway to a visa-free entry into the United States for Iranian procurement agents. The lifting of sanctions against Iran may actually increase the number of regime agents trying to enter the U.S.

The steps Congress now takes must ensure that actors involved in facilitating proliferation and other illicit activities abroad do not benefit from free access to the United States. The United States should explain to all visa waiver countries offering or considering citizenship and permanent residency by investment that the due diligence and stringency of the requirements of their programs may affect their status. Their programs should not become a shortcut to entering the United States.

The suspension of the Visa Waiver Program for dual nationals of Iran is the direct result of the regime's close association with terrorism and other illicit activities. The dangerous exploitation of foreign passports for illicit purposes justifies the inconvenience posed to the relatively few who will now have to obtain a visa in person. The singling out of Iranian dual nationals is thus not only appropriate but should be a vital component of homeland security policy.

My written testimony provides additional recommendations. Thank you for the opportunity to testify, and I look forward to your questions.

[Prepared statement of Mr. Ottolenghi follows:]

Congressional Testimony

**The Role of Iranian Dual Nationals in
Sanctions Evasion**

Dr. Emanuele Ottolenghi
Senior Fellow
Center on Sanctions and Illicit Finance
Foundation for Defense of Democracies

**Hearing before the House Committee on Oversight and
Government Reform**
Subcommittee on National Security and
Subcommittee on Government Operations

Washington, DC
February 10, 2016



1800 M Street NW • Suite 800, South Tower • Washington, DC 20036

Emanuele Ottolenghi

February 10, 2016

INTRODUCTION

Chairmen DeSantis and Meadows, ranking members Lynch and Connolly, members of the committee, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, I thank you for the opportunity to testify.

Entry into the United States under the Visa Waiver Program is a privilege, not a right, bestowed on foreign nationals wishing to visit from a select group of countries. Those countries earned this privilege based on specific criteria, and may lose it if they fail to meet those conditions – as has happened to Argentina and Uruguay in the past.

Today we are here to discuss not whether Congress unreasonably deprived countries of this privilege, but whether it is reasonable to deny it to a select group of visitors from Visa Waiver countries on the basis that they are dual nationals of the Islamic Republic of Iran.

I contend that the exception for dual nationals of Iran and Visa Waiver countries is, on balance, a sound and not unduly burdensome measure. Dual nationals may still come to the United States, but now need to apply in person for a visa. This measure should not be undermined for fear that Iran may view it as a violation of the Joint Comprehensive Plan of Action (JCPOA) nuclear agreement or because of fears of retaliatory measures from Visa Waiver countries. As I indicate in my testimony, the added layer of due diligence – requiring a visit to a U.S. consular section and an interview with an official – is critical to the national security of the United States.

Tehran, after all, has long relied on Iranian nationals who are dual passport holders to pursue illegal activities, including terrorism, illicit finance, and procurement of technology for its ballistic-missile and nuclear-weapons programs. Clearly, not every dual national is an Iranian agent. But virtually all agents of the Iranian regime who over the past decade were involved in conspiracies to commit acts of terrorism, illicit financial activities, nuclear and ballistic procurement, *were* dual passport holders. The Visa Waiver exception will make it more difficult for them to enter the United States and engage in criminal activities on American soil.

SECTION I: DUAL NATIONALS AND TERRORISM

Dual nationals acting on behalf of Iran's regime repeatedly carried out or were arrested while trying to carry out acts of terrorism. One was Mansour Arbabsiar, the Iranian-American dual national sentenced in May 2013 to 25 years in prison for participating in a plot to murder the Saudi Ambassador to the United States under the direction of Iran's Islamic Revolutionary Guard Corps' Quds Forces.¹ The plot was meant to target the Café Milano restaurant in Washington, DC in October 2011. A year after Arbabsiar's failed plot, in July 2012, Hezbollah operatives successfully targeted a bus carrying Israeli tourists at an airport outside the Bulgarian sea town resort of Burgas, murdering five Israeli tourists and the Bulgarian bus driver. The three

¹ U.S. Department of Justice, Press Release, "Mansour Arbabsiar Sentenced in New York City Federal Court to 25 Years in Prison for Conspiring with Iranian Military Officials to Assassinate the Saudi Arabian Ambassador to the United States," May 30, 2013. (<http://www.justice.gov/opa/pr/mansour-arbabsiar-sentenced-new-york-city-federal-court-25-years-prison-conspiring-iranian>)

terrorists were Meliad Farah, Hassan el-Haji Hassan, and Mohamad Hassan El Hussein, dual nationals of Lebanon and, respectively, Australia, Canada, and France.² A few days before the Burgas attack, Cypriot authorities arrested Hossam Yaakoub, a dual national of Lebanon and Sweden who was plotting to strike Israeli tourists in Cyprus.³ Several weeks later, an Iranian-Canadian dual national was arrested in Bulgaria while she was scouting a Chabad center for another possible terror attack.⁴ Another dual national of Lebanon and Canada, Hossein Bassam Abdallah, was arrested in Cyprus and sentenced to six years in prison in 2015 for plotting terror attacks against Israeli targets. He was found in possession of vast quantities of explosives when arrested.⁵

Dual nationals played a critical role in Iran's terror plots. Their Western passports facilitated their entries and operations into the countries where they planned to execute their criminal objectives. And very much like the cases of terrorism, Tehran relies on dual nationals for other illicit activities.

SECTION II: PASSPORTS FROM IRAN'S ALLIES

In the past, Tehran has relied on Iranian expatriates to pursue a variety of nefarious projects. It has dispatched executives of government-owned companies abroad to acquire permanent residence and citizenship. It has also leveraged friendly relations and exploited citizenship-by-investment programs (CIP) to equip its agents with second passports. A non-Iranian passport generally draws less scrutiny at border crossings and makes it easier for a dual-passport holder to open foreign bank accounts, incorporate companies, and conduct financial operations overseas.

A number of Iranians, for example, were granted citizenship by Bosnia and Herzegovina during the 1992-1995 civil war. According to Shaul Shay, the author of *Islamic Terror and the Balkans*, "The Mujahidin fighters were either recognized as legal citizens following marriage to local women or were granted citizenship for their contribution to the Bosnian Muslim nation during the war."⁶ These included officials from the Islamic Revolutionary Guard Corps, military, and intelligence.⁷

² Benjamin Weinthal, "Bulgaria names Hezbollah suspects behind bombing of Israeli bus in Burgas," *Jerusalem Post* (Israel), July 25, 2013, (<http://www.jpost.com/International/Bulgaria-names-2-suspects-in-Burgas-bus-bombing-321017>); "Bulgarian authorities identify third suspect in Burgas bus bombing," *Ha'aretz* (Israel), July 18, 2014, (<http://www.haaretz.com/israel-news/premium-1.605940>)

³ Nicholas Kulish, "Hezbollah Courier Found Guilty in Plot to Attack Israeli Tourists in Cyprus," *The New York Times*, March 21, 2013, (http://www.nytimes.com/2013/03/22/world/middleeast/hezbollah-courier-guilty-of-role-in-cyprus-terror-plot.html?_r=0)

⁴ Benjamin Weinthal, "Iran agent monitoring Chabad arrested in Bulgaria," *Jerusalem Post* (Israel), April 22, 2013, (<http://www.jpost.com/International/Iranian-agent-with-Canadian-passport-arrested-in-Bulgaria-310616>)

⁵ "Lebanese-Canadian Confesses to Cyprus Terror Charges," *The Times of Israel* (Israel), June 29, 2015, (<http://www.timesofisrael.com/lebanese-canadian-confesses-to-cyprus-terror-charges/>)

⁶ Shaul Shay, *Islamic Terror and the Balkans*, (New Brunswick: Transactions Publishers, 2011), p. 69.

⁷ Iranian weapons supplies to Bosnia are well documented. Peter Andreas, "The Clandestine Political Economy of War and Peace in Bosnia," *Bosnian Security after Dayton: New Perspectives*, Ed. Michael A. Innes, (Abingdon, UK: Routledge, 2006).

Bosnian passports have provided Iranians with the ability to enter and exit a country bordering the European Union that has applied for EU membership and enjoyed an Association Agreement with it since 2008. Since 2010, Bosnian citizens with a biometric passport also enjoy a visa-free regime with the EU's Schengen Area.

Venezuela offers another, more recent instance in which diplomatic ties and Iranian economic largesse provided access to second passports. For over a decade now, Venezuela has provided passports and other identity documents to non-Venezuelan nationals, including many from Middle Eastern countries. In a July 2006 testimony to the Subcommittee on International Terrorism and Non-Proliferation of the House Foreign Affairs Committee, Mr. Frank C. Urbancic, Jr., then Principal Deputy Coordinator at the State Department's Office of the Coordinator for Counterterrorism, said:

"Venezuelan travel and identification documents are extremely easy to obtain by persons not entitled to them, including non-Venezuelans. Passports and national ID cards are available for sale in the requester's identity, or another, if so desired. The systems and processes for issuing these documents are corrupted on various levels: alien smuggling rings use confederates in the issuing entities to make documents available in large numbers to their clients; freelancers in those entities capitalize on lax or non-existent controls to sell documents for personal gain; forgers alter passports with child-like ease; and most worrisome, Venezuelan Government officials direct the issuance of documents to ineligible individuals to advance political and foreign policy agendas."⁸

Media reports confirm that these practices are ongoing to the benefit of Iranian and Hezbollah agents. The Brazilian weekly, *La Veja*,⁹ reported last year that Lebanese citizens belonging to Iran's Hezbollah proxy, as well as Iranian nationals, were issued passports by the Venezuelan embassy in Damascus. A recently surfaced video of an exiled Venezuelan police officer formerly seconded to the Venezuelan embassy in Baghdad echoes these reports, claiming that numerous Middle Eastern nationals, mostly Shiite Muslims, obtained Venezuelan documents and birth certificates in exchange for cash during his time in Baghdad.¹⁰ Venezuelan passports have given their beneficiaries visa-free access to Mercosur and ALBA countries in Latin America and the Caribbean,¹¹ placing them within easy reach of U.S. soil.

⁸ Frank Urbancic Jr., "Prepared Statement" for "Venezuela Terrorism Hub of South America?" *Hearing before the Subcommittee on International Terrorism and Proliferation of the Committee on International Relations of the House of Representatives*, July 13, 2006.

(http://commdocs.house.gov/committees/intlrel/hfa28638.000/hfa28638_0.HTM)

⁹ "Venezuela sold non-existent air tickets for 'aeroterror' flight," *La Veja International*, March 25, 2015.

(<http://vejainternational.com/news/venezuela-sold-non-existent-air-tickets-for-aeroterror-flight/>)

¹⁰ "Diplomatico Venezolano Denuncio la Entrega de Documentos a Terroristas (Venezuelan diplomat denounced the delivery of documents to terrorists)," *Infobae* (Argentina), November 24, 2015.

(<http://www.infobae.com/2015/11/24/1772058-diplomatico-venezolano-denuncio-la-entrega-documentos-terroristas>)

¹¹ The eleven member countries are Antigua and Barbuda, Bolivia, Cuba, Dominica, Ecuador, Grenada, Nicaragua, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Venezuela.

SECTION III: IRANIAN DUAL NATIONALS WORKING FOR SANCTIONED ENTITIES

Before the UN Security Council imposed sanctions on Iran in December 2006, Iranian government companies frequently appointed Iranian-based executives to operate their overseas subsidiaries in Visa Waiver countries. Since the beginning of the international sanctions regime, however, host countries have grown increasingly suspicious of Iranian regime-affiliated businesses and tightened border controls for Iranian travelers. Even when able to travel, Iranian executives have faced growing restrictions on their ability to open and operate bank accounts, move funds across jurisdictions, execute payments, obtain letters of credit, and get export licenses for merchandise the regime has dispatched them to procure.

To overcome such obstacles, Iran relied on two strategies. Where possible, it helped willing executives to permanently relocate abroad and obtain permanent residency permits which, over time, could be upgraded to a second nationality.

Iran also hired Iranian expatriates to manage its overseas businesses. With international sanctions increasingly restricting Iranian business, finance, and travel, dual nationals became a critical asset for the regime.

Numerous Iranian dual nationals currently living abroad are managing regime assets. In many such cases, the U.S., the UN, and the European Union sanctioned either these individuals or the companies they managed.

MCS Technologies GmbH, for example, was a German gas-cylinder factory sanctioned by the U.S. Treasury in June 2013. At the time, it belonged to Execution of Imam Khomeini's Order, or EIKO – the supreme leader's holding company, which Treasury also sanctioned in 2013.¹² (Under the nuclear deal, EIKO has been delisted).

In 2003, a group of Iranian investors purchased Mannesman Cylinder Systems in Dinslaken, Germany, and renamed it MCS International GmbH. The company changed its name again in 2011, to MCS Technologies GmbH, after a bankruptcy procedure, and was liquidated in April 2013. Corporate records show that from 2003 to 2011, MCS was owned by Reyco GmbH, a German-incorporated subsidiary of Rey Investment Co. According to Treasury, Rey Investment Company:

“[W]as formerly run by Ayatollah Mohammad Mohammadi Reyshahri, who previously served as the Iranian Minister of Intelligence and Security. Rey Investment Company collected and invested donations obtained from Iranian Shi'a shrines. However, amidst allegations of mismanagement and embezzlement of shrine donations from the company, the Iranian Government cut off its funding to the point of nearly bankrupting the company. In mid-to-

¹² U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” April 4, 2013. (<https://www.treasury.gov/press-center/press-releases/Pages/jl1968.aspx>)

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February 10, 2016

late 2010, Reyshahri was removed and control of Rey Investment Company was transferred to EIKO and its director. EIKO subsequently appointed a new Managing Director of Rey Investment Company.”¹³

Rey Investment’s mismanagement affected the performance of its overseas holdings, including, critically, MCS International. But in 2011, Iranian assets in Europe operated under a new, more difficult business climate. The UN Security Council had passed four resolutions imposing sanctions against Iran’s financial, commercial, and transportation sectors. The European Union had adopted expansive sanctions against the same sector, as well as Iran’s energy industry. The U.S. sanctions regime also included new executive and legislative measures. But rather than closing the factory and looking for new investments, Iran salvaged its German asset, obfuscating its ownership in the process. Dual nationals played a key role.

According to the June 4, 2013 Treasury designation:

“MCS International was audited by [an EIKO subsidiary] in October 2010 and determined to be in poor financial standing. However, EIKO management rescued MCS International from bankruptcy and insisted on keeping the company open because it viewed MCS International as key to facilitating business in Europe. EIKO management viewed MCS International as being too important to EIKO’s international plans to allow it to go bankrupt and believed that it would be easier to rescue MCS International from bankruptcy than to create or acquire new foreign companies on behalf of EIKO due to U.S. and international sanctions. EIKO subsequently ordered that responsibility for MCS International be transferred from EIKO-controlled TEACO to Iranian businessmen, who were sent to oversee the company. Following this transfer, the two individuals owned the shares for MCS International, but answered directly to EIKO.”¹⁴

Commercial registry entries for MCS Technologies GmbH (aka MCS International) show that both registered owners were Iranian-Canadian dual nationals and both residents of Canada.

¹³ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” April 4, 2013. (<https://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹⁴ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” April 4, 2013. (<https://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

Berichtigte Liste der Gesellschafter der Kronen tausend674 GmbH, Berlin künftig: MCS Systems GmbH, Dinslaken, gemäß § 40 Abs. 2 GmbHG			
Nr.	Gesellschafter	Wohnort	Anteil mit Nr.
1	Abdoulrasoul Dorri-Esfahani (geb. 04.04.1945) No. 130 b, Belsize Drive, Toronto, Ontario	No. 130 b, Belsize Drive, Toronto, Ontario M4S 1L8, Kanada	1 - 12.750 über je EUR 1,00
2	Eshagh Hajizadeh (geb. 03.11.1967)	1189 Shavington Street, North Vancouver, BC, V7L1L1, Kanada	12.751 - 25.000,00 über je EUR 1,00

Commercial Extract for MCS Technologies GmbH showing two owners as residents of Canada

Reliance on these dual nationals was not happenstance. For years, affluent Iranians sought to obtain Canadian citizenship through federal and provincial (primarily Quebec) permanent residency programs. A well-publicized case involved Mahmoud Reza Khavari, a dual Iranian-Canadian citizen, former CEO of Iran's state-owned Bank Melli, and former board member of Iran's Bank Sepah. Khavari fled to Canada in 2011 to elude charges from a multi-billion-dollar embezzlement case.¹⁵ At the time, Banks Sepah and Melli were under international sanctions for their role in support of Iran's proliferation efforts.¹⁶ According to *The Toronto Star*, the banker owned property in Canada for at least a decade – a \$3 million home in an affluent Toronto

¹⁵ Arash Karami, "Iran businessman hanged for embezzlement," *Al-Monitor*, May 26, 2014. (<http://www.al-monitor.com/pulse/ja/originals/2014/05/iran-businessman-hanged-embezzlement.html>)

¹⁶ According to the U.S. Department of Treasury, Bank Melli provided "banking services to entities involved in Iran's nuclear and ballistic missile programs, including entities listed by the U.N. for their involvement in those programs." In addition, Treasury faulted Bank Melli for providing "banking services to the IRGC and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services." Treasury also cited Bank Melli's "deceptive banking practices to obscure its involvement from the international banking system." U.S. Department of the Treasury, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<https://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>). Treasury designated Bank Sepah for "providing support and services to designated Iranian proliferation firms," and called it the "bank of choice" of Iran's Aerospace Industries Organization. It added that "since at least 2000, Sepah has provided a variety of critical financial services to Iran's missile industry, arranging financing and processing dozens of multi-million dollar transactions for AIO and its subordinates." U.S. Department of the Treasury, "Iran's Bank Sepah Designated by Treasury Sepah Facilitating Iran's Weapons Program," January 9, 2007. (<https://www.treasury.gov/press-center/press-releases/Pages/hp219.aspx>)

neighborhood.¹⁷ Canadian authorities investigated Khavari on suspicion of fraudulent citizenship,¹⁸ which he reportedly held since 2005.¹⁹

Khavari was not alone. In May 2012, Canadian authorities charged Ziad El-Shurafa, a partner at an immigration consultancy named Canada 2000 Immigration and Business Services Inc., along with two business associates, with defrauding immigration authorities.²⁰ They were found to have helped residency applicants deceive authorities by pretending to already be in the country while actually living abroad. Canada 2000 operated offices across the Middle East, including, crucially, Iran. The three individuals were eventually sentenced.²¹

Another senior Iranian executive with dual Canadian nationality is Ahmad Nazemi, who served as director of IFIC Holding, the German subsidiary of Iran's Foreign Investment Company (IFIC), from 2010 until 2013.²² The U.S. Treasury designated both companies in August 2010 for being "owned or controlled by the Government of Iran."²³ Under the terms of the JCPOA, neither entity remains under sanctions. Company extracts from IFIC's now-defunct Swiss branch, SWIFIC Holding AG,²⁴ described Ahmad Nazemi as a Canadian citizen. His co-director was another Iranian executive, Parviz Mardani, who is described as a German citizen. Both men worked on behalf of the Iranian regime under cover of foreign passports.

¹⁷ Amy Dempsey, "Iranian tied to bank blacklisted by United Nations," *The Toronto Star* (Canada), October 8, 2011. (http://www.thestar.com/news/gta/2011/10/08/iranian_tied_to_bank_blacklisted_by_united_nations.html)

¹⁸ Daniel Proussalidis, "Iranian-Canadian Banker under Investigation," *Toronto Sun* (Canada), October 20, 2011. (<http://www.torontosun.com/2011/10/20/iranian-canadian-banker-under-investigation>)

¹⁹ Daniel Proussalidis, "Iranian-Canadian Banker under Investigation," *Toronto Sun* (Canada), October 20, 2011. (<http://www.torontosun.com/2011/10/20/iranian-canadian-banker-under-investigation>)

²⁰ Stewart Bell, "Halifax consulting firm members charged with aiding immigration fraud: CBSA," *National Post* (Canada), May 18, 2012. (<http://news.nationalpost.com/news/canada/halifax-consulting-firm-charged-with-aiding-immigration-fraud-cbsa>)

²¹ Steve Bruce, "Halifax consultant fined \$75k in immigration fraud," *The Chronicle Herald* (Canada), September 11, 2014. (<http://thechronicleherald.ca/metro/1235726-halifax-consultant-fined-75k-in-immigration-fraud>)

²² "IFIC Holding AG, Chronological Document" *Handelsregister B des Amtsgerichts Düsseldorf* (Commercial Registry B, Düsseldorf's City Court), Registry number HRB 48032. (Accessed February 4, 2016)

²³ U.S. Department of the Treasury, Press Release, "Treasury Identifies 21 Entities Determined to be Owned or Controlled by the Government of Iran Treasury Exposes Iran's Foreign Trade Network, Identifies Entities Operating in Belarus, Germany, Iran, Italy, Japan and Luxembourg," August 3, 2010. (<https://www.treasury.gov/press-center/press-releases/Pages/tg811.aspx>)

²⁴ "SWIFIC HOLDING AG Company Extract," *Commercial Registry of Canton Zug* (Switzerland), Identification number CHE-116.350.676. (Accessed February 5, 2016).

Kanton Zug		COMMERCIAL REGISTER OF CANTON ZUG													
Identification number	Legal status	Entry	Cancelled	Carried over	from	to									
CHE-116.350.676	Limited or Corporation	13.12.2010	16.10.2012	CH-170.3.035.217-0											
All data				Cancelled company											
In	Ca	Business name	Ref				Legal seat								
5		SWIFIC Holding AG					1 Baar								
5		SWIFIC Holding AG in Liquidation													
In	Ca	Share capital (CHF)	Paid in (CHF)	Shares	In	Ca	Company address								
1		100'000.00	50'000.00	100 Inhaberaktien zu CHF 1'000.00	1		c/o KBT Treuhand AG Grafenstrasse 25 6340 Baar								
In	Ca	Purpose													
1		Erwerb, Halten, Verwalten und Veräußerung von Unternehmensbeteiligungen im in- und Ausland und von im in- und Ausland gelegenen Liegenschaften sowie Erbringen von Management-Dienstleistungen im in- und Ausland; vollständige Zweckumschreibung gemäss Statuten													
In	Ca	Remarks	Ref				Date of the acts								
1		Die Mitteilungen an die Aktionäre erfolgen durch Publikation im SHAB					1 06.12.2010								
5		Mit Änderung vom 06.12.2010 wurde auf die eingeschränkte Revision verzichtet. Mit Entscheid des Einzelrichters des Kantonsgerichts Zug vom 22.02.2012, 10:00 Uhr, wurde die Gesellschaft gemäss Art. 74a OR aufgelöst und ihre Liquidation nach den Vorschriften über den Konkurs angeordnet.													
6		Das Konkursverfahren wurde mit Entscheid des Einzelrichters am Kantonsgericht vom 12.10.2012 als geschlossen erklärt. Die Gesellschaft wird von Amtes wegen gelöscht.													
In	Ca	Qualified facts	Ref				Official publication								
							1 SHAB								
In	Ca	Branch offices	In					Ca	Branch offices						
Vis	Ref	No	Journal	Date	SOGC	Date SOGC	Page / Id	Vis	Ref	No	Journal	Date	SOGC	Date SOGC	Page / Id
ZG	1	16151	13.12.2010	246	17.12.2010	26 / 5645642	ZG	4	15136	14.11.2011	224	17.11.2011	6420462		
ZG	2	1745	03.02.2011	28	06.02.2011	20 / 6025792	ZG	5	KK	35.12	13.03.2012	KK 54	16.03.2012	6599398	
ZG	3	13591	11.10.2011	200	14.10.2011	6377144	ZG	6	13425	16.10.2012	204	19.10.2012	6897278		
In	Mo	Ca	Personal Data	Function		Signature									
1		4	Erwin, Dr. Holger, deutscher Staatsangehöriger, in Zürich	member of the board of directors		single signature									
1			Nazemi, Ahmad, kanadischer Staatsangehöriger, in Düsseldorf (DE)	director		single signature									
1			Mardani, Parviz, deutscher Staatsangehöriger, in Mannheim (DE)	director		single signature									
2		3	Razavi, Mohd., iranischer Staatsangehöriger, in Teheran (IR)	president of the board of directors		single signature									

Zug 06.02.2016 14:20

The information above is given with not commitment and is in no way legally binding. Only the company record (extract) issued and certified by the commercial Registry Office of Zug and the text published in the Swiss Commercial Gazette are binding.

The information above is given with no commitment and is in no way legally binding.

Commercial Extract for SWIFIC Holding AG showing owners Ahmad Nazemi and Parviz Mardani as a Canadian and a German citizen, respectively

Another prominent example is Mehdi Shamszadeh, the former commercial director for the Islamic Republic of Iran's Shipping Lines (IRISL).²⁵ Treasury sanctioned IRISL in 2008 for facilitating "shipments of military-related cargo destined for [Iran's Ministry of Defense Armed Forces and Logistics] and its subordinate entities, including organizations that have been designated by the United States pursuant to E.O. 13382 and listed by United Nations Security Council Resolutions 1737 and 1747."²⁶

Shamszadeh moved to London in 2005 to serve as the local director of IRISL UK, a subsidiary of IRISL, and of IRINVESTSHIP Ltd, a financial holding co-owned by IRISL. Treasury eventually sanctioned both in September 2008.²⁷ Shamszadeh, however resigned both positions within months of arriving in the UK, before sanctions were imposed. By May 2006, he launched his own businesses, and by June 2011, Shamszadeh acquired British nationality and shortened his name to Shams.²⁸ Shamszadeh was never sanctioned. His association with IRISL preceded U.S., UN, and EU sanctions – although it does not necessarily precede the timeframe during which IRISL facilitated illicit procurement activities, which prompted the sanctions.

 CH01 (ef) Change of Particulars for Director	
	
Company Name:	GLOBAL HOLDING INVESTMENTS LIMITED
Company Number:	07595455
Received for filing in Electronic Format on the: 16/07/2011	
Details Prior to Change	
Original Name:	DR MEHDI SHAMSZADEH
Date of Birth:	04/06/1967
New Details	
Date of Change:	15/07/2011
New Name:	DR MEHDI SHAMS

Commercial Extract for Global Holding Investments Ltd showing a name change from Shamszadeh to Shams

²⁵ Cynthia Busuttill, "Iranian firm denies 'pressure' claims," *Times of Malta*, June 4, 2004.

(<http://www.timesofmalta.com/articles/view/20040604/local/iranian-firm-denies-pressure-claims.121313>)

²⁶ U.S. Department of the Treasury, Press Release, "Major Iranian Shipping Company Designated for Proliferation Activity," September 10, 2008. (<https://www.treasury.gov/press-center/press-releases/Pages/hp1130.aspx>)

²⁷ U.S. Department of the Treasury, Press Release, "Major Iranian Shipping Company Designated for Proliferation Activity," September 10, 2008. (<https://www.treasury.gov/press-center/press-releases/Pages/hp1130.aspx>)

²⁸ "Directors' Particulars of Change," *Company House*, Corporate entry for Global Holding Investments Ltd., July 16, 2011.

<i>Surname:</i>	SHAMS
<i>Former names:</i>	
<i>Service Address:</i>	23 BUCKINGHAM GATE LONDON UNITED KINGDOM SW1E 6LB
<i>Country/State Usually Resident:</i>	UNITED KINGDOM
<i>Date of Birth:</i> 04/06/1967	<i>Nationality:</i> BRITISH
<i>Occupation:</i> NONE	

Commercial Extract showing Medhi Shams' British citizenship

Yet another example is Babak Zanjani, allegedly an associate of Shamszadeh. Iranian news outlets allege²⁹ that Zanjani is a dual Iranian-Danish national and published a scanned image of his passport. Zanjani was sanctioned by the EU and U.S. for "moving billions of dollars on behalf of the Iranian regime, including tens of millions of dollars to an Islamic Revolutionary Guards Corps (IRGC) company."³⁰

Zanjani has since been removed from both sanctions lists under the terms of the JCPOA, but he was jailed in Iran, where he is being tried for allegedly embezzling billions in Iranian oil revenue. Last October, after the JCPOA was adopted, reports emerged that Iran's Oil Ministry was suing the low-cost Turkish airline Onur Air, claiming it is a hidden asset of Zanjani.³¹

²⁹ "نفت وزارت مسئولان سر بر تومانی میلیارد نهصد کلاه" (The oil ministry is victim of a 900 billion toman fraud)," *Quds Online* (Iran), February 3, 2013. (<http://qudsonline.ir/detail/News/101834>)

³⁰ U.S. Department of the Treasury, Press Release, "Treasury Targets Network Attempting to Evade Iran Sanctions," April 11, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/t11893.aspx>)

³¹ Ipek Yezdani, "Iran in legal bid to claim all stakes of airline company in Turkey," *Hurriyet Daily News* (Turkey), October 22, 2015. (<http://www.hurriyettailynews.com/iran-in-legal-bid-to-claim-all-stakes-of-airlines-company-in-turkey-.aspx?PageID=238&NID=90202&NewsCatID=345>)



Passport of Babak Zanjani showing his nationality as Danish

Corporate filings from the Turkish company registry list Shams as one of Onur Air's shareholders,³² which is consistent with Turkish media reports in September 2013. Those reports alleged that Shams, who acquired Onur Air in May 2013 for \$250 million, sought to evade international sanctions and gain access to global markets.³³ Reports further claimed that Shams had bought the airline on behalf of Zanjani.³⁴ This alleged scheme would have been exceedingly difficult had the men not been European passport holders.

The private Iranian airline Mahan Air provides more evidence of Iranian reliance on dual passport holders for procurement. Treasury designated the airline in 2011 "for providing financial, material and technological support" to the Quds Force, including ferrying personnel and weapons to Syria.³⁵ The following year, Treasury designated Mahan's entire fleet. In 2013, Treasury sanctioned two senior Mahan executives – CEO Hamid Arabnejad Khanooki and senior manager Gholamreza Mahmoudi. In 2015, Treasury designated nine aircraft that Mahan acquired

³² The Union of Chambers and Commodity Exchanges of Turkey, Turkish Trade Registry Gazette, "Onur Air Corporate Plenary Meeting Registry," February 23, 2015.

³³ "Iran using Turkish firms to bypass sanctions," *Today's Zaman* (Turkey), September 29, 2013. (<http://www.todayszaman.com/news-327729-iran-using-turkish-firms-to-bypass-sanctions.html>)

³⁴ Ipek Yezdani, "Iran in legal bid to claim all stakes of airline company in Turkey," *Hurriyet Daily News* (Turkey), October 22, 2015. (<http://www.hurriyetdailynews.com/iran-in-legal-bid-to-claim-all-stakes-of-airlines-company-in-turkey-.aspx?PageID=238&NID=90202&NewsCatID=345>)

³⁵ U.S. Department of the Treasury, Press Release, "Treasury Designates Iranian Commercial Airline Linked to Iran's Support for Terrorism," October 12, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1322.aspx>)

through intermediaries, and sanctioned an Iraqi airline, a Dubai-based Syrian businessman, and a Dubai-based company for facilitating the transaction.³⁶

Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin recently vowed that Treasury “will continue to expose Mahan’s front companies, and to remind governments and private industry in the 24 cities where Mahan continues to fly that they risk exposure to U.S. sanctions.”³⁷ However, Mahan’s role in the shipment of weapons and military personnel to Syria appears to be ongoing, with shipments occurring several times a week – sometimes daily, and occasionally more than once a day.³⁸ Due to its ongoing logistical support to the Revolutionary Guards, Mahan Air was not delisted under the JCPOA and remains sanctioned under Executive Order 13224.

Given these constraints, Mahan relies on Iranian expatriates and dual nationals to run its overseas procurement. Treasury has sanctioned some of them. The Department of Commerce has issued Temporary Denial Orders³⁹ against certain companies to interdict Mahan’s efforts to buy planes and spare parts. They include the British-based Skyco Ltd and Equipco Ltd, and their director, the British-Iranian dual national Ali Eslamian. Alongside Eslamian, there are other Iranians who work (or used to) for Skyco. The best-known among them is Gholamreza Mahmoudi, whom Treasury identified as a Mahan Air official and sanctioned on February 6, 2014.⁴⁰ According to Treasury, “Mahmoudi acts for or on behalf of Mahan Air as a senior official and corporate director at Mahan Air. Mahmoudi has worked closely with Mahan Air Managing Director Hamid Arabnejad on sanctions evasion strategies to acquire U.S. aircraft.”⁴¹

According to Skyco’s corporate entries, another company executive until 2009 was Manouchehr Hadjian, a dual German-Iranian citizen. Hadjian was director at Skyco until 2009⁴² and of the

³⁶ U.S. Department of the Treasury, Press Release, “Treasury Department Targets Those Involved in Iranian Scheme to Purchase Airplanes,” May 21, 2015. (<http://www.treasury.gov/press-center/press-releases/Pages/j110061.aspx>)

³⁷ Adam Szubin, “Beyond The Vote: Implications for the Sanctions Regime on Iran,” *The Washington Institute for Near East Policy*, September 16, 2015. (<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

³⁸ Emanuele Ottolenghi, “Flying in the Face of U.S. Sanctions,” *The Wall Street Journal*, February 3, 2016. (<http://www.wsj.com/articles/flying-in-the-face-of-u-s-sanctions-1454531168>); Emanuele Ottolenghi and Benjamin Weinthal, “The wings of war,” *Politico*, September 16, 2015. (<http://www.politico.eu/article/iran-mahan-air-sanctions-nuclear-deal-aviation-air-safety/>); Jennifer Griffin, “Exclusive: Russia flying Iranian weapons shipments into Syria, sources say,” *Fox News*, October 29, 2015. (<http://www.foxnews.com/world/2015/10/29/exclusive-russia-flying-iranian-weapons-shipments-into-syria-sources-say/>)

³⁹ U.S. Department of Commerce Bureau of Industry Security, “Order Renewing Order Temporarily Denying Export Privileges,” January 16, 2015. (https://www.bis.doc.gov/index.php/forms-documents/doc_view/395-bis-renews-temporary-denial-order-against-mahan-airways-of-iran-zarand-aviation-and-related-parties)

⁴⁰ U.S. Department of the Treasury, Press Release, “Treasury Targets Networks Linked to Iran,” February 6, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j12287.aspx>)

⁴¹ U.S. Department of the Treasury, Press Release, “Treasury Targets Networks Linked to Iran,” February 6, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j12287.aspx>). Treasury had already designated Arabnejad pursuant to E.O. 13224 on May 31, 2013 for “acting for or on behalf of Mahan Air.”

⁴² “Termination of Appointment of Director,” *UK Company House*, Corporate Filing, December 31, 2009. (Accessed February 7, 2016)

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German-based Comet Aviation Services GmbH (which was terminated in 2015),⁴³ and was also the director of Elite Air Ltd⁴⁴ and Revenue Enterprises Ltd,⁴⁵ two now-defunct Cyprus-based companies. Like Eslamian with his British passport, Hadjian was able to seamlessly move across European jurisdictions thanks to his German citizenship.

Reg. Number	HE 247734		
Type	Limited Company		
SubType	Private		
Name Status	Current Name		
Registration Date	30/03/2009		
Organisation Status	Dissolved		
Status Date	11/01/2016		
Main Business Description	Last Annual		
☒ Present ☐ Previous ☐ All			
Directors & Secretaries			
	Name	Date of Appointment	Last Date of Changes
	HADJIAN MANOUCHEHR	30/03/2009	30/03/2009
HADJIAN MANOUCHEHR			
Address		Date of Appointment	30/03/2009
Αντιστάσιος, 29		Last date of changes	30/03/2009
Καρόνη		Country of Citizenship	Γερμανία
Αττική 19400, Ελλάδα			

Commercial Extract for Elite Air Ltd listing 'Germany' as Manouchehr Hadjian's country of citizenship

As the presidential pardon in January of seven Iranian-Americans involved in illicit nuclear and military procurement on behalf of the government of Iran proves,⁴⁶ even the United States is not immune from the this phenomenon. When Iran sought to procure technology from U.S. companies, it relied on Iranian-Americans to carry out the task.

In the above cases, possession of a passport from a Visa Waiver country helped facilitate Iran's illicit financial activities and clandestine procurement efforts. The recent lifting of sanctions against companies and individuals mentioned in this testimony is the result of a political deal, not the product of a change of course. The United States should therefore pass new measures to mitigate the risk of Iranian dual nationals taking advantage of the visa waiver program to engage in illicit activities on behalf of the government of Iran.

⁴³ "Comet Aviation Services GmbH, Chronological Document," *Handelsregister B des Amtsgerichts Düsseldorf* (Commercial Registry B, Düsseldorf's City Court), Registry number HRB 49057. (Accessed February 7, 2016)

⁴⁴ "Elite Air Ltd Commercial Extract," Department of the Registrar of Companies and Official Receiver, Republic of Cyprus, Registry number HE247734. (Accessed January 28, 2016)

⁴⁵ "Revenue Enterprises Commercial Extract," Department of the Registrar of Companies and Official Receiver, Republic of Cyprus, Registry number HE244056. (Accessed January 28, 2016)

⁴⁶ Josh Gerstein, "Obama Grants Clemency to Seven in Iran Deal," *Politico*, January 16, 2016. (<http://www.politico.com/blogs/under-the-radar/2016/01/iran-deal-obama-grants-clemency-to-seven-217879>)

SECTION IV: PURCHASE OF PASSPORTS THROUGH CITIZENSHIP-BY-INVESTMENT PROGRAMS

In most Visa Waiver countries, obtaining citizenship is a lengthy process with stringent requirements of residency and financial commitment. There are countries, however, that are making their citizenship readily available merely through investment, and Iranian nationals (among others) are exploiting this. Passports can be obtained speedily – usually with no residency requirements or even presence in the country. Five Caribbean countries currently offer such programs: St. Kitts and Nevis (the oldest and most popular program), Grenada, Dominica, Antigua and Barbuda, and, since January 1, 2016, St. Lucia.

In 2014, the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) issued an advisory "to alert financial institutions that certain foreign individuals are abusing the Citizenship-by-Investment program sponsored by the Federation of St. Kitts and Nevis (SKN) to obtain SKN passports for the purpose of engaging in illicit financial activity."⁴⁷ The advisory made particular reference to Iranian nationals:

"[I]n 2013 the SKN government announced that all Iranian nationals were suspended from participating in the SKN Citizenship-by-Investment program. Despite this public assurance, FinCEN believes that **Iranian nationals** continue to obtain passports issued through the program. As a result of these lax controls, illicit actors, **including individuals intending to use the secondary citizenship to evade sanctions**, can obtain an SKN passport with relative ease."⁴⁸ (Emphasis added)

Treasury has since sanctioned one Iranian dual national with a Caribbean passport,⁴⁹ while also targeting three Dubai-based Iranian nationals who had obtained their second nationality through the St. Kitts citizenship-by-investment program: Houshang Farsoudeh, Houshang Hosseinpour, and Pourya Nayeibi. Treasury designated them and a handful of their companies on February 6, 2014 for facilitating "deceptive transactions for or on behalf of persons subject to U.S. sanctions concerning Iran."⁵⁰ According to Treasury:

"In 2011, they acquired the majority shares in a licensed Georgian bank with direct correspondent ties to other international financial institutions through a Liechtenstein-based foundation they control. They then used the Georgian

⁴⁷ U.S. Department of Treasury's Financial Crimes Enforcement Network, "Advisory: Abuse of the Citizenship-by-Investment Program Sponsored by the Federation of St. Kitts and Nevis," May 20, 2014.

(https://www.fincen.gov/statutes_regs/guidance/html/FIN-2014-A004.html)

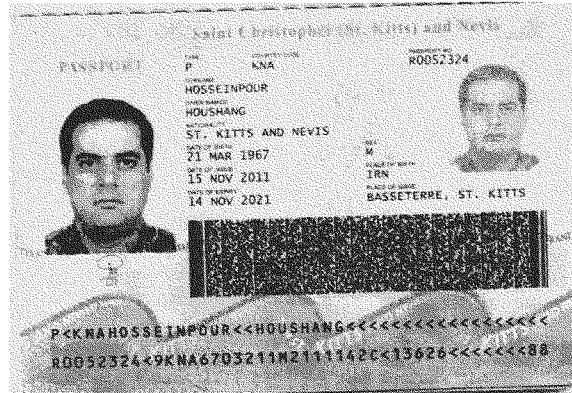
⁴⁸ U.S. Department of Treasury's Financial Crimes Enforcement Network, "Advisory: Abuse of the Citizenship-by-Investment Program Sponsored by the Federation of St. Kitts and Nevis," May 20, 2014.

(https://www.fincen.gov/statutes_regs/guidance/html/FIN-2014-A004.html)

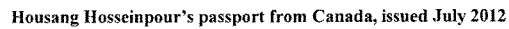
⁴⁹ U.S. Department of the Treasury, Press Release, "Treasury Designates Additional Individuals and Entities Under Iran-related Authorities," December 30, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j19731.aspx>)

⁵⁰ U.S. Department of the Treasury, Press Release, "Treasury Targets Networks Linked to Iran," February 6, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j12287.aspx>)

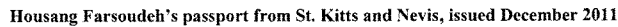
After the passage of UN Security Resolution 1929 in 2010, such Iranian financial operations became extremely difficult. Still, the three individuals moved across borders easily, thanks to their St. Kitts passports and, for Hosseinpour, his permanent residency in Canada.



⁵¹ U.S. Department of the Treasury, Press Release, “Treasury Targets Networks Linked to Iran,” February 6, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/j12287.aspx>)

[illegible]

Nayebi's new St Kitts and Nevis Passport, issued in January 2015.



I visited the Poti Free Zone in October 2014. Of the 166 companies registered at the time, Iranian nationals owned 84 – or 53 percent. Another nine were owned by Iranians dual nationals of St Kitts and Nevis, who were engaging in sanctionable commercial activities. Notably, the former CEO of Fly Georgia, Bijan Mougouee, is a Dutch-Iranian national.⁵⁵ Similarly, Mohsen

³⁵ Passport details are available in corporate filings for Aerogeorgia LLC (registry #400105355), registry entry for 19 November 2013 at the Georgian national registry of companies. "If Georgians Perceive Fly Georgia as a National Carrier and are Proud of it, That Day Will Be the Day of Our Success," *Caucasian Business Weekly* (Georgia), July 1, 2013, page 4. (<http://issuu.com/giorgikheladze/docs/cbw-11>)

Hendiseh, the Iranian national holding power of attorney for Nayebe over the (formerly U.S.-sanctioned) Georgia Business Development LLC is a permanent resident of Georgia.⁵⁶

The immigration-services industry's focus on Iran suggests this is not by chance. Canada 2000 Immigration and Business Services had offices in Tehran, as did other leading service providers before UN Security Council Resolution 1929 led to their closure. The lifting of sanctions can be expected to bring their return to the Iranian market, with one significant difference: new programs are now available to wealthy investors in search of a second passport, which include a growing number of Visa Waiver countries. They could potentially become a gateway to a visa-free entry into the United States for Iranian procurement agents.

SECTION V: ACCESS TO VISA WAIVER COUNTRIES' PASSPORTS THROUGH CITIZENSHIP-BY-INVESTMENT PROGRAMS

For years, citizenship-by-investment in Western countries required both long-term residency and substantial financial investment. That remains the case with the United Kingdom Tier-1 (Entrepreneur) visa, the Quebec residency program, and Australia's Significant Investor Visa Program.⁵⁷ Similar criteria exist for applicants to the U.S. fast track to permanent residency, otherwise known as the EB-5.

Since the global financial crisis of 2008, other Visa Waiver countries have established their own citizenship- or residency-by-investment programs to attract high net-worth individuals and entice them to invest. Today, one can begin the process to obtain citizenship in Malta – a member of the EU's Schengen Area, and a Visa Waiver country – within a year of establishing residency.⁵⁸

Other EU countries have also adopted either permanent residency- or citizenship-by-investment programs, including Portugal,⁵⁹ Hungary⁶⁰ and Bulgaria⁶¹ (residency), as well as Cyprus⁶² (citizenship). Portuguese and Hungarian citizens currently participate in the Visa Waiver program, and Bulgaria and Cyprus may become eligible in the future. Cyprus currently ranks

⁵⁶ National Commercial Registry of Georgia, February 3, 2015, Corporate filing for Georgia Business Development LLC (Registry number 404399833).

⁵⁷ Australian Trade Commission, "Significant and Premium Investor Visa Programmes," accessed February 4, 2016. (<http://www.austrade.gov.au/international/invest/guide-to-investing/coming-to-australia/significant-and-premium-investor-programmes/austrades-role>)

⁵⁸ Individual Investor Program of the Republic of Malta, accessed February 4, 2016. (http://iip.gov.mt/wp-content/uploads/2014/07/IIP-Brochure-v1.2_updated.pdf)

⁵⁹ Portuguese Immigration and Border Service, "Golden Residence Permit Programme," accessed February 4, 2016. (http://www.sef.pt/portal/V10/EN.aspx/apoiocliente/detalheApoio.aspx?fromIndex=0&id_Linha=6269)

⁶⁰ Hungary's Ministry of Foreign Affairs, "The Hungarian Investment Immigration Program," accessed February 6, 2016. (http://www.mfa.gov.hu/NR/rdonlyres/1A5BB49E-75C4-429D-A6F0-0D3E753838BC/0/program_overview_EN.pdf)

⁶¹ Invest Bulgaria Agency, "Legal Framework," accessed February 8, 2016. (<http://www.investbg.government.bg/en/pages/legal-framework-107.html>)

⁶² Cyprus' Ministry of Interior, "Scheme of Naturalisation of Investors in Cyprus by Exception," accessed February 6, 2016. (<http://www.moi.gov.cy/moi/moi.nsf/All/1562764E412F7B6DC2257B80005235CF>)

among the fastest tracks to second citizenship – requiring only three months to successfully complete an application.⁶³

RECOMMENDATIONS

Distinguished Chairmen,

Congress must sustain and reinforce exceptions to the Visa Waiver program currently benefiting 38 countries. They include 23 members of the European Union, Andorra, Iceland, Lichtenstein, Monaco, Norway, San Marino, Switzerland, Australia, Brunei, Canada, Japan, New Zealand, Singapore, South Korea, and Taiwan.⁶⁴

The suspension of the Visa Waiver program for dual nationals of Iran is the direct result of the regime's close association with terrorism and other illicit activities such as money laundering, illicit finance, and nuclear procurement. The risks are clear. No doubt, some individuals will be inconvenienced, but the dangerous exploitation of foreign passports for illicit purposes justifies the inconvenience posed to the relatively few who will have to obtain a visa in person before traveling to the U.S., which countless other foreigners must also undergo.

As Iran returns to the global economy after the implementation of the JCPOA in January, the number of Iranian procurement agents and proxies seeking to acquire illicit technology is likely to increase, and Tehran will likely dispatch more emissaries to the U.S. to procure technology for ballistic missiles and nuclear activities.

The growth of Western citizenship-by-investment programs, including the likely reopening of the Canadian federal program, means that regime emissaries can quickly obtain a passport from a Visa Waiver country for relatively little money. The singling out of Iranian dual nationals is thus not only appropriate, but should be a vital component of homeland security policy.

I therefore offer the following recommendations:

FIRST, the United States Government must make it clear to all Visa Waiver countries offering (or considering) citizenship and permanent residency for investment that the ease of doing so will affect their status in the program. Visa Waiver countries are entitled, as a matter of sovereignty, to grant nationality in the manner in which they choose. However, their sovereign prerogative should not become a shortcut to entering the United States for nationals of countries excluded from the program. At a minimum, Congress should reassess the Visa Waiver status of countries offering citizenship through investment based on the due diligence, residency requirements, and speed citizenship is obtained.

⁶³ "Citizenship-by-Investment in Cyprus," *Henley & Partners*, accessed February 4, 2016.

(<https://www.henleyglobal.com/citizenship-cyprus-citizenship/>)

⁶⁴ "Visa Waiver Countries," *Esta United States Travel Authorization Application*, accessed February 2, 2016.

(http://www.esta.us/visa_waiver_countries.html)

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SECOND, the United States should seek the full cooperation of Visa Waiver countries offering citizenship- or residency-by-investment. These countries must improve their due diligence standards and agree to more data sharing. Washington should request access to applications, both approved and rejected, of Iranian nationals to such programs. Refusal to cooperate could be grounds for restricting the Visa Waiver status of these countries.

THIRD, the United States should require that due diligence reviews of applications should not be limited to the origin of funds for investment but rather the applicant's entire financial portfolio. Such reviews should not be limited to background checks with Interpol to determine whether an applicant has an outstanding international arrest warrant. Instead, they should require a full accounting of all of the applicant's business activities and assets prior to applying for the program.

FOURTH, the United States should improve due diligence standards at visa-processing centers for Iranian dual nationals' applications to minimize the risk that visas will be issued to individuals acting on behalf of the Iranian regime. Such due diligence could rely on the aforementioned data sharing, but also with increased cooperation between federal agencies involved in investigating and tracking potential sanctions evaders.

FIFTH, Congress should request a report from the Department of Homeland Security on the extent to which each of its own special visa programs, like EB-5, identify whether applicants have dual passports from countries providing citizenship-by-investment. For the special visa programs whereby DHS does not require information about whether applicants hold or have applied for citizenship-by-investment passports, this should be added to the due diligence process, along with applicants' full financial disclosures.

Distinguished Chairmen, Iran's systematic reliance on dual nationals to circumvent sanctions, procure illicit technology, and conduct acts of terrorism demands that visa waiver benefits not be reinstated for its nationals merely in order to avoid a confrontation with Tehran or America's European allies over the interpretation of the JCPOA. With the end of Western sanctions against Tehran, the number of regime agents trying to enter the United States for nefarious reasons is bound to increase. The steps Congress now takes will be of critical importance to ensure that the actors involved in facilitating proliferation and other illicit activities abroad do not benefit from free and unfettered access to the United States.

On behalf of the Foundation for Defense of Democracies, thank you for the opportunity to testify.

Mr. DESANTIS. Thank you.
The chair now recognizes Mr. Heifetz for 5 minutes.

STATEMENT OF STEPHEN HEIFETZ

Mr. HEIFETZ. Thank you, Chairman DeSantis, Ranking Member Lynch, Chairman Meadows, and Ranking Member Connolly. Thank you to all of the distinguished members of the Subcommittees on National Security and on Government Operations. I appreciate the opportunity to participate in this hearing about the Visa Waiver Program.

My name is Stephen Heifetz. I'm a partner at Steptoe and Johnson, an international law firm. And prior to joining Steptoe, I served from 2006 to 2010 in several positions at the Department of Homeland Security, including as deputy assistant secretary for policy development, where I had oversight responsibility for the VWP.

Under the VWP, DHS waives the B non-immigrant visa requirement for aliens traveling from 38 approved countries, all U.S. allies, to permit stays of up to 90 days for business or tourism. The effect of the waiver is that the standard visa interview by a U.S. consular officer, which generally requires the traveler to go to a consular office in person, is not required. This does not mean, however, that DHS waives security requirements for these travelers. In fact, under the VWP, DHS mandates additional more stringent security requirements for both the individual traveler and his or her home country.

The 38 U.S. allies that are VWP members must meet high security standards to enter and maintain membership in the VWP, and substantial checks are conducted on every traveler. The result is a system that provides as much security against terrorist or criminal travelers as the visa system.

Nevertheless, many in the media and elsewhere have labored under the misapprehension that security standards have been looser for VWP travelers than for those traveling with a visa and that this poses a threat to U.S. national security. At least since reforms implemented about a decade ago, that perception has been inaccurate. Security experts in both the Bush and Obama administrations have lauded the VWP as a good security program. But, like any successful security program, the VWP has continued to be closely reviewed over the years, undergoing further reform as new threats are perceived.

The most recent VWP statutory reforms were enacted as part of the 2016 Consolidated Appropriations Act in December 2015. Among other things, the new law generally precludes travel under the VWP for dual nationals of Iran, Iraq, Syria, and Sudan, and further, the new law generally precludes travel under the VWP for those who have traveled to these countries.

There are, however, exceptions for those who travel to perform military service or other official duties of a VWP member country. In addition, the new law provides that the DHS Secretary may, with respect to any particular traveler, waive the prohibitions with regard to Iran, Iraq, Syria, and Sudan if doing so is in the national security interests of the United States.

Such a waiver would allow VWP travel to the U.S. by a citizen of a VWP member country notwithstanding dual nationality or travel involving the four countries of concern. For example, a Japanese businessperson who travels to Iraq for business or an Australian doctor who provides humanitarian aid in Syria generally would be ineligible for VWP travel under the new law, but that ineligibility can be waived by the DHS Secretary.

This national security waiver authority is important. Here's one illustration why. The United States and other world powers recently signed a momentous deal with Iran that addresses Iran's nuclear weapons program. Under this deal, the Joint Comprehensive Plan of Action, JCPOA, European companies now will have regular business dealings with Iran. It's common and will become ever more common for a European businessperson to travel to Iran to conduct legitimate business. But if that European businessperson's travel will preclude further travel to the U.S. under the Visa Waiver Program, that might deter European business dealings with Iran. If you're a Londoner or Parisian sitting in London or Paris and considering traveling to Iran to scout a business deal, you might reconsider because of the potential loss of VWP privileges.

As part of the JCPOA, though, the U.S. committed to refrain from creating new types of sanctions on Iran. More specifically, the U.S. agreed to refrain from, quoting from the JCPOA text, "imposing exceptional or discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by the JCPOA."

Some have argued that this commitment necessitates U.S. waivers to allow legitimate business travel to Iran without the loss of VWP privileges. Even if one thinks the JCPOA was a bad deal, the administration fairly can claim that it is in the national security interest of the United States to ensure JCPOA compliance by Iran. And ensuring compliance is made much more difficult if Iran can allege that the U.S. has breached its obligations by creating obstacles to Iranian travel. That is one reason the administration should be granted deference in determining how to utilize the waiver authority under the new VWP law.

And there are other reasons. There is a great need for humanitarian intervention in some of the poor countries of concern, Syria and Iraq in particular. Without the exercise of waivers, the loss of VWP privileges may deter needed humanitarian travel to these countries. The Australian doctor who wants to offer medical services in Syria may reconsider if doing so will cause a loss of VWP privileges. Such thinking could, ironically, have adverse effects on U.S. security.

More fundamentally, waivers that allow travel under the VWP should not cause undue concerns because the VWP fundamentally is a strong security program. I've alluded to that previously and discussed it in more detail in my formal written testimony.

You have other witnesses today that can speak to the operational security of the VWP so I'll close my verbal testimony and would be happy to address questions.

[Prepared statement of Mr. Heifetz follows:]

Statement of Stephen Heifetz
before the

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security
Subcommittee on Government Operations

“The President’s Waiver of Restrictions on the Visa Waiver Program”

February 10, 2016

Thank you Chairman DeSantis, Ranking Member Lynch, Chairman Meadows, and Ranking Member Connolly. Thank you to all of the distinguished members of the Subcommittees on National Security and on Government Operations. I appreciate the opportunity to participate in this hearing about the Visa Waiver Program (VWP).

My name is Stephen Heifetz. I am a partner at Steptoe & Johnson LLP, an international law firm. Prior to joining Steptoe, I served from 2006-2010 in several positions at the Department of Homeland Security (DHS), including as Deputy Assistant Secretary for Policy Development, where I had oversight responsibility for the VWP.

VWP Misperceptions

Under the VWP, DHS waives the “B” nonimmigrant visa requirement for aliens traveling from 38 approved countries – all U.S. allies – to permit stays of up to 90 days for business or tourism. The effect of the waiver is that the standard visa interview by a U.S. consular officer, which generally requires the traveler to go to a consular office in person, is not required.

This does *not* mean, however, that DHS waives security requirements for these travelers. In fact, under the VWP, DHS mandates additional, more stringent security requirements, for both the individual traveler and his or her home country. The 38 U.S. allies that are VWP members must meet high security standards to enter and maintain membership in the VWP, and substantial checks are conducted on every traveler. The result is a system that provides as much security against terrorist or criminal travelers as the visa system.

Nevertheless, many in the media and elsewhere have labored under the misapprehension that security standards have been looser for VWP travelers than for those traveling with a visa, and that this poses a threat to U.S. national security. At least since reforms implemented about a decade ago, that perception has been inaccurate. Security experts in both the Bush and Obama administrations have lauded the VWP as a good security program. But, like any successful security program, the VWP has continued to be closely reviewed over the years, undergoing further reform as new threats are perceived.

New VWP Restrictions

The most recent VWP statutory reforms, the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015” were enacted as part of the 2016 Consolidated Appropriations Act in December 2015. Among other things, the new law generally precludes travel under the VWP for dual nationals of Iran, Iraq, Syria, and Sudan; further, the new law generally precludes travel under the VWP for those who have traveled to these countries.

There are, however, exceptions for those who traveled to perform military service or other official duties of a VWP member country. In addition, the new law provides that the DHS Secretary may, with respect to any particular traveler, waive the prohibitions with regard to Iran, Iraq, Syria, and Sudan if doing so is in the national security interests of the United States. Such a waiver would allow VWP travel to the U.S. by a citizen of a VWP member country, notwithstanding dual nationality or travel involving the four countries of concern. For example, a Japanese businessperson who travels to Sudan for business, or an Australian doctor who provides humanitarian aid in Syria, generally would be ineligible for VWP travel under the new law, but that ineligibility can be waived by the DHS Secretary.

Importance of Waiver Authority

This national security waiver authority is important. Here is one illustration why. The United States and other world powers recently signed a momentous deal with Iran that addresses Iran’s nuclear weapons program. Under this deal – the Joint Comprehensive Plan of Action (“JCPOA”) – European companies now will have regular business dealings with Iran. It is common and will become ever more common for a European businessperson to travel to Iran to conduct legitimate business.

But if that European businessperson’s travel will preclude further travel to the U.S. under the VWP, that might deter European business dealings with Iran. If you are a Londoner or Parisian sitting in London or Paris and considering traveling to Iran to scout a business deal, you might reconsider because of the potential loss of VWP travel privileges.

As part of the JCPOA, though, the U.S. committed to refrain from creating new types of sanctions on Iran. More specifically, the U.S. agreed to refrain from “imposing exceptional or discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by the JCPOA.”

Some have argued that this commitment necessitates U.S. waivers to allow legitimate business travel to Iran without the loss of VWP privileges. Even if one thinks the JCPOA was a bad deal, the Administration fairly can claim that it is in the national security interest of the United States to ensure JCPOA compliance by Iran. And ensuring compliance is made much more difficult if Iran can allege that the U.S. has breached its obligations by creating obstacles to Iranian travel.

That is one reason that the Administration should be granted deference in determining how to utilize the waiver authority under the new VWP law. And there are other reasons. There is a great need for humanitarian intervention in some of the four countries of concern – Syria and

Iraq in particular. Without the exercise of waivers, the loss of VWP privileges may deter needed humanitarian travel to these countries – the Australian doctor who wants to offer medical services in Syria may reconsider if doing so will cause a loss of VWP privileges. Such thinking could, ironically, have adverse effects on U.S. security.

More fundamentally, waivers that allow travel under the VWP should not cause security concerns, because the VWP fundamentally is a strong security program. I've alluded to that point above and will address that point in detail below.

Evolution of the VWP

Since its inception in the late 1980s, the VWP has evolved into an essential tool for increasing global security standards, advancing information sharing, strengthening international relationships, and promoting legitimate trade and travel to the United States.

Over the past decade in particular, Congress and the Executive branch have worked together to implement a number of enhancements to the VWP to address evolving threats to international travel and to the United States homeland. Although critics of the VWP often cite the example of the "Shoe Bomber" Richard Reid, who as a British citizen traveled under the VWP in December 2001, the reforms put in place since that time have successfully addressed this risk to date.

In particular, in order to align with the recommendations of the 9/11 Commission, Congress, in 2007, mandated additional security requirements for the VWP, including standards for secure travel documents, individualized pre-screening of travelers, bilateral information-sharing arrangements, prompt reporting of lost and stolen passports, and a threat assessment conducted by the Director of National Intelligence. These reforms have made the VWP a significant, security-enhancing program and a critical element of the layered border security approach the U.S. has implemented since September 11, 2001.

Key Security Components of the VWP

As described below, the VWP enhances U.S. security in four mutually reinforcing ways:

- It enables individualized and recurrent screening of travelers against law enforcement and security databases;
- It mandates bilateral and multilateral information and intelligence sharing;
- It requires secure passports to confirm identity; and
- It permits regular audits of the security standards of participating countries.

First, the VWP screens all travelers against multiple law enforcement and security databases, including the Terrorist Screening Database, before they depart for the United States. Using the online Electronic System for Travel Authorization (ESTA), a VWP traveler is required to provide biographic information (including name, date of birth, and passport number) as well as his or her destination address in the United States. The traveler is also required to answer questions regarding communicable diseases, arrests, convictions for certain crimes, past history of visa revocation or deportation, and other relevant history. ESTA functions as a powerful

screening tool, enabling recurrent, individualized vetting of travelers. Travelers without an ESTA approval cannot board a flight to the United States.

Second, the VWP mandates robust information and intelligence sharing between the United States and its VWP partners, including agreements concerning known or potential terrorists and criminals and reporting lost and stolen passport (LASP) data to the United States. Supplementing the U.S. government's "watch lists" and other databases with information from a traveler's home government greatly enhances DHS's ability to identify and stop travelers who pose a threat.

Third, all VWP travelers must use secure travel documents that meet internationally recognized standards, which allows for easier detection of forged or fraudulent passports. VWP travelers generally are required to use electronic passports (e-passports), which have an embedded chip that includes the bearer's biometric information. At the port of entry, the biographic and biometric data contained in the electronic chip is compared to both the traveler and the travel document being presented. There are many other layers of technical security in the e-passport production process and the document itself that make duplication or forgery much less likely.

Lastly, VWP countries are required to undergo periodic eligibility reviews designed to ensure that VWP membership does not compromise U.S. security, law enforcement, and immigration enforcement interests. These comprehensive assessments are conducted by DHS, with the assistance of other U.S. government agencies as appropriate. Critically, these reviews involve a site visit during which a team of U.S. government subject matter experts examines the country's security and law enforcement capabilities and procedures. Among other issues, a site visit focuses on the existence of radicalized groups in the country and the government's efforts to address this concern. The findings from the site visit form the core of the DHS evaluation of a country's fitness to continue participating in the VWP. Should DHS identify any issues or concerns during the course of its review, it can propose and insist on mitigation measures.

To complement these reviews and to ensure recommended mitigation measures are carried out, DHS has developed a vigorous monitoring process to ensure awareness of changing conditions in VWP countries. This monitoring process includes regular consultation with U.S. law enforcement and intelligence agencies, as well as frequent communication with relevant U.S. Embassies abroad and foreign embassies in Washington for updates on law enforcement or security concerns related to the VWP. Overall, no other program provides the U.S. government with the opportunity to conduct as far-reaching and consequential audits of foreign security standards, ensuring alignment with our high standards for managing risk.

Under current law, DHS has the authority to immediately terminate a country's membership if an emergency occurs in the country that threatens the law enforcement or security interest of the United States. The Director of National Intelligence is also able to recommend immediate suspension to DHS if any current and credible threat poses an imminent danger to the United States or its citizens and originates from a country participating in the VWP.

That the modernized VWP enhances U.S. security is widely recognized by security experts

across the political spectrum. The last three secretaries of homeland security, for example, have praised the program's contribution to U.S. and international security. Indeed, for precisely that same reason, both the Bush and Obama administrations have added countries to the VWP.

The VWP and U.S. Border Security

Because of its strong security components, the VWP has become an integral part of the U.S. government's ability to identify security or other risks associated with travelers at the earliest possible point and push-out our "virtual" border. In particular, the VWP helps answer the three key questions necessary to implement an effective risk-based screening system:

- "Who is a threat?" – U.S. officials need to identify known and suspected terrorists as well as other individuals who may pose a threat.
- "Is the person coming to the U.S.?" – U.S. officials need to know, as early as possible, if the traveler should be examined more closely.
- "Is the person really who he says he is?" – U.S. officials determine if the traveler is presenting fraudulent documents.

Who is a threat?

The U.S. government collects and maintains an array of information designed to identify those associated with terrorism or other illicit activities. These "watch lists" use identifiers – primarily biographic-based – to support border-screening protocols and procedures.

However, when it comes to identifying dangerous individuals from abroad, the U.S. government is not the only, or necessarily the best, source of information. In fact, if you wanted to identify potentially dangerous individuals from a particular country, say the UK, your first stop would not be Washington; it would be London. Many European countries have rapidly growing ethnic and religious immigrant communities, a small minority of which has the potential to become radicalized. It makes sense then that the person's home country is the best source of information about which of its citizens or residents is most likely to pose a risk to the United States. This kind of unprecedented bilateral and multilateral information sharing mandated by the VWP, along with the routine audits and inspections made possible by the program improves the U.S. government's overall ability to identify bad actors and activity.

Is the person coming to the U.S.?

DHS begins the screening process well before a potentially risky traveler reaches the U.S. border; in fact, DHS begins the process before the traveler even arrives at an airport through ESTA. In addition to the ESTA requirement for VWP travelers, DHS requires airlines to provide a copy of their passenger manifests and data from their reservation files. This information – which applies to all travelers and is provided to DHS a minimum of 72 hours in advance – helps the agency determine who to allow onboard a U.S.-bound plane, who requires further screening and investigation upon arrival, and who should be turned away and referred to appropriate law enforcement personnel. These advance-screening measures give DHS a better, more informed understanding of who is coming to the United States.

Is the person really who he says he is?

No amount of "watch listing" and passenger screening will detect terrorists if they are able to

travel on an assumed identity with fraudulently obtained or fake documents. In order to verify that people are who they say they are when they travel, DHS insists on high standards for documents acceptable for entry to the United States. These standards are highest for VWP travelers. For example, the electronic passports mandated by the VWP enable DHS to incorporate biometric verification—digital photographs and, increasingly, fingerprints—in the screening process to confirm that the person presenting the document is the person that the document describes. And DHS routinely audits the document production and issuance process in VWP countries to ensure standards are being met. In other words, VWP makes it harder to enter the United States using fraudulent documents and forged identities.

* * * * *

The VWP accordingly has received bipartisan praise as a strong security program. Against this background, the exercise of occasional national security waivers by the Administration to allow the program to continue to function as it has in the recent past does not seem troublesome. If the Administration makes a judgment that a London businesswoman who travels to Iran for business nevertheless can travel to the U.S. under the VWP – and that it is in the national security interest of the United States to allow such travel under the VWP – that should not trigger any alarms.

Again, thank you for inviting me to participate today. I look forward to answering any questions the committee may have.

Mr. DESANTIS. Thank you. The chair now recognizes himself for 5 minutes.

Ms. JOHNSON, as a general matter, requiring a foreign national traveling to the United States to obtain a visa, how does that damage national security?

Ms. JOHNSON. Thank you, sir. As I mentioned in my remarks, the VWP is a very important and significant counterterrorism tool. The security requirements under the VWP —

Mr. DESANTIS. That is not my question. You are saying some people may be ineligible for the VWP, so my question is, okay, that means they would have to get a visa. So the requirement to get a visa, how does that damage national security?

Ms. JOHNSON. So citizens of those VWP countries are very suddenly treated as a heightened security risk. So what we've heard from our European colleagues in particular just even yesterday —

Mr. DESANTIS. Well, wait—okay, yes, but why—I mean, you have some of these people in like Brussels and some of these jihadist-infested areas. I mean, why would we not want to treat them as a heightened security?

Ms. JOHNSON. Well, again, I mean —

Mr. DESANTIS. They are a heightened security risk, aren't they?

Ms. JOHNSON. Well, these waivers are again very limited and very narrowly focused and would be done on a case-by-case basis. And again, of those categories of travelers we were looking at, it's not somebody who would just go to Syria to go visit perhaps and go attend a terrorist training camp. We're looking at, again, very limited and very focused waiver categories that's permissible under the law.

Mr. DESANTIS. Well, I think that the testimony alluded to—so under the administration's action with respect to the visa waiver changes that were enacted by Congress, they would allow somebody who is a national of, say, Iran and a European country who qualified under Visa Waiver Program. If that Iranian national is traveling back to Iran to do business, even though the businesses may have connections with the Revolutionary Guard Corps, they would qualify under the business exemption, correct?

Ms. JOHNSON. No, that's not correct, sir.

Mr. DESANTIS. Why not?

Ms. JOHNSON. So, again, these are limited case by case. They would be focused on being reviewed. And again, these individuals are going to be screened against all of our databases, again, with information provided by the VWP countries.

Mr. DESANTIS. Well, but I think that is the issue is that the reason why you want someone to obtain a visa, I mean, if we are confident that everyone is a threat is in the database, then you are right, there are certain things that could catch him at an airport. But the whole idea is, you know, you have someone like Tashfeen Malik. You know, she didn't pop on those databases. We were hoping that that visa process that she went through would have ferreted her out and would not have allowed her entry into the United States.

And so let me just return just as a general—because I don't think I got a clear answer. You know, Israel, non-visa waiver coun-

try, Azerbaijan, Shiite Muslim ally of ours. Iran, they don't like that Shiite Muslim government. You know, they are not on the Visa Waiver Program. So how does it damage national security to require these travelers from those areas to get a visa?

Ms. JOHNSON. I'm not sure I understand the linkage with Israel and Azerbaijan.

Mr. DESANTIS. Just there are different countries that we are allies with where their citizens have to get a visa in order to come here that are not under the Visa Waiver —

Ms. JOHNSON. I understand.

Mr. DESANTIS.—Program. So my question is is why not err on the side of caution? And if you require someone to get a visa, how does that fact damage our national security?

Ms. JOHNSON. So again, these visa waiver partner countries, their citizens are being treated as a heightened security concern and we're looking at not damage—we're leveraging the program to get additional information-sharing requirements. We go and interview their—we, you know, examine their seaports, their land borders, their airports. We're getting more out of the Visa Waiver Program as a counterterrorism tool than perhaps what we would be doing with a non-VWP partner.

So again, I think that we're looking at the fact that we're treating these individuals as heightened security risks and we're utilizing this waiver —

Mr. DESANTIS. Okay. So —

Ms. JOHNSON.—to look at a narrow group —

Mr. DESANTIS. But I —

Ms. JOHNSON. And those countries may not cooperate with us as a counterterrorism matter if there's —

Mr. DESANTIS. Which countries —

Ms. JOHNSON.—a consideration —

Mr. DESANTIS.—have indicated that?

Ms. JOHNSON. Well, we've had a number who have been very concerned. Again, yesterday —

Mr. DESANTIS. Which ones?

Ms. JOHNSON. We've met—I've met with the Swiss, I've met with the French, I've met with the E.U., I've met with Japan. They've all expressed concerns. And as Mr. Steifletz—or Heifetz has mentioned that they may actually choose not to come to the United States because they're concerned—or not got to Iran or they might not go to Iraq, participate in a humanitarian mission because they're concerned about this, that they're being treated—their citizens are being treated as a heightened security risk.

Our VWP program is going under—every traveler under the VWP program is going under heightened security screening just like they will with visas. So I take issue that the fact that they don't get an SAO review, they do. They don't get an automatic ESTA just because they've applied and answered questions. Every one of those individuals are completely scrubbed against our screening databases before being issued an ESTA, and then those ESTAs are reviewed continually.

Mr. DESANTIS. So, yes, they are traveling to Iran, some of them are doing business with Iran. Iran is the number one state sponsor of terrorism in the world. The State Department considers the gov-

ernment of Iran to be a state sponsor of terrorism. The Revolutionary Guard Corps is a designated terrorist group.

So yes, they would be treated differently, but aren't there legitimate reasons why they should be treated differently given the circumstances? I mean, if a Japanese citizen is going to Taiwan to do business, you know, the idea that that was going to affect the visa waiver status, I mean, I get that, but you are traveling to Iran, given the circumstances, how is it unreasonable to think that that would be something that we would be concerned about?

Ms. JOHNSON. Again, individuals from the VWP countries going and conducting legitimate business in Iran that's permissible under the JCPOA shouldn't be penalized or shouldn't be considered a heightened risk. Of course, again, we would do all of the routine screening on each individual —

Mr. DESANTIS. So —

Ms. JOHNSON.—to ensure that they are not a threat to the United States.

Mr. DESANTIS. So you are worried about penalizing someone going to Iran to do business even though that could potentially expose the American people to more danger? And I get like the visa waiver—you know, the sharing of intelligence. I think that is good. But the bottom line is it is easier to come here if you qualify for a visa waiver. And if you are not in the database, you know, I don't think that you are going to be able to be found out.

My time is up. I am going to recognize Mr. Lynch for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

Let's stay on that, Ms. Johnson. So a number of my colleagues have expressed concern that waivers could be granted to individuals for reasons that might run contrary to our national security interests as required under the law. What is the countermeasure against that within the system? How do we make sure—and, look, I am sort of the devil's advocate here. I spent a lot of—a lot of members on this committee spent a lot of time in the Middle East so we—but just came back again from visiting all these refugee camps, been to Sudan so I know—and that is on the list here, too, certainly understand all the—the huge number of NGOs that we have working on these countries on behalf of the American people, which the goal is to keep the refugees from flooding into Europe and elsewhere, this huge diaspora that has been created because of the war in Iraq and Syria. They are trying to keep them stable and in safe conditions on the border.

So as a result, we have got a lot of people—USCIS does great work on our behalf. We have got a bunch of different—the World Food Program did great work. But we do have a lot of people that end up especially in Iraq. We have got tons of contractors that are going in and out of Iraq on a regular basis. How do we create a countermeasure within—and, Mr. Heifetz, you might want to join in on this because your testimony speaks to this issue as well. How do we rest assured that someone is not breaching the Visa Waiver Program with nefarious intent, that someone gets a waiver from the Secretary of DHS and, you know, does what, you know, these folks in Paris did or San Bernardino did?

Ms. JOHNSON. Yes, so again, the Visa Waiver Program requires much more strict security standards, so all of the countries have

to meet those strict security standards. Countries that don't issue—don't have to have to have their citizens come get visas do not necessarily have those—I mean, they certainly don't have those standards that they're required to meet. So that's on the front end. And then we're inspecting those on a regular basis.

It's important to stress that the information-sharing that we get from them, the known and suspected terrorist information we receive from those VWP countries again enhances our screening databases. So we're getting more information through the VWP partnership than we would any other country relationship that we have outside the VWP.

Then we have the additional layered security, so an individual who might be a humanitarian worker applying for an ESTA because they want to utilize this waiver, it should be important to note that they're not applying for the waiver. They're applying for the ESTA. So the ESTA then has more stringent questions. I would be frank in, you know, that we have only a couple minutes in a visa window. You're asking a number of questions through the ESTA process, which we then look—work really hard to verify. We also screen against all of our databases, both terrorism and criminal. And then for all travelers, whether they're visa or—traveling under the visa or the VWP, we have layered security portions again to ensure we're not entering—having people enter the United States that should do us harm.

Mr. LYNCH. Okay. So in the past—and I want to ask you about the lists—we had a situation where there were some workers, I believe about 72 workers that went through DHS screening and were able to obtain security badges to work in secure areas of our airports, yet they were on the TIDE list. They were on one of our terrorist lists. Has that been straightened out? Because earlier on, DHS and people weren't sharing lists, and that was the root cause of that problem.

Now, I have been reassured in other forums that that problem has been addressed and the lists are being shared so that is not going to happen anymore. Is that your understanding, Mr. Kerlikowske?

Mr. KERLIKOWSKE. So TSA runs that part of the program and Admiral Neffenger. And I know that they have just gone back under his direction and completely rescreened all of those individuals against all of these different databases. They've rescreened all of these individuals as a result of that. There's another group, of course, that works on the ports and the cargo crane and operators of other equipment. That is run through the United States Coast Guard, and as I understand it, they are also in that process.

But within DHS and our partner government agencies under the—especially under the National Targeting Center, I would tell you that there is no database that cannot be shared and is not run against others.

Mr. LYNCH. Okay. I see my time is expired. I will yield back. Thank you.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Ms. Johnson, you say you are going to do these waivers on a case-by-case basis, so I guess you have got a criteria set for how they get a waiver or not?

Ms. JOHNSON. I think that would be more of a question for DHS in the process of how those waivers are administered.

Mr. MEADOWS. So is there a criteria?

Mr. KERLIKOWSKIE. There's a system that—by February 23 that will have all of these additional questions. For instance, if you were doing legitimate business in Iran, you would have to, of course, had an Iranian business passport with those numbers. So —

Mr. MEADOWS. What part of the law, I guess —

Mr. KERLIKOWSKIE.—there'd be a whole —

Mr. MEADOWS.—talked about business purposes having a waiver?

Mr. KERLIKOWSKIE. So the protocol would be that if you were claiming that you wished under—and, by the way, no waiver has been granted and no waiver —

Mr. MEADOWS. Right, but it is a national security or law enforcement waiver. It was fairly clear, wasn't it, national security or law enforcement waiver, isn't that right, Ms. Johnson?

Mr. KERLIKOWSKIE. It is correct.

Mr. MEADOWS. Okay. So how can you quantify that a business purpose is a national security purpose?

Mr. KERLIKOWSKIE. So I think there are —

Mr. MEADOWS. I am a business guy, so that means I am a national security risk.

Mr. KERLIKOWSKIE. Or a national security benefit.

Mr. MEADOWS. Because what I am hearing—and let me tell you what troubles me. It sounds like we have created a jobs program for Iran that we are concerned about their business activity at the expense of the national security of all freedom-loving Americans. Have we done that? Because that is what Mr. Heifetz indicated. It is important for their economy. So is that what we have done, Ms. Johnson? We have created a jobs program?

Ms. JOHNSON. No, sir. This —

Mr. MEADOWS. Then why do we give an exception according to DHS—I guess the exception is for legitimate business purposes? And it is not just in Iran. It is in Iraq, and they are not part of the agreement in terms of the JCPOA. So why would we include Iraq and Syria and Sudan if it is not trying to help them get investors from Europe?

Mr. KERLIKOWSKIE. Well, under the business it is only Iraq and Iran, and we certainly want to see Iraq's economy do —

Mr. MEADOWS. So it is a jobs program?

Mr. KERLIKOWSKIE. Well, we certainly want to see Iraq's economy do better so that they can support their own defense —

Mr. MEADOWS. But I can tell you that was nowhere in the deliberations between the minority or the majority when we were talking about this. It had nothing to do with business purposes. So how does the administration start to interpret this law as somehow being a jobs program? Ms. Johnson?

Ms. JOHNSON. Again, it's not a jobs program. It's not about—it's not about Iran. It's about our national security. And I work in the Counterterrorism Bureau at the State Department, and so I'm very

focused on the fact that the protection of the homeland—which the entire State Department is focused on—is one of our major priorities.

Mr. MEADOWS. So wouldn't allowing more business travelers who travel from Belgium or France going to Iran potentially create a greater national security threat than if they never traveled there at all?

Ms. JOHNSON. I don't think —

Mr. MEADOWS. I'm not talking about the Visa Waiver Program because I know you have been defaulting that. Could it not potentially create a greater national security threat?

Ms. JOHNSON. I don't see the connection in the sense that these are—under the JCPOA, these countries can —

Mr. MEADOWS. No. One of them is. Not all those countries are under that. Am I confused? Or are they all under that? I thought only a few of those were, like one.

Ms. JOHNSON. The program—the VWP partnership, again, for us with our partners under the VWP program —

Mr. MEADOWS. That is different —

Ms. JOHNSON.—they can go —

Mr. MEADOWS. That is different than what you just said, though. I understand. So if the VWP program is all great, why don't we expand it to all the countries if it actually increases our national security? Why don't we increase it to Israel?

Ms. JOHNSON. I would think that, you know, they're—again —

Mr. MEADOWS. Aren't they an ally?

Ms. JOHNSON.—for those countries that want to be part —

Mr. MEADOWS. They are a closer ally than Iran, aren't they?

Ms. JOHNSON. Well, there's requirements to get into the program, a number of factors —

Mr. MEADOWS. But Iran hasn't met those requirements, have they?

Ms. JOHNSON. Well, it's—visas —

Mr. MEADOWS. But they are —

Ms. JOHNSON.—it's not about Iran.

Mr. MEADOWS. But they are enjoying the benefit. Let me go on. I got a few minutes left.

For DHS, the report that you sent only had 2 of 70 types of visas. Is there any reason why we excluded the other 68 types on that report?

Mr. KERLIKOWSKE. So we were given this mission by—the entry-exit mission by Congress in 2013.

Mr. MEADOWS. Oh, no, no, no, no, no, no. There is a GAO report. You were given the mission back in the 1990s.

Mr. KERLIKOWSKE. I'm sorry. I'm speaking as the commissioner of Customs and Border Protection.

Mr. MEADOWS. Okay. Your agency?

Mr. KERLIKOWSKE. Right. We were given that mission in 2013. And as you know, there had not been a visa waiver overstay report for many, many, many years.

Mr. MEADOWS. Nineteen ninety-four.

Mr. KERLIKOWSKE. Right, until last year. It was very clear that there was a lot of —

Mr. MEADOWS. But there hasn't still been one. Let's be clear about that. We have had a partial report.

Mr. KERLIKOWSKIE. I'll agree that the—certainly a partial report. It is certainly a step ahead and a step better than what had ever been issued before under many administrations.

Mr. MEADOWS. Well, that is true because it hadn't been issued in 20 years, so I mean something is always better than nothing. I guess my—when are we going to get the full report?

Mr. KERLIKOWSKIE. So the full report and the number of things—and we'd be happy to spend some time with you or your staff briefing you about all the things that DHS and Customs and Border Protection is doing to try to increase the quality of the data. You know that an overstay—if you leave the country one day after your visa expired, you're considered an overstay even though you have left the country and —

Mr. MEADOWS. Yes, but that is not the numbers we are talking about.

Mr. KERLIKOWSKIE. Okay.

Mr. MEADOWS. Let's don't give a false premise here —

Mr. KERLIKOWSKIE. Okay.

Mr. MEADOWS.—and if the chair will indulge this last clarifying question. We have reason to believe that the number of overstays, if you include all the categories, is closer to 3/4 of a million versus the 500,000 that has been indicated. Would you agree with that

Mr. KERLIKOWSKIE. I —

Mr. MEADOWS.—estimate? Have you seen any estimate?

Mr. KERLIKOWSKIE. I don't—no, I have not.

Mr. MEADOWS. All right. I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you so much.

Just for the record, Mr. Kerlikowskie, Ms. Johnson, you aren't in some secret conspiracy to allow terrorists to come into the United States, are you?

Mr. KERLIKOWSKIE. No, sir.

Ms. JOHNSON. No, sir.

Mr. CONNOLLY. And you are both under oath.

Mr. KERLIKOWSKIE. Correct.

Ms. JOHNSON. Yes.

Mr. CONNOLLY. Oh, good. Thank God. Okay. I just want to make sure because sometime in listening to some of the criticism, one would draw perhaps a strange conclusion.

Mr. Heifetz, were you advocating for a jobs program through the use of this program in Iran?

Mr. HEIFETZ. No, I was not.

Mr. CONNOLLY. What were you advocating or digressing about?

Mr. HEIFETZ. Ensuring—that was suggesting that the administration needs deference in the exercise of the national security exemption, among other things, to ensure that all sides to the JCPOA are compliant.

Mr. CONNOLLY. Might there be unintended consequences with the law we passed in December? Could there be, you know, people

caught up in it that we didn't intend to—or presumably didn't intend to be caught up in it?

Mr. HEIFETZ. Yes.

Mr. CONNOLLY. Could an IAEA inspector, for example, critical to validating compliance with the JCPOA—that is to say the nuclear agreement with Iran—could they be caught up in the net unwittingly?

Mr. HEIFETZ. Yes.

Mr. CONNOLLY. So we might want to make an exception there?

Mr. HEIFETZ. For sure.

Mr. CONNOLLY. Mr. Lynch talked about going to refugee camps. So, for example, Medecins Sans Frontieres or Doctors Without Borders or U.N. officials who are doing humanitarian work, certainly something we would laud, we might want to give due deference to the administration in making sure they are not unwittingly caught up in this law and prevented from coming into the United States through the waiver program? Would that be a fair statement?

Mr. HEIFETZ. That seems sensible.

Mr. CONNOLLY. Ms. Johnson, is that of concern to the State Department? Are there some unintended consequences from a law we passed that you are trying to address through implementation, as well as Mr. Kerlikowske at DHS?

Ms. JOHNSON. Yes. Again, with our foreign partners who feel that those individuals are being considered a heightened security risk, yes.

Mr. CONNOLLY. Our foreign partners? That is to say they are concerned about this?

Ms. JOHNSON. Yes. And we're —

Mr. CONNOLLY. So there are foreign policy relations that could also be at risk because we have maybe passed a law with good intent and out of deep concern to protect the country, but there may be some unforeseen aspects of that law, consequence of that law that could affect our partners, our allies, and we need to address that. Otherwise, we are needlessly alienating friends and partners we need in other endeavors. Would that be a fair statement?

Ms. JOHNSON. Yes, and for the national security of the United States. We rely on those partners to help protect the U.S. homeland.

Mr. CONNOLLY. Right. Are there any such partners who have publicly called for us to make adjustments because of those concerns?

Ms. JOHNSON. I would have to get back to you, but I know the E.U. has themselves, I believe, sent a letter to the Speaker of the House.

Mr. CONNOLLY. Okay. So it is not an idle speculation. We actually have a record of concern by Europe, not a trivial partner or ally. Okay.

The issue of dual nationals—and I know it has been addressed—but is there another side, either Mr. Kerlikowske or Ms. Johnson, to the debate on dual nationality? Because I can tell you my district, there are certain ethnic groups who are apoplectic about the application of this law because they feel they are unwitting victims and they are not terrorists, though they may be of a certain national background that would fall under the penumbra of this law.

Is there some rationale—and I invite you, too, Mr. Heifetz. Is there some rationale for why we might want to make exception or dual nationals?

Ms. JOHNSON. So we're reviewing that internally right now in consultation working closely with the Department of Homeland Security. I do know the Europeans have also expressively very concerned about that, feeling that the law was discriminatory. And I think—and CBP can—the commission can confirm. I think some of the biggest dual national populations come out of Britain, Australia, some of our key allies.

Mr. KERLIKOWSKIE. We implemented the—that particular facet of the law almost immediately by canceling 17,000 dual nationals that we had information on, and we've also—any application that has come in since that also shows dual nationality has been denied. And of course our default position on all of this, whether it's with a potential waiver application or not, is that if there is any derogatory information, any concern or any—or anything that would violate the law that Congress passed and the President signed, the default position would be to —

Mr. CONNOLLY. Deny?

Mr. KERLIKOWSKIE.—deny them and send them —

Mr. CONNOLLY. I think that is really important. My time is up and I thank the chair, but the default—when in doubt, we don't do it. We don't put the United States at risk. Okay. Thank you very much. Thank you, Mr. Chairman.

Mr. DESANTIS. The chair now recognizes the gentleman from Oklahoma, Mr. Russell, for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman. And thank you, all of you, for being here today.

The difficulty that obviously a lot of us face on all sides of the immigration issue is not conflating refugee resettlement with visa waiver, with border security, with the larger immigration issue. I think many times we tend to get all of that confused.

However, here, we are talking about specifically a vulnerability second only to the open border that we have and ways that people could infiltrate. The Visa Waiver Program constitutes probably the greatest threat for infiltration if you were trying to enter the United States to do nefarious activities. And a simple yes or no, would you disagree with that statement, Mr. Kerlikowskie?

Mr. KERLIKOWSKIE. I would not agree with it, no.

Mr. RUSSELL. Ms. Johnson?

Ms. JOHNSON. I would not agree as well.

Mr. RUSSELL. Ms. Vaughan?

Ms. VAUGHAN. Yes, I would agree with that.

Mr. RUSSELL. Mr. Ottolenghi?

Mr. OTTOLENGHI. So would I.

Mr. RUSSELL. Mr. Heifetz?

Mr. HEIFETZ. I disagree.

Mr. RUSSELL. Okay. And see, therein lies the problem because even in the refugee camps that we visited, even as we have traveled into some very dangerous places to look at a lot of different things, even they will build up their border so that we have a controlled entry. Now, visa waivers, we have control, and I hear cited here today that it is the ESTA that is far more stringent and is

far more thorough, and therefore, we should have some reassurance.

Ms. JOHNSON, how long is the ESTA legitimate for?

Ms. JOHNSON. I believe it's 2 years. It's good for 3 and it can go down to 1.

Mr. RUSSELL. So 2 to 3 years. So do you think that maybe someone could be in a different viewpoint in terms of nefarious activity over a 2-year period?

Ms. JOHNSON. Well, just like our visas, the ESTAs are recurrently vetted so they're—it's not a static moment in time. So just because you're issued an ESTA does not mean we don't continually look at you as —

Mr. RUSSELL. Well, I understand that, but unless the information is volunteered such as the change of address or some other nature, the ESTA is good for 2 years. And, you know, whether or not I am coming here to visit Disneyland or coming here to commit an act of terror, we don't know. And see, here is part of the problem now. I am not conflating the refugee resettlement and some of those—look, we need to be a nation that welcomes immigrants. I just want to be on the record for that.

However, what we are talking about here is a vulnerability to infiltration. And as someone who defended my country in uniform for more than two decades of my life, living among many of the places that we are talking about, by the way, which have very good people, we are vulnerable.

And, Mr. Heifetz, let me see if I am correct here. You say, as part of the JCPOA, though, the United States committed to refrain from creating new types of sanctions on Iran. More specifically, the U.S. agreed to refrain from “imposing exceptional or discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures cover by the JCPOA.”

So am I hearing you correctly that modifications to the visa waiver should be avoided because it might curtail Iranian business? Yes or no?

Mr. HEIFETZ. No, that's not what I was saying.

Mr. RUSSELL. But that's in multiple statements to include your recorded testimony. You do state that we should avoid that because it might be discriminatory or exceptional. Do you believe that it's discriminatory or exceptional to have an additional scrutiny on Iranian people conducting Iranian business?

Mr. HEIFETZ. I believe that we have to be very careful about the exercise of VWP privileges and the withdrawal of those VWP privileges and that we need—that it is in the United States' national security interests to ensure compliance with the JCPOA.

Mr. RUSSELL. Well, okay, but that is a whole separate issue with the joint agreement.

Mr. HEIFETZ. Well, it's —

Mr. RUSSELL. In fact, let's talk about trading allies. Our top 20 allies, GDP, okay, China, Brazil, India, Saudi Arabia, Hong Kong, Malaysia, these are in the top 20 trading partners. We are talking a lot of money, hundreds of billions of dollars in trade to the United States. They are not on the Visa Waiver Program. Are you suggesting, sir, that Iran should be treated more favorably or those

that do business with Iran, that, say, if I were a Londoner and I visited Malaysia —

Mr. HEIFETZ. No.

Mr. RUSSELL.—are you suggesting that I ought to get favorable attention because I am going to Iran as opposed to our allies that we trade hundreds of billions of dollars with?

Mr. HEIFETZ. The U.S. security depends in large part on cooperation from, among others, European allies. And when we—if we threaten withdrawal of VWP privileges from citizens of those countries, that's something that has to be factored into the calculation.

Mr. RUSSELL. Well, I agree, and I understand a little bit about security and providing security to the United States having nearly lost my life in defense of the country. How would requiring additional screening on a visa application for those conducting business in Iran be any different than, say, exceptions to conduct business with Saudi Arabia? Do you favor Iran over Saudi Arabia?

Mr. HEIFETZ. I'm not taken any position on that —

Mr. RUSSELL. Well, I think you are, sir. I think you are taking a position here —

Mr. HEIFETZ. No.

Mr. RUSSELL.—with your testimony. And this is the point that I am making—and thank you, Mr. Chairman, for your indulgence—but we have to be very careful here. We have vulnerabilities. We want to be a nation that is welcoming. We have vulnerabilities. But as Mr. Ottolenghi correctly stated, this is not an additional burden. It is not so bad that we can't do it. And I think we need to be very careful before we open ourselves up to real danger and real vulnerability.

And with that, Mr. Chairman, I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. I thank the chairman, and thank you, you and Mr. Meadows, for putting this hearing together.

Mr. Kerlikowske, a couple months ago we had an individual from DHS here, and we asked her a number of questions, and she wasn't able to give us any answers. Some of them didn't deal directly—I am going to ask you some of the same questions. They didn't deal directly with the Visa Waiver Program, but information I think the American public is interested in knowing. So I am going to ask you some of the same ones and see if you have the answers.

Do you know how many Americans have traveled to Syria in the past 2 years?

Mr. KERLIKOWSKE. I do not.

Mr. JORDAN. And who would have that information?

Mr. KERLIKOWSKE. Within DHS headquarters, there is a visa waiver office, and they're also—they would work with the Department of State on that information. We have a fairly narrow mission

Mr. JORDAN. I am talking about just Americans —

Mr. KERLIKOWSKE.—customs and border protection —

Mr. JORDAN.—who have traveled to Syria, people who have left our country and travel to—do we know that number?

Mr. KERLIKOWSKE. Well, if you're also —

Mr. JORDAN. Not necessarily Visa Waiver Program folks, but just anyone.

Ms. JOHNSON. I think you can get the numbers from the FBI and the National Counterterrorism Center. I know last year. So it was over 100. I don't know what the numbers are today.

Mr. JORDAN. Okay. So over 100. And of those who—do we know how many of those 100 who have traveled there who have then come back?

Mr. KERLIKOWSKE. If you are talking about those that may do harm and we are concerned about it may come back, I think whether it is the DNI or others, I think we would be much more comfortable in a closed setting giving you that information. But

Mr. JORDAN. I am not asking whether they are going to do harm or not. I am just asking do we know Americans who have traveled to Syria, Iraq and then have come back? Do we know that number?

Mr. KERLIKOWSKE. We do know that number.

Mr. JORDAN. Okay. But you don't think we should give that in a

Mr. KERLIKOWSKE. I would not because —

Mr. JORDAN.—non-classified —

Mr. KERLIKOWSKE.—I would tell you that I think that there is a significant heightened risk —

Mr. JORDAN. Okay.

Mr. KERLIKOWSKE.—unless there is particular information that they went over as a medical worker, et cetera.

Mr. JORDAN. I understand.

Mr. KERLIKOWSKE. So we'd be more comfortable telling you that

Mr. JORDAN. Okay.

Mr. KERLIKOWSKE.—in a closed setting.

Mr. JORDAN. So let's go to—do we know how many Syrian refugees are in the country today? Again, not the Visa Waiver Program, I am talking about Syrian refugees. And Ms. Johnson or whoever can—either one.

Mr. KERLIKOWSKE. And I think that USCIS, the director Leon Rodriguez, that is something that would be within his portfolio, not Customs and Border Protection.

Mr. JORDAN. Okay. All right. Well, let's go to Visa Waiver Program. How many Visa Waiver Program overstays are there currently in the United States?

Mr. KERLIKOWSKE. The number of overseas was estimated in the last reports, and as Chairman Meadows mentioned —

Mr. JORDAN. This is the most recent report that you guys —

Mr. KERLIKOWSKE. Right. Exactly.

Mr. JORDAN.—just put together? Okay.

Mr. KERLIKOWSKE. Over —

Mr. JORDAN. What was that number again?

Mr. KERLIKOWSKE. Over 500,000 overstays.

Mr. JORDAN. Over 500,000? And what is the average length of time they have overstayed?

Mr. KERLIKOWSKE. I don't have that.

Mr. JORDAN. Is it in the report?

Mr. KERLIKOWSKE. I believe it is.

Mr. JORDAN. Okay. And of those half-a-million overstays, do we know how many of those may have been to Syria or Iraq in the past couple years? I mean, do you know their travel history? So they are coming from largely, I mean, most likely a European country who are part of the Visa Waiver Program. Do we know, of those half-a-million who are here who have overstayed the time they were supposed to be here, do we know how many of those may have traveled to Syria or Iraq?

Mr. KERLIKOWSKE. If we have the information from an air manifest or a sea manifest as to whether or not they had traveled to another country, we would have that information, and I'd be happy to try and provide more detail. I wouldn't have that right in front of me.

Mr. JORDAN. But you do think you could get me that information?

Mr. KERLIKOWSKE. I could get you much more specifics to what you're asking than what I can tell you right now.

Mr. JORDAN. Well, I think that is an important question —

Mr. KERLIKOWSKE. Right.

Mr. JORDAN.—I mean, because if you have got half-a-million people who are overstaying the time that they are supposed to be here, we want to know where they came from. We want to know where they have traveled. I mean, the whole idea is that this Visa Waiver Program could be exploited by terrorists. It would be interesting to know if some of the people who are currently here who have overstayed have already violated what the agreement is, what the law is if they had been to places in the Middle East prior to coming to the United States.

Mr. KERLIKOWSKE. And we also know that in order for a country to remain in the Visa Waiver Program, there has to be a percentage, an overstay percentage I believe—is it below 3 percent?

Ms. JOHNSON. The visa, yes.

Mr. JORDAN. Wait. Say that again.

Mr. KERLIKOWSKE. So all these countries that are in the Visa Waiver Program do a whole host of things that they share information —

Mr. JORDAN. Right.

Mr. KERLIKOWSKE.—whether it's lost or stolen passports —

Mr. JORDAN. I understand.

Mr. KERLIKOWSKE.—on and on. They also have to abide by a reduced amount of people that would be in an overstay capacity. That would be one of the criteria.

Mr. JORDAN. Okay. Well, that sort of raises the question, then, of these half-a-million people who are here who aren't supposed to be here, what kind of ramifications or consequences do the countries that they came from—what kind of consequences have happened?

Mr. KERLIKOWSKE. Well, I would tell you that —

Mr. JORDAN. It is one thing to say there are going to be consequences. We want to know, for the half-a-million who are here who aren't supposed to be here, have there been any consequences?

Mr. KERLIKOWSKE. Well, I would tell you that the half-a-million people includes the people that got on the plane and left the day after their overstay. And I think as Chairman Meadows mentioned

that there's a lot of gaps in the data. I mean, that's why I think it took so many years for people to try and gather and put it together. That's why I was very pleased that Secretary Johnson, working with us and other parts of the DHS headquarters, were able to put together a report. And as I think all of us have clearly mentioned, there are gaps in the report. The data-gathering needs to be better, and the information needs to be supplied not just to the Members of Congress but also to the American public. None of us disagree with that.

Mr. JORDAN. Okay. I am over time. Thank you, Mr. Chairman.

Mr. DESANTIS. The chair now recognizes Mr. Hice for 5 minutes.

Mr. CONNOLLY. Mr. Chairman?

Mr. DESANTIS. Yes?

Mr. CONNOLLY. Would you allow just a quick clarification?

Mr. DESANTIS. Sure.

Mr. CONNOLLY. I thank the chair.

It would be helpful, Mr. Kerlikowske, if we had some specified data on overstays. So your point is some people are classified overstays technically because a few hours lapsed between the expiration of the visa and their getting on an airplane and leaving. I think it would be helpful to the committee if we actually had a breakdown of that data. So otherwise we are dealing with the raw data of a half-a-million, which is not accurate. But what is accurate? And I think that is where Mr. Jordan was going.

Mr. JORDAN. If I could, Mr. Chairman?

Mr. DESANTIS. Yes.

Mr. JORDAN. Yes, great point. We would like to break down that, but I think it is also important for the committee to understand—my understanding is that half-a-million is only the tourists and business, right? There are all kinds of other people here on visas who overstay. They may not be in the Visa Waiver Program, but there are all kinds of others. So that number is just with those two programs, and we can't even get the exact information where they have traveled before, what may have transpired there.

Mr. KERLIKOWSKE. You're absolutely correct, Congressman, for instance, student visas, but student visas aren't for 90 days. Student visas are for the completion of the educational requirement. As we know, any of us who have sent our kids to college know they don't graduate in 4 years. So we have—so there are significant—you know, there's significant greater difficulties. All of us at DHS and certainly —

Mr. JORDAN. That is a good point. They may not graduate in 4 years, but our kids aren't breaking the law if they would stay longer than 4 years. That is the point, right?

Mr. KERLIKOWSKE. Well, actually —

Mr. JORDAN. They are breaking our wallet but not breaking the law.

Mr. KERLIKOWSKE. They're not breaking the law because—they're not breaking the law if they stay 4-1/2 years to get that college education because the—it's—at the end of the term, at the end of the—that you can see the difficulty of trying to track somebody for 4-1/2 years. So that's why the B-1/B-2 visa I think was easier

Mr. JORDAN. I am not saying it is not difficult. All I am saying is we want the numbers, and frankly, that is your job to know what is going on and know those who are overstaying their time.

Mr. DESANTIS. And, though, I think of the 500,000 identified, I think you have the vast majority, like 416,000, are still in the country overstaying. And there is only a very small fraction that were investigated by ICE for overstaying. So I think that there is—I mean, we need the data, I agree, but there are a lot more questions that haven't been answered.

So, Mr. Hice, you are recognized for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

Okay. We have, by Congress, given some restrictions to the Visa Waiver Program. Ms. Johnson, let me ask you this. Did the administration discuss the exceptions to these restrictions with the government of Iran before announcing those exceptions to Congress and the American people?

Ms. JOHNSON. Are you referring to a conversation between—or a letter between Secretary Kerry and Foreign Minister Zarif?

Mr. HICE. I am referring to any communication with the Iranian Government about the exceptions.

Ms. JOHNSON. So I know that Secretary Kerry did send a letter to Foreign Minister Zarif after the Iranians publicly claimed that this law violated the JCPOA commitments. In that letter, Secretary Kerry defended the law, telling him that it was not a violation of the JCPOA commitments. He also outlined the fact—what the law was, again, defending the law but also outlined why it was not in violation of those commitments because it is possible for Europeans to travel to Iran and conduct legitimate business.

Mr. HICE. So there was communication. Can we have a copy of that letter if we don't already have it, Mr. Chairman, that it be entered in the record?

Ms. JOHNSON. And these are letters—I mean, we've gotten similar letters from our VWP—or similar inquiries. Again, I've met with —

Mr. HICE. Okay. It is concerning to me that Congress passes restrictions and then the administration has conversations with the Iranian Government and makes exceptions to the restrictions that were imposed by law, by Congress. I would like to have a copy of that.

You mentioned also a little while ago the legitimate business-related purposes. I have absolutely no idea what that means. What is the definition? How is that defined?

Ms. JOHNSON. Well, obviously, legitimate business, we are working through how we would process it in the context of the waivers, but obviously, in the case of Iran, it would not be sanctionable—things that are sanctionable under both U.S. law and regulations, U.N. Security Council resolutions, things of those natures. That would be our basis for starting out —

Mr. HICE. So you are saying you don't have a real firm definition either?

Ms. JOHNSON. We definitely—from the sanctionable side obviously, and then what would be looking at how we could also narrowed down review of those individual case-by-case waivers to determine legitimate business.

Mr. HICE. I just don't understand how someone with a so-called legitimate business-related purpose, how that business, someone traveling to Iran or Iraq or wherever it may be, somehow falls under a national security exemption. And can you explain that?

Ms. JOHNSON. For both Iraq and Iran or —

Mr. HICE. Sure.

Ms. JOHNSON. Yes. So obviously, in the case of Iraq we have been encouraging governments from VWP countries but more broadly, more globally, to engage in business with Iraq to help stabilize their economy. That's in our national security interests. For Iran, the same thing. We are looking at these foreign partners and particularly the VWP countries to engage in—they've got legitimate business interests and permissible under the JCPOA. Again, that's why we have a deadline of July 14 when it was concluded, not before. And those are international security interests, so those partners to be able to participate in that activity.

These are partners, again, who are contributing to our national security. By participating in the VWP program, they're providing us with additional information on known and suspected terrorists. We also have information on how they do border controls both at their sea and land and airports. And again, we are constantly monitoring our partnerships with those countries to make sure that it's a securing the homeland and it's not —

Mr. HICE. Okay. Let me go to —

Ms. JOHNSON.—undermining our security.

Mr. HICE. Thank you. Let me go to Mr. Kerlikowske. The Department of Homeland Security, are they currently monitoring individuals who have traveled to countries like Syria, Iraq, some of these other countries, where there is known radicalization and training efforts that are ongoing in those countries? Are those individuals being monitored?

Mr. KERLIKOWSKE. We would not do that. The Department of Justice and the Federal Bureau of Investigation would be in a much better position to answer that. We do share —

Mr. HICE. Is there anyone on the panel that can answer that?

So we have experts here and we don't know whether these people traveling these countries where there is radicalization taking place, we don't know if they are being monitored?

Mr. KERLIKOWSKE. Well, actually, the Department of Justice could answer it in a closed session with probably far more specificity —

Mr. HICE. But none of you can answer it, so that is not public knowledge. We don't know. Is that —

Mr. KERLIKOWSKE. We would not want to release information or talk about the number of people or who is being monitored who may pose a threat to people of this country in a —

Mr. HICE. All right. My time is almost gone.

Mr. KERLIKOWSKE.—in an open setting.

Mr. HICE. Since you can't answer that, let me ask it this way. Is there any way for the U.S. Government to prevent individuals from visa waiver countries where there is radicalization and training, terroristic training taking place, is there any way to ensure that these individuals cannot enter the United States under the Visa Waiver Program?

Mr. KERLIKOWSKIE. You know, as a police chief of two of the largest cities in the country, I was never held accountable for having Seattle not having any crime. We did the very best we could. I would tell you that it might be very much similar to what we do now. Every day, Customs and Border Protection personnel deny admissibility in this country to 241 people that are either stopped at preclearance, they're stopped at a port of entry, or their arrested or apprehended. It happens every single day.

Mr. HICE. But we are giving exceptions to a Visa Waiver Program that, as you just have mentioned, as you just declared, has no real security. We don't know if we are preventing people from radicalized countries from coming into the United States under the Visa Waiver Program.

Mr. KERLIKOWSKIE. And I didn't say that. It—I wouldn't say that it has no—I'd say it has greater security than many of the systems in place.

Mr. HICE. My time is up, Mr. Chairman. Thank you.

Mr. DESANTIS. The gentleman's time is expired. The chair now recognizes the gentleman from Kentucky, Mr. Massie, for 5 minutes.

Mr. MASSIE. Thank you, Mr. Chairman.

I would like to take my time to discuss what I hope is an unintended consequence of some hasty changes to this legislation before it passed. As a result of this legislation, citizens of Visa Waiver Program countries can no longer travel to the United States visa-free if they are dual nationals of Iran, Iraq, Sudan, or Syria solely due to their ancestry.

And let that sink in. I mean, this feels like discrimination to me because if the citizens of those countries we are excluding, if those countries in the Visa Waiver Program decide to reciprocate, there is a category of millions of Americans, freedom-loving Americans that could be exposed to discrimination as a result merely of who their parents were.

And by this I mean you could be swept into this program of discrimination even if you have never been to one of these four countries if you are solely the progeny of somebody from one of these countries because three of the countries consider you to be a citizen of that country even if you weren't born there so long as your father was a citizen of that country. This is a great concern to me.

There is a piece of legislation that I have introduced. The primary sponsor is Justin Amash. It is H.R. 4380. It is called the Equal Protection and Travel Act of 2016 that would remedy this problem.

And, Mr. Chairman, I ask unanimous consent to enter into the record two letters in support of H.R. 4380, the Equal Protection and Travel Act of 2016. The first letter is from the American Civil Liberties Union and the second letter is signed by 65 separate groups representing a wide range of viewpoints and membership.

Mr. DESANTIS. Without objection.

Mr. MASSIE. So while we have got the witnesses here who are obviously experts on the Visa Waiver Program, I want to ask, for instance, Mr. Heifetz—and anybody is welcome to answer this—of what national security advantage would there be to excluding peo-

ple from this program merely because their parents were citizens of one of these countries, Mr. Heifetz?

Mr. HEIFETZ. None that are apparent.

Mr. MASSIE. Please elaborate.

Mr. HEIFETZ. Well, I think a couple things are worth noting. First, the most significant expansion of the Visa Waiver Program occurred in the Bush administration. This was a security program, properly viewed as one. Secretary Chertoff has spoken on numerous occasions about Visa Waiver Program enhancing U.S. security. And the reason for that is the tradeoff is one between a short—what is typically a short interview by a consular officer. In exchange, rather than having that, we get heightened security standards by our Visa Waiver Program partners, particularly including lots of data to some of the questions that have come up—lots of data about who it is who intends to travel here, data that we wouldn't otherwise have access to.

So I think part of the points—part of what—the point that has been made several times is that when we begin—if we chip away at the advantages to the member states—to the VWP member states, we risk the security that comes with the additional information about who those people are and the heightened security standards that our VWP members provide.

Mr. MASSIE. Well, let me elaborate about this category of individuals that is going to be discriminated against and then ask another question. So this category includes people who may have fled here from those countries, for instance, in the '70s from Iran, who were seeking relief from that regime and have never gone back, never returned to that country.

Do we have any evidence—is there a single example of somebody who came to this country and is a dual citizen of one of these countries that presented a terrorist threat, you know, with credible evidence? And I am talking about people who were either born in the United States and became, by virtue of their parentage, a citizen of one of these countries, or fled here and never went back. Is there a single example?

Mr. OTTOLENGHI. Yes, sir. Manssor Arbabsiar, involved in a plot to try and murder the Saudi Ambassador to the United States in October 2011, Iranian American national living in Texas instructed and abetted by the cousin from Iran involved in the—Iran's Revolutionary Guard Corps forces.

Mr. MASSIE. And —

Mr. OTTOLENGHI. So that's one example.

Mr. MASSIE. And —

Mr. OTTOLENGHI. The second example, sir, is the seven recent pardons by the President —

Mr. MASSIE. Let me ask you about that example.

Mr. OTTOLENGHI.—of Iranian Americans —

Mr. MASSIE. That individual had never traveled to Iran.

Mr. OTTOLENGHI. Sir, you are raising the point about dual nationals who are citizens —

Mr. MASSIE. Right. And —

Mr. OTTOLENGHI.—of the United States and citizens of Iran. The point being made —

Mr. MASSIE. My point, the question was for people who have not returned to the country or people that were born here.

Mr. OTTOLENGHI. I am not familiar with the travel patterns of Mr. Arbabsiar —

Mr. MASSIE. Okay. Well, my —

Mr. OTTOLENGHI.—but certainly he was —

Mr. MASSIE.—time is expired.

Mr. OTTOLENGHI.—a dual national.

Mr. MASSIE. My time is expired. So here is the point I am making. I think it is fair to discriminate against someone based on their activity, their actions, or their travel patterns but not on their parentage. And I think the legislation runs the risk of disenfranchising millions of freedom-loving Americans. And I hope people will consider H.R. 4380 to remedy this.

And I yield back my time.

Mr. DESANTIS. The gentleman's time is expired.

The chair now recognizes the gentleman from South Carolina for 5 minutes.

Mr. MULVANEY. Thank you, Mr. Chairman. I thank the panel. I have just got a couple of clean-up questions for a couple different folks as we come to the end of this first round.

Mr. Heifetz, we will start with you. You have been asked a couple times by a couple different people how is it—and in fact several folks have been asked how could it be possible that somebody going someplace on business could be a national security interest or national security threat? But I don't think that is your point.

Let me see if I am correctly articulating your point, and I think Ms. Johnson may have made a similar point, which is that if we interfere with the free travel of, say, a European businessman or woman who has gone to Iran, then gone back, and then comes into this country, we deny that person the Visa Waiver Program, then that may discourage trade or travel to and from Iran, which would be a violation of the agreement we just signed with Iran a couple weeks ago. Is that your argument, sir?

Mr. HEIFETZ. That is an argument as to why discretion with respect to the waiver is important.

Mr. MULVANEY. I will take that as a yes, as lawyers tend to do, but I will take that as a yes unless you are telling me it is no, that what you are saying is that because that interpretation of the statute would potentially or likely violate the agreement with Iran, that it is in the national security interest of the United States to do something else, because breaching the agreement with Iran is against the national security interest of the United States?

Mr. HEIFETZ. That's—yes.

Mr. MULVANEY. Okay. Let me ask you this. What if the bill—what if the law, by the way, signed by the—I mean passed by the House and the Senate and signed by the President required the President to do something in violation of the JCPOA? Would it still qualify as a national security waiver under this law? Could the President break the law in order to not break the JCPOA?

Mr. HEIFETZ. I have a hard time envisioning the scenario that perhaps you're envisioning. The —

Mr. MULVANEY. We passed a bill today that says that it is illegal for anybody who has traveled to Iran to come into the United States for a year. We pass that law today —

Mr. HEIFETZ. And —

Mr. MULVANEY.—and the President waived that law under subsection C in the name of the national security interest of the United States.

Mr. HEIFETZ. If there's a—an—if there's a waiver authority for national security and the administration determines that it's in the national security interest to waive it, then it's not a violation of the law.

Mr. MULVANEY. No, but it is a violation of the separate law that we may have passed. Again, take by example we passed a bill today, we go in the House, Senate, President signs it and says if you go to Iran, you can't come here for a year, could the President waive that law under subsection C in your mind?

Mr. HEIFETZ. If the administration determines that it's in the national security interest of the United States, then yes.

Mr. MULVANEY. And I think that is right. I think that is consistent with your position. But my point is I start to get—the hair on the back of my neck stands up when we say it is okay for the President to break the law in order to accomplish something. But anyway, again, I think we are just clarifying a couple questions that were asked before.

A question about process, if I am that Iranian businessman and I go to Iran and I come back—excuse me, I am a British business person, I go to Iran and I come back and then I want to come to the United States. How do we know that I have been to Iran?

Mr. HEIFETZ. This is probably a better question for —

Mr. MULVANEY. Okay. Anybody —

Mr. HEIFETZ.—some of the others, but I—my understanding is that they're—that the fields are expanding—the ESTA fields are expanding to ask that —

Mr. MULVANEY. Okay.

Mr. HEIFETZ.—to get at that issue.

Mr. MULVANEY. That is one possible answer. It is not the best answer. The best answer would be that the computer systems would know that we are sharing information with the British, because if I lie on the ESTA or however you pronounce it, then am I going to get caught? Do we share information with the British on that?

Mr. KERLIKOWSKE. We do and —

Mr. MULVANEY. Okay.

Mr. KERLIKOWSKE.—it's in the travel records and it's in the either the name information or the advanced data. But then, of course, there's another way, and that is if you then enter the United States or you happen to be trying to enter the United States through Dublin or Abu Dhabi, you would show to a United States Customs and Border Protection officer a passport, who would go through the pages of that passport and see the stamp or see the information that you had been to one of those four countries. And that's what we did during the Ebola issue of those impacted countries.

Mr. MULVANEY. Okay. And then I am stopped at the border if that is the case?

Mr. KERLIKOWSKIE. You're denied entry because you have traveled within—after 2011.

Mr. MULVANEY. Thank you. Now, to another point—and I am going to ask Ms. Vaughan a question and then I promise, Mr. Chairman, I will wrap up—because we talked about this hypothetical businessperson, we have talked to—I think Mr. Heifetz in his testimony mentions a couple different folks.

Mr. Heifetz, I will read from yours. It says, "It is common and will become ever more common for a European businessperson to travel to Iran to conduct legitimate business"—I think we all agree with that—"but if that European businessperson's travel will preclude further travel to the United States, under the VWP, that might deter European business dealings with Iran." You then go on to talk about the Australian doctor who might also be deterred from going to the Middle East in order to provide services.

Ms. Vaughan—and someone told me before you used to work in the Foreign Service.

Ms. VAUGHAN. That's right.

Mr. MULVANEY. Okay. I will ask you first and then I will ask anybody. Does anybody really believe that the possibility of getting kicked out of the Visa Waiver Program is going to deter a doctor from going to work in the Middle East?

Ms. VAUGHAN. I do not think so. And certainly not with respect to business —

Mr. MULVANEY. If I have a doctor ask that—if I go to this country, can I still get in —

Ms. VAUGHAN. Right, like, oh, I can't —

Mr. MULVANEY. Yes.

Ms. VAUGHAN. Yes, I can't go to Disneyland or something.

Mr. MULVANEY. Right.

Ms. VAUGHAN. I don't think that would deter them. I don't think it would deter a businessperson. If they're pursuing a lucrative business opportunity in Iran or Iraq, \$160 and the time of a visa interview is not going to be too much of a cost of business to go take care of that. I think it's a mistake to think of these people as victims.

Mr. MULVANEY. Well, I am not going to get into victimization, but I tend to agree it doesn't discourage them. If anybody else disagrees—I'm going to let Mr. Heifetz disagree with that because it was his testimony. Does anybody else disagree? Does anybody really think that is a deterrent to travel?

Okay. Let the record reflect nobody said no.

Mr. Heifetz, it is your testimony. Why do you think it is a deterrent to travel?

Mr. HEIFETZ. We —

Mr. MULVANEY. Do you have personal experience with that?

Mr. HEIFETZ. Yes, we have clients who—it is—to address another point that arose, I think it is common knowledge that travel history—an individual traveler's travel history is a factor that's taken into account as to whether to grant an ESTA and whether to grant entry to the United States, and properly so.

We have been asked with some frequency whether travel to a particular location will cause difficulties entering the United States, and the answer to that is it might. And there have been instances in which people have foregone travel because of that concern. So I would expect that there would be instances in which people decline the type of travel that we've been discussing if VWP privileges were at risk.

Mr. MULVANEY. Thank you, Mr. Heifetz. Thank you to the whole panel —

Mr. DESANTIS. The gentleman's time is expired.

Mr. MULVANEY.—and thank you, Mr. Chairman.

Mr. DESANTIS. We are going to wrap up. We have votes. So I am just going to recognize the chairman of the Government Operations Subcommittee, Mr. Meadows, for a minute.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. KERLIKOWSKE, on the report that has been done for the visa overstates—and we are not talking about visa waiver; we are talking about all visa overstates—are we expecting another report? Because, as you and I agree, that is not complete. So we are expecting a final report from DHS?

Mr. KERLIKOWSKE. We are expecting a subsequent report in which we would have greater detail and more information. Whether or not that is for this coming year, I—because the visa waiver

Mr. MEADOWS. Because we have had other testimony that would suggest that we would get that within 6 months. I guess what I am saying is, is the report we got is not viewed by DHS as agreeing to the sworn testimony we have already had before this committee, is that correct?

Mr. KERLIKOWSKE. You know, I don't know, but I'd be happy to

Mr. MEADOWS. Okay.

Mr. KERLIKOWSKE.—get back to you with an answer.

Mr. MEADOWS. In the 13 seconds —

Mr. KERLIKOWSKE. Yes.

Mr. MEADOWS.—I have remaining, let me tell you my concern. We continue to get stonewalled with regards to the visa overstayed numbers. I know that there was a report done in 2013 that has failed to be released. It is time. It is time you get it back to this committee, and we are going to continue to bring you back until we get a report, okay?

Mr. KERLIKOWSKE. Okay.

Mr. MEADOWS. I will yield back.

Mr. CONNOLLY. Mr. Chairman?

Mr. DESANTIS. The gentleman yields back.

I want to thank the —

Mr. CONNOLLY. Mr. Chairman?

Mr. DESANTIS.—witness—yes?

Mr. CONNOLLY. Would you just yield me the same amount of time?

Mr. DESANTIS. One minute.

Mr. CONNOLLY. Thank you very much.

Just a statement for the record, it seemed to be suggested in Mr. Mulvaney's questioning that the President of the United States had

violated the law. There is no evidence of the President of the United States violating the law. That is a very grave charge. It is one any one of us at this dais would take exception to if somebody threw that at us. And it is no less significant when you do it with the President of the United States.

He is taking advantage of a provision provided in the law. If we don't like it, we can change the law. And it is no different than a waiver authority that has been provided in 1 million pieces of legislation to myriad Presidents of the United States. I am old enough to remember Ronald Reagan using waiver authorities with impunity, and he wasn't violating the law even though I didn't always like it.

Thank you.

Mr. DESANTIS. Well, I think Mulvaney was talking about a hypothetical case, but I think we do on this side of the aisle—at least I do—you know, consider the national security waiver to be narrow, and in this instance, when you are expanding it to Iranian business travel, I think a lot of us think that that is not consistent with Congress's intent.

But I would like to thank our witnesses for taking the time to appear before us today.

If there is no further business, without objection, the subcommittee will stand adjourned.

[Whereupon, at 4:53 p.m., the subcommittees were adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

WASHINGTON
LEGISLATIVE OFFICE



February 10, 2016

The Honorable Mark Meadows
Chairman
Subcommittee on Government Operations
Oversight & Government Reform Cmte.
U.S. House of Representatives
Washington, D.C. 20510

The Honorable Gerald Connolly
Ranking Member
Subcommittee on Government Operations
Oversight & Government Reform Cmte.
U.S. House of Representatives
Washington, D.C. 20510

The Honorable Ron DeSantis
Chairman
Subcommittee on National Security
Oversight & Government Reform Cmte.
U.S. House of Representatives
Washington, D.C. 20510

The Honorable Stephen Lynch
Ranking Member
Subcommittee on National Security
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PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Re: **House Subcommittee on Government Operations and Subcommittee on National Security of the Committee on Oversight and Government Reform Hearing on "The President's Waiver of Restrictions on the Visa Waiver Program"**

Dear Chairman McCaul and Ranking Member Thompson:

On behalf of the American Civil Liberties Union (ACLU), we submit this letter to the U.S. House of Representative's Subcommittee on Government Operations and Subcommittee on National Security of the Committee on Oversight and Government Reform Hearing on "The President's Waiver of Restrictions on the Visa Waiver Program." Congress must fix recent changes to the Visa Waiver Program ("VWP") that enshrine discrimination based on national origin, ancestry, and parentage, and fan the flames of discriminatory exclusion, both here and abroad. The ACLU urges Congress to repeal the discriminatory travel restriction by swiftly passing H.R. 4380, the "Equal Protection in Travel Act of 2016."

I. The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 arbitrarily discriminates against dual nationals of Iran, Iraq, Sudan, or Syria who are citizens of visa waiver program ("VWP") countries – based on their national, origin, ancestry, and parentage.

On December 8, 2015, the House of Representatives hastily passed H.R. 158, the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015," a bill that never received a hearing or markup by the House Homeland Security Committee ("Committee"). The original H.R. 158, approved by the Committee in June 2015 was a markedly different bill and contained none of the visa waiver travel restrictions that were added in early December, shortly before the bill went to the House floor.

Hastily negotiated and cobbled together on December 3, 2015, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act was intended to be the House's response to the November 2015 terrorist attacks in Paris. What emerged, however, from the negotiations was a bill that singled out dual nationals of Iran, Iraq, Sudan, or Syria to the exclusion of all other citizens of VWP countries. There was no justification to strip

visa-free travel privileges from these dual nationals, and the ACLU criticized and continues to oppose this provision as discriminatory and un-American.

Significantly, 19 lawmakers voted NO on H.R. 158 when it went to the House floor on December 8, 2015, and 33 lawmakers wrote to congressional leadership urging them, to no avail, not to include the discriminatory provision targeting dual nationals in the fiscal year 2016 Consolidated Appropriations Act.¹

Now the law of the land and in operation, the 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act has categorically terminated visa-free travel privileges for all citizens of VWP countries who are dual nationals² of Iran, Iraq, Sudan, or Syria. This revocation of VWP privileges applies to all dual nationals of Iran, Iraq, Sudan, or Syria, even if they have never resided in or traveled to these four countries.³ By singling out these four nationalities to the exclusion of other dual nationals in VWP countries, this law amounts to blanket discrimination based on nationality, ancestry, and parentage.

Not only is this law discriminatory, it is arbitrary. Unlike the U.S. which grants citizenship to all children born on U.S. soil, birth within Syria,⁴ Iran,⁵ or Sudan⁶ does not automatically confer citizenship. Rather citizenship is conferred by naturalization, marriage, or descent. With respect to descent, a child born to an Iranian father is an Iranian citizen, regardless of the child's country of birth. The same citizenship by descent law applies to a child born to a Syrian father, regardless of the child's country of birth. A similar citizenship by descent law applies to a child born to native-born Sudanese father, regardless of the child's country of birth. The 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act has now folded such gender-based distinctions into U.S. law.

The 2015 Visa Waiver law has caused immediate and direct harm to otherwise qualified visitors seeking to travel to the U.S. In January 2016 alone the following individuals were denied boarding on U.S.-bound flights, solely on the basis of their dual nationality:

- **Rana Rahimpour**, a British-Iranian *BBC* journalist, and her young British citizen child were denied boarding on a flight from London Heathrow airport to Newark airport. They had planned to attend a surprise party for a relative in the U.S.⁷
- **Marjan Vahdat**, a European citizen and Iranian dual national, was scheduled to perform on January 30, 2016, in San Jose, California. A world-renowned vocalist trained in classical Persian music, Ms. Vahdat was denied boarding on her Frankfurt to U.S. flight. Central Stage

¹ Letter from 33 Members of Congress to Senate Majority Leader Mitch McConnell and Senate Minority Leader Harry Reid (Dec. 11, 2015), available at <http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/HR%20158%20Letter%20to%20Senate%2012%2011%2015.pdf>.

² For a list of countries that support or reject dual nationality as of 2001, see U.S. OFF. OF PERSONNEL MGMT. ("OPM"), CITIZENSHIP LAWS OF THE WORLD (2001), available at <http://www.multiplecitizenship.com/documents/IS-01.pdf>. See also Transatlantic Council on Migration (MCI), "Dual Citizenship in an Age of Mobility" (2008), www.migrationpolicy.org/transatlantic/docs/Faist-FINAL.pdf.

³ 8 U.S.C. 1187(a)(12)(A)(ii), which Title II, Sec. 203 of H.R. 2029 amends, specifically names the countries of Iraq and Syria (Subsection I) and covers Iran and Sudan by incorporating reference to existing government lists that name Iran and Sudan (Subsection II).

⁴ See OPM, *supra* note 2 at 192; and U.K. HOME OFF., SYRIAN ARAB REPUBLIC – COUNTRY OF ORIGIN INFORMATION (COI) REPORT (2013), 164-165, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312738/Syrian_Arab_Republic_report_2013.pdf.

⁵ Iranian Civil Code states that "[t]hose whose fathers are Iranians, regardless of whether they have been born in Iran or outside of Iran" are "considered to be Iranian subjects" (The Civil Code of the Islamic Republic of Iran, Book 2, Article 976 (2006), available at <https://www.princeton.edu/irandataportal/laws/institutions/governance/nationality-law/>).

⁶ See OPM, *supra* note 2 at 186, which states that, for a person born after January 1, 1957, "birth in the territory of Sudan does not automatically confer citizenship."

⁷ Saeed Kamali Dehghan, *BBC journalist stopped from flying to US over UK-Iranian nationality*, THE GUARDIAN (Jan. 19, 2016), <http://www.theguardian.com/uk-news/2016/jan/19/bbc-journalist-stopped-from-flying-to-us-over-uk-iranian-nationality>.

and Hamyar Art Foundation made multiple calls to the U.S. embassy, Department of Homeland Security, and airlines with no success. The concert organizers ended up posting a notice on their website to all ticket purchasers explaining the circumstances surrounding Ms. Vahdat's absence.⁸

- **Newsha Tavakolian**, a European citizen and Iranian dual national, is a photographer whose work has been published in *Time Magazine*, *The New York Times*, and *National Geographic*. She can no longer travel to the U.S. on the VWP because of the new discriminatory travel restriction targeting dual nationals;⁹
- **Yasamin Omoomian**, a British citizen and Iranian dual national, may not be able to attend the wedding of a childhood friend in Arizona.¹⁰

II. By singling out dual nationals of Iran, Iraq, Sudan, or Syria, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 creates a wedge of distrust between those minority American communities and U.S. law enforcement.

There is no sufficient security reason to justify the differential treatment of VWP citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. By singling out these dual nationals, the new visa waiver law stigmatizes them as inherently suspect and sends a message of prejudice and intolerance against Iranian, Iraqi, Sudanese, or Syrian communities in the U.S. The discriminatory treatment of dual nationals creates a wedge of distrust between those minority American communities and domestic U.S. law enforcement.

Already, many prominent Americans have spoken out against the discriminatory dual nationality provision, expressing how it stigmatizes them and makes them feel like second-class American citizens:

- **Kourosh Kolahi**, an Iranian-American orthopedic surgeon in California: "Because of the little-noticed visa reform language included in the federal omnibus spending bill, I am now treated differently than my wife, daughter and other fellow Americans. I was born in this country and have spent my entire life here.... Yet, based on our ancestry, this law discriminates against me and other Americans."¹¹
- **Marjan Ehsassi**, an Iranian-American woman who previously worked at the National Democratic Institute in Washington, D.C.: "What this proposed language would do is create two tiers of citizens.... I don't know this country. I feel like I don't belong."¹²
- **Roosbeh Shirazi**, an Iranian-American assistant professor at the University of Minnesota: "Our sense of belonging as Americans, a topic that I have devoted much of my research toward, is at stake. Three generations of my family's lives, memories and relationships are inextricably tied to this land. For many Iraqi- and Syrian-Americans, this history is much longer.... How are we expected to feel a connection to a country that formalizes a lower tier of citizenship for us? How

⁸ See, Email from Central Stage and Hamyar Art Foundation to customers, who had purchased tickets to Mahsa & Marjan Vahdat concert (Jan. 29, 2016), available at <http://www.piaaction.org/vwp-content/uploads/2016/01/Screen-Shot-2016-01-30-at-8-38-14-AM.png>; and Events, *Marjan (Absent) and Mahsa Vahdat Concert in San Jose*, KODOOM (Jan. 30, 2016), <http://events.kodoom.com/en/san-jose-ca/marjan-and-mahsa-vahdat-in-concert/76950/c/> (stating that "UPDATE, Jan. 29, 2016: Marjan Vahdat not [a]ble to [a]ttend due to visa issues.").

⁹ Hadas Gold and Nahal Toosi, *New York Times Iran reporter on new visa requirements: 'America, it was fun while it lasted.'* POLITICO (Jan. 26, 2016), <http://www.politico.com/blogs/on-media/2016/01/new-york-times-iran-reporter-visas-218240>.

¹⁰ Rachel Gorman, *West Bridgford woman could miss wedding in USA because she is half Iranian*, NOTTINGHAM POST (Jan. 28, 2016), <http://www.nottinghampost.com/West-Bridgford-woman-miss-wedding-USA-half/story-28625603-detail/story.html#ixzz3yeYPajen>.

¹¹ Kourosh Kolahi, *Visa waiver law deprives me, an Iranian American, of my rights*, S.F. CHRON. (Jan. 4, 2016), <http://www.sfchronicle.com/opinion/openforum/article/Visa-waiver-law-deprives-me-an-Iranian-American-6736417.php>.

¹² Dana Milbank, *Middle Eastern by birth, American by choice and terrified of Trump*, WASH. POST (Dec. 14, 2015), https://www.washingtonpost.com/opinions/middle-eastern-by-birth-american-by-choice-and-terrified-of-trump/2015/12/14/6cc565ca-a2aa-11e5-b53d-972e2751f433_story.html.

are my wife and I supposed to raise our 2-year-old son to exercise his rights as a citizen of this country when those rights are marked with an asterisk?"¹³

- **Farshad Farahat**, an Iranian-American actor: "Unfortunately, instead of combating the roots of terrorism, this bill scapegoats Iranian Americans, millions of US professionals who have helped build America. Professionals that strive in education and economy in the US and in the Mid-East, the real weapons that can end terrorism."¹⁴
- **Maziar Nourian**, an Iranian-American student at the University of Utah: "The more important thing here is it's not really talking about travel privileges, you're creating two classes of citizens, one being every other American, including yourself, and me, who was born and raised in Salt Lake City but who happens to be of dual national citizenship."¹⁵
- **Mitra Jouhari**, an Iranian-American comedian in Brooklyn, New York: "Iranian-Americans are being targeted in a way that is alarming....It's all knee jerk, it's reactive, and it's racist."¹⁶

III. The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 could result in the loss of visa-free travel privileges for U.S. citizens who are dual nationals of Iran, Iraq, Sudan, Syria.

Under the VWP, Americans of all nationalities have long been accustomed to traveling to many parts of Europe and Asia without visitor visas. This allows for speedy, flexible, and convenient international travel, which in turn promotes tourism, trade, study abroad, and business, both in the U.S. and abroad.

However, because the VWP operates on the basis of reciprocity, the new visa waiver travel restrictions could result in the 38 VWP countries applying the same travel restrictions to U.S. citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. If any of the VWP countries chooses to apply the same discriminatory rule, that reciprocal action will result in the loss of visa-free travel privileges for U.S. citizens who are dual nationals of Iran, Iraq, Sudan, or Syria.

- **Ali Partovi**, an Iranian-American entrepreneur and investor: "the idea that some of us would lose this privilege because of our Middle Eastern or African heritage compromises the very essence of America: that 'all men are created equal.'"¹⁷
- **Samira Damavandi**, an Iranian-American student currently pursuing a master degree at the University of Oxford: "I have temporarily left my home state to attend graduate school abroad. I thought to myself, 'While I'm here, I can't wait to travel throughout Europe to see my cousins during my term breaks' and began planning the trips to Switzerland and Germany to see them. But because my Iranian-born parents automatically passed down their nationality on to me through *jus sanguinis* laws and I am an Iranian-American dual national, now I'm uncertain if freely traveling to see my family will be a possibility due to the recent passage of a discriminatory House bill sponsored by Rep. Candice Miller (R-MI-10)."¹⁸
- **Azita Ranjbar**, an Iranian-American Ph.D. candidate at Pennsylvania State University: "If Visa Waiver countries retaliate, Iranian Americans and other dual nationals will become 'less than' American citizens. We will be forced to go through long, expensive, and invasive security

¹³ Roozbeh Shirazi, *Moving toward second-class citizenship with Congress' visa-waiver legislation*, MINN. POST (Dec. 16, 2015), <https://www.minnpost.com/community-voices/2015/12/moving-toward-second-class-citizenship-congress-visa-waiver-legislation>.

¹⁴ Farshad Farahat, *Iranian Americans Are Not Second Class Citizens*, HUFF. POST (Dec. 14, 2015), http://www.huffingtonpost.com/farshad-farahat/iranian-americans-are-not_b_8799192.html.

¹⁵ Jeremy Harris, *Dual-citizen Utahns call new visa-requirement 'discriminatory'*, CBS KUTV (Feb. 5, 2016), <http://kutv.com/news/local/dual-citizen-utahns-call-new-visa-requirement-discriminatory> (quoting Maziar Nourian, student, University of Utah).

¹⁶ Julie Bort, *A Brooklyn comedian has launched a Facebook campaign to stop a 'racist' bill from passing Congress*, BUSINESS INSIDER (Dec. 15, 2015), <http://www.businessinsider.com/brooklyn-comedian-mitra-jouhari-tries-to-stop-hr-158-2015-12>.

¹⁷ Ali Partovi, *A Call To Arms Against McCarthy 2.0*, TECHCRUNCH (Dec. 16, 2015), <http://techcrunch.com/2015/12/16/a-call-to-arms-against-mccarthy-2-0/>.

¹⁸ Samira Damavandi, *Am I Not American Enough?*, HUFF. POST (Dec. 14, 2015), http://www.huffingtonpost.com/Samira-Damavandi/visa-waiver-program_b_8790096.html.

processes to secure visas for international travel ...This differential treatment of Americans solely based on national origin is unacceptable and a grave violation of the basic rights of U.S. citizens.”¹⁹

IV. Congress must swiftly pass the Equal Protection in Travel Act (H.R. 4380), to remove the discriminatory travel provision and ensure that American citizens are not further harmed by the new visa waiver law.

Introduced shortly after the new year, H.R. 4380 is bipartisan legislation that would correct the shameful discriminatory travel provision now enshrined into U.S. law. [A companion bill, S. 2449, has been introduced in the Senate with bipartisan support.] H.R. 4380 would revoke the provision included in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that strips visa-free travel privileges from dual nationals of Iran, Iraq, Sudan, or Syria. Under H.R. 4380, dual nationals of these four countries would be restored to the VWP and enjoy the travel privileges they had long enjoyed prior to December 18, 2015. To ensure that no U.S. citizens who are dual nationals are harmed by the discriminatory provision, Congress should move swiftly to pass H.R. 4380.

V. Conclusion

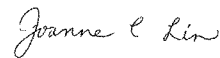
The ACLU urges Congress to fix the discriminatory dual nationality provision in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that scapegoats four groups based on national origin, ancestry, and parentage. We urge Congress to swiftly pass H.R. 4380, the Equal Protection in Travel Act, which will remove the provision that enshrines discrimination against dual nationals of Iran, Iraq, Sudan, and Syria.

For more information, please contact ACLU Legislative Counsel Joanne Lin (202-675-2317; jlin@aclu.org).

Sincerely,



Karin Johanson
Director
Washington Legislative Office



Joanne Lin
Legislative Counsel

¹⁹ Azita Ranjbar, *When Rhetoric Becomes Reality: Changes to Visa Waiver Program Create Second-Class Citizens*, HUFF. POST (Jan. 8, 2016), http://www.huffingtonpost.com/azita-ranjbar/when-rhetoric-becomes-real_b_8934832.html.

February 1, 2016

Re: Please Support H.R. 4380, the “Equal Protection in Travel Act of 2016.”

Dear Representative:

On behalf of the 65 undersigned groups, we write to express our strong support for the Equal Protection in Travel Act of 2016 (H.R. 4380), bipartisan legislation to address recent amendments to the Visa Waiver Program (VWP) that discriminate against certain dual nationals.

Just one month ago on December 18, 2015, Congress passed the FY2016 Omnibus Appropriations Act which included changes to the VWP that, among other changes to the program, would revoke VWP travel privileges from citizens of VWP countries who are dual nationals of Iran, Iraq, Sudan, or Syria. Drafted and passed on the heels of the November 2015 terrorist attacks in Paris, the 2015 visa waiver law enshrines discrimination based on nationality, ancestry, and parentage. There is no compelling security argument that justifies the discrimination against certain dual nationals in violation of fundamental American values.

Citizens of VWP countries can now no longer travel to the U.S. visa-free if they are dual nationals of Iran, Iraq, Sudan, or Syria—solely due to their ancestry and not because of any decision or action on their part. They will now need to apply for visitor visas, pay a \$160 fee, attend an interview at a U.S. consulate, and pass additional background checks. They will need to clear these extra hurdles if they are coming to the U.S. for any visitor purpose – whether to attend a family reunion, go on vacation, or attend business meetings and conferences. In fact, directly as a result of this new law, on January 19 a British-Iranian *BBC* journalist and her British citizen daughter, who were heading to New Jersey to attend the birthday party of a family member living in the United States, were stopped from boarding their flight at Heathrow Airport.¹ Similarly, a European-Iranian photographer, whose work has been published in *Time Magazine*, *The New York Times*, and *National Geographic*, can no longer travel to the United States with just her European Union passport because of this new restriction.²

Given that citizenship is passed down through the father in Iran, Sudan, and Syria, many dual nationals will be barred from visa-free travel under the VWP based solely on their heritage. For example, a British citizen who has lived in London her entire life will lose her visa-free privileges if her father is a Syrian citizen, even if she herself has never been to Syria. Singling out these dual nationals is rank discrimination and contradicts fundamental American values of fairness and equality. Indeed, according to one Iranian-American entrepreneur and investor, “the idea that some of us would lose this privilege because of our Middle Eastern or African heritage compromises the very essence of America: that ‘all men are created equal.’”³

¹ Saeed Kamali Dehghan, *BBC journalist stopped from flying to US over UK-Iranian nationality*, THE GUARDIAN (Jan. 19, 2016), <http://www.theguardian.com/uk-news/2016/jan/19/bbc-journalist-stopped-from-flying-to-us-over-uk-iranian-nationality>.

² Hadas Gold and Nahal Toosi, *New York Times Iran reporter on new visa requirements: ‘America, it was fun while it lasted.’* POLITICO (Jan. 26, 2016), <http://www.politico.com/blogs/on-media/2016/01/new-york-times-iran-reporter-visas-218240>.

³ Ali Partovi, *A Call To Arms Against McCarthy 2.0*, TECHCRUNCH (Dec. 16, 2015), <http://techcrunch.com/2015/12/16/a-call-to-arms-against-mccarthy-2-0/>.

Furthermore, because the VWP operates on the basis of reciprocity, the 2015 visa waiver travel restrictions risk inviting the 38 VWP countries to erect similar bans on dual nationals of the United States. By swiftly repealing the discriminatory travel restrictions, Congress can diminish the likelihood that American citizens—including Iranian Americans like Dr. Firouz Naderi, Director for NASA's Solar System Exploration Directorate, or orthopedic surgeon Kourosh Kolahi⁴—will be impacted by these restrictions.

We are encouraged that a bipartisan group of lawmakers has swiftly introduced the Equal Protection in Travel Act of 2016 to repeal the travel restrictions targeting dual nationals. We applaud Representatives Justin Amash (R-MI), John Conyers, Jr. (D-MI), Debbie Dingell (D-MI), and Thomas Massie (R-KY) for sponsoring this legislation in the House.

Passage of the Equal Protection in Travel Act will ensure that dual nationals are not punished because of their nationality, ancestry, or parentage and that Americans are not similarly targeted for discrimination under the VWP. We strongly urge Congress to swiftly pass the Equal Protection in Travel Act of 2016.

Sincerely,

National Organizations

American Immigration Lawyers Association
 American-Arab Anti-Discrimination Committee (ADC)
 American Civil Liberties Union
 Asian American Legal Defense and Education Fund (AALDEF)
 Asian Americans Advancing Justice-AAJC
 Bill of Rights Defense Committee/Defending Dissent Foundation
 Casa Esperanza
 Christian Church (Disciples of Christ) Refugee and Immigration Ministries
 Demand Progress
 Friends Committee on National Legislation
 Human Rights First
 International Campaign for Human Rights in Iran
 Iranian Alliances Across Borders (IAAB)
 Iranian American Bar Association
 ISLAMIC CIRCLE OF NORTH AMERICA
 Jewish Voice for Peace
 Just Foreign Policy
 Justice Strategies
 The Leadership Conference on Civil and Human Rights
 MoveOn.org
 NAFSA: Association of International Educators
 National Immigrant Justice Center
 National Immigration Forum

⁴ David Smith, *Iranian Americans dismayed by discrimination in new visa regulations*, THE GUARDIAN (Jan. 15, 2016), <http://www.theguardian.com/us-news/2016/jan/15/iranian-americans-visa-regulations-waiver-programme-us-immigration>.

National Immigration Law Center
 National Immigration Project of the National Lawyers Guild
 National Korean American Service & Education Consortium
 National Religious Campaign Against Torture
 NIAC Action
 Pars Equality Center
 Physicians for Human Rights
 Project South
 Public Affairs Alliance of Iranian Americans (PAAIA)
 Reporters Without Borders
 South Asian Americans Leading Together (SAALT)
 The HAND Foundation
 U. S. Committee for Refugees and Immigrants
 Unitarian Universalist Service Committee
 United for Iran
 We Belong Together
 YWCA USA

State/Local Organizations

Asian Americans Advancing Justice - Asian Law Caucus
 Asian Americans Advancing Justice-Atlanta
 Asian Law Alliance
 Austin Jewish Voice for Peace
 Bay Area Iranian-American Democrats
 Colectiva Legal del Pueblo
 Conversations With Friends (MN)
 Creating Law Enforcement Accountability and Responsibility project at CUNY School of Law
 Dar al-Hijrah Islamic Center
 Esmail Khoi Foundation
 Friends of Broward Detainees
 Georgia Peace & Justice Coalition
 Georgia Rural Urban Summit
 Illinois Coalition for Immigrant and Refugee Rights
 MAIZ
 Massachusetts Immigrant and Refugee Advocacy Coalition
 New York Immigration Coalition
 North Carolina Justice Center
 Northwest Immigrant Rights Project
 Racial Justice Action Center
 Reformed Church of Highland Park (NJ)
 Refugee and Immigrant Center for Education and Legal Services (RAICES)
 Services, Immigrant Rights, and Education Network (SIREN)
 Undocumented Student Alliance at KSU
 Virginia Coalition for Immigrant Rights

Question#:	1
Topic:	Criteria Exceptions
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: The Administration has stated that it will be developing criteria for offering exceptions to the new rules imposed on users of the Visa Waiver program that travel to Iran, Iraq, Sudan, Syria, Libya, Somalia, or Yemen. What criteria will be used to evaluate those that have traveled to these locations? Will there be blanket criteria or will DHS develop separate criteria for each of these regions based on the unique threats they pose to the U.S.?

Response: Under the Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015 (Act), the Secretary of Homeland Security may waive the new restrictions on Visa Waiver Program (VWP) travel if he determines that such a waiver is in the law enforcement or national security interests of the United States. Any and all waivers being contemplated by the Secretary would be granted on a case-by-case basis using information received through the Electronic System for Travel Authorization (ESTA), related vetting processes, and other sources. In no instance will a VWP authorization be automatically granted simply because an individual falls into a waiver category.

Although discussions are ongoing, categories of travelers who may be eligible for waiver consideration include:

- Individuals who have traveled to Iran, Iraq, Sudan, Syria, Yemen, Libya, or Somalia on behalf of international organizations, regional organizations, or sub-national governments on official duty;
- Individuals who have traveled to Iran, Iraq, Sudan, Syria, Yemen, Libya, or Somalia on behalf of a humanitarian non-governmental organization (NGO);
- Individuals who have traveled to Iran, Iraq, Sudan, Syria, Yemen, Libya, or Somalia as a journalist for reporting purposes;
- Individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015); and
- Individuals who have traveled to Iraq for legitimate business-related purposes.

If the information provided by the applicant in the ESTA application indicates that the subject may be ineligible from traveling under the VWP but may qualify for a waiver, the application will be electronically referred to the Terrorist Travel Prevention Cell (TTPC) for manual review. TTPC is a multi-agency coordinating cell leveraging both operational and intelligence resources from across the U.S. Government to make individualized waiver determinations for travelers seeking to enter the United States under the VWP.

Question#:	1
Topic:	Criteria Exceptions
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

TTPC uses a variety of border security, counterterrorism, and law enforcement systems, as well as open source data, in conjunction with information provided on the ESTA application to determine if the subject may qualify for a waiver.

Question#:	2
Topic:	IAEA Inspector Travel
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: It has been suggested that International Atomic Energy Agency (IAEA) inspectors may be barred from doing their work or may not join the IAEA for fear they will not be able to travel to the U.S. Can you describe in detail how an IAEA inspector would be barred from entering the United States after performing an inspection at a facility in Iraq or Iran?

Response: The Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015 (Act) does not bar affected individuals from traveling to the United States but only from traveling to the United States under the Visa Waiver Program. Such travelers may still travel to the United States with a valid visa. As an example, assume the International Atomic Energy Agency (IAEA) inspector is a citizen of France and traveled to Iran to inspect a facility in June 2015. That travel to Iran would make the inspector ineligible for travel under the Visa Waiver Program unless the inspector receives a national security waiver. If the interagency Terrorist Travel Prevention Cell determines that a waiver is not appropriate, the ESTA application would be denied and, the IAEA inspector would need to apply for and obtain a visa to travel to the United States.

Question: Couldn't that inspector merely obtain a visa at a U.S. consulate after the inspection and gain access to the United States with relative ease?

Response: The Act's changes would not affect the IAEA inspector's eligibility for a U.S. nonimmigrant B-1/B-2 visa.

Question: Can you describe the specific burden an individual would have to go through in this scenario including the relative time it would take to receive a visa?

Response: The Department of Homeland Security does not issue visas and respectfully refers the Committee to the Department of State, which would likely have the requested information.

Question#:	3
Topic:	Affected Journalists
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: It has been reported that journalists may be affected by the changes in the Visa Waiver Program. The eligibility criteria to utilize the Visa Waiver program states explicitly that the program cannot be used for:

- a.Study, for credit
- b.Employment
- c.Work as foreign press, radio, film, journalists, or other information media

d.Permanent residence in the United States

Has this criteria changed since the new rules were formulated? Were journalists previously required to get visas in order to perform their duties in the United States? Given that journalists need a visa to visit the United States for work reasons, how do the new rules restrict their ability to fulfill their profession duties?

Response: The Visa Waiver Program (VWP) allows citizens of specific countries to travel to the United States for tourism, business, or while in transit for up to 90 days without having to obtain a visa. Citizens of VWP countries who wish to travel to the United States for study (for credit), employment, work as foreign media, or permanent residence must do so under the appropriate visa and do not qualify for travel under the VWP. The Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015 (Act) or other recent VWP enhancements have not changed these criteria.

Notwithstanding the requirement that foreign journalists traveling to the United States to work in media must obtain a Media (I) Visa, the Act may affect a foreign journalist who seeks to travel to the United States for tourism or similar purposes allowed under VWP, if his or her professional responsibilities had previously led to travel to any of the seven listed or described countries since 2011. In that case, travel would require either a waiver by the Secretary in order to utilize the VWP program or travel under the appropriate nonimmigrant visa.

Question#:	4
Topic:	Foreign Aid Workers
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: It has been stated that the new visa restrictions would also harm aid workers who wished to work in the countries covered under the new rules. Would a U.S. aid worker who wanted to perform humanitarian work in these countries be affected at all by these new restrictions? Would a foreign aid worker who wished to work in these countries and then return home be affected by these new restrictions?

Response: A U.S. aid worker who wanted to perform humanitarian work in any of the seven recently designated countries would not be affected by the new restrictions if they are U.S. citizens or lawful permanent residents. This law only applies to nationals from VWP countries who wish to travel to the United States for business or pleasure. It does not affect travel by U.S. citizens or lawful permanent residents.

Similarly, a non-U.S. aid worker who wished to work in one of these countries and then return home would also be unaffected, as the VWP only applies to travel to the United States, not to a foreign worker returning to his or her home country without transiting the United States. The individual would only be affected by these restrictions if he or she then chose to travel to the United States under the VWP.

Question: Are U.S. contractors operating in these locations subject to additional scrutiny under these rules?

Response: As the recent enhancements under the new law do not pertain to U.S. citizens or lawful permanent residents, U.S. contractors operating in these locations will not be affected if they are U.S. citizens or lawful permanent residents.

Question#:	5
Topic:	ESTA's Suspended
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: In recent Congressional testimony, it was stated that 17,000 valid ESTA's were suspended because of new laws. Can you confirm that this is an accurate number? If it is not, what is the correct number?

Response: On January 21, 2016, CBP revoked 17,086 ESTAs based on dual nationalities. These revocations were applicants who self-identified as dual nationals of a VWP country and Iran, Iraq, Sudan, or Syria. CBP also denied an additional 772 pending applications of travelers who had self-identified dual nationality with one of the aforementioned countries.

Question: Will some of these applicants eventually be approved?

Response: No, under current application of the law, these dual national applications are no longer eligible for VWP travel. They may still apply for a visa to travel to the United States. If there are ever waivers for dual nationals, and they don't already have a visa, they may be able to reapply for an ESTA, but application procedures and mechanisms will have to be established.

Question: What is the total number of ESTA applications received on a yearly basis?

Response: CBP received 13,841,433 ESTA applications in Fiscal Year 2015.

Question: How many have been denied?

Response: In FY 2015, CBP denied 42,767 ESTA applications and revoked 44,975 ESTAs.

Question: What is the average number of valid ESTAs at any given moment of the year?

Response: CBP has about 25,000,000 valid ESTA applications at any given time.

Question#:	6
Topic:	Passport Disclosure
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: Are applicants required to disclose all passports they hold in order to be eligible for the Visa Waiver Program? Could someone eligible for the Visa Wavier Program also hold another passport that is not yet been disclosed and gain access to the United States through the program?

Response: Electronic System for Travel Authorization (ESTA) applicants are required to provide the passport that they are using to travel to the United States. The new ESTA application that was released on February 23, 2016 also asks, "Have you ever been issued a passport or national identity card for travel by any other country," with space to add up to five passports or identity cards. Not disclosing all valid information that CBP needs to make an admissibility decision can lead to refusal of admission to the United States or being denied an ESTA authorization to travel to the United States under the VWP.

Question#:	7
Topic:	Dual National Crimes
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: How many dual nationals who were eligible for the Visa Waiver Program have committed crimes in the United States in the past 5 years? How many dual nationals eligible to enter the United States under the Visa Waiver Program have been charged with crimes related to terrorism in the United States? How many dual nationals eligible for the Visa Waiver program have been implicated in instances of sanctions evasion, illicit finance, proliferation activities, and industrial espionage on behalf of the Government of Iran?

Response: DHS does not track this information.

Question#:	8
Topic:	Waivers for Dual Nationals
Hearing:	The President's Waiver of Restrictions on the Visa Waiver Program
Primary:	The Honorable Stephen F. Lynch
Committee:	OVERSIGHT & GOV RFORM (HOUSE)

Question: Please describe in depth the process by which the United States will adjudicate waivers that will allow dual nationals of, and those who have travelled to, countries designated under the Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015 to enter the United States.

Response: There are currently no waiver categories for dual nationals. DHS and State continue to analyze whether waivers may be appropriate for individuals who are dual nationals of a VWP country and Iraq, Syria, Iran, or Sudan, but there are currently no agreed to categories or other criteria for issuing a dual nationality-related waivers. We would be happy to provide you with an update once this review is completed.

**Questions for the Record Submitted to
Deputy Coordinator Hillary Batjer Johnson by
Representative Ron DeSantis (#1)
Committee on Oversight and Government Reform
February 10, 2016**

Question:

It has been suggested that International Atomic Energy Agency (IAEA) inspectors may be barred from doing their work or may not join the IAEA for fear they will not be able to travel to the U.S. Can you describe in detail how an IAEA inspector would be barred from entering the United States after performing an inspection at a facility in Iraq or Iran? Couldn't that inspector merely obtain a visa at a U.S. consulate after the inspection and gain access to the United States with relative ease? Can you describe the specific burden an individual would have to go through in this scenario including the relative time it would take to receive a visa?

Answer:

The issue is not that individuals, such as IAEA inspectors, will be inconvenienced by having to get a standard visa appointment at a U.S. Embassy or Consulate. Rather, the United States has a strong national security interest in supporting the work of the IAEA, and it would be damaging to U.S. relationships with these institutions and groups if they perceived the United States views them or their employees as a security risk due to the official work they do in some of the world's toughest places.

**Questions for the Record Submitted to
Deputy Coordinator Hillary Batjer Johnson by
Representative Ron DeSantis (#2)
Committee on Oversight and Government Reform
February 10, 2016**

Question:

It has been reported that journalists may be affected by the changes in the Visa Waiver Program. The eligibility criteria to utilize the Visa Waiver program states explicitly that the program cannot be used for:

- a. Study, for credit
- b. Employment
- c. Work as foreign press, radio, film, journalists, or other information media
- d. Permanent residence in the United States

Has this criteria changed since the new rules were formulated? Were journalists previously required to get visas in order to perform their duties in the United States? Given that journalists need a visa to visit the United States for work reasons, how do the new rules restrict their ability to fulfill their profession duties?

Answer:

The criteria have not changed. The Visa Waiver Program allows eligible travelers to enter the United States for short-term (90 days or less) business and tourism purposes allowable under the B1/B2 visa category. Persons coming to the U.S. to engage in journalistic activity, perform other types of work, study, or to reside permanently continue to require visas, even if they are eligible to travel under VWP for tourism or business purposes.

The new law does render journalists, who have reported from certain countries of concern, ineligible for traveling to the United States under the VWP.

The Secretary of State has recommended to the Secretary of Homeland Security, however, that he exercise his waiver authority under the legislation for these journalists on a case-by-case basis. Reporting from these countries on grave violations of human rights, allegation of chemical weapons use, and terrorist propaganda has been invaluable, and builds support for the objectives we are trying to achieve in those countries. The United States has a national security interest in promoting this journalistic activity and restricting access to the VWP could act as a disincentive to this important work.

**Questions for the Record Submitted to
Deputy Coordinator Hillary Batjer Johnson by
Representative Ron DeSantis (#3)
Committee on Oversight and Government Reform
February 10, 2016**

Question:

It has been stated that the new visa restrictions would also harm aid workers who wished to work in the countries covered under the new rules. Would a U.S. aid worker who wanted to perform humanitarian work in these countries be affected at all by these new restrictions? Would a foreign aid worker who wished to work in these countries and then return home be affected by these new restrictions?

Answer:

U.S. citizens who travel or work in the countries of concern are not affected by the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as it applies only to citizens of Visa Waiver Program countries. However, foreign humanitarian workers, such as a British citizen who worked for Doctors without Borders inside one of the four countries at any time on or after March 1, 2011, would need to get a visa if he or she ever wanted to visit the United States for business or pleasure.

It is strongly in the United States' national security interest to support the work of humanitarian non-governmental organizations (NGOs), which provide vital assistance to alleviate human suffering and address basic needs of civilians in the seven affected countries, including the delivery of food and medicine in

conflict zones, and to identify serious human rights abuses. The United States should not send the message to the world that we think someone poses a heightened security risk, for instance, because she helped bring food, medicine, or blankets to a village along the Syrian border or because he also helped document atrocities in Darfur. Humanitarian assistance is critical to meeting the urgent needs of vulnerable civilians who are targets for extremist groups, and maintaining regional stability.

**Questions for the Record Submitted to
Deputy Coordinator Hillary Batjer Johnson by**

Representative Ron DeSantis (#4)
Committee on Oversight and Government Reform
February 10, 2016

Question:

Are U.S. contractors operating in these locations subject to additional scrutiny under these rules?

Answer:

Foreign employees of U.S. contractors, including USG contractors, are subject to the new VWP travel restrictions, if they carry a passport from a VWP country and have traveled to one of the countries of concern since March 1, 2011; they may be eligible for a waiver on case-by-case basis.

The VWP travel restrictions do not apply to U.S. citizens.

**Questions for the Record Submitted to
Deputy Coordinator Hillary Batjer Johnson by
Representative Ron DeSantis (#5)
Committee on Oversight and Government Reform
February 10, 2016**

Question:

Iranian officials have publicly stated that these new rules are a violation of the Joint Comprehensive Plan of Action (JCPOA). It has been suggested that Iran receive a specific carve-out from these rules and that they should thus have preferential treatment. Given the prominent role Iranian dual nationals have played as facilitators of sanctions evasion and industrial espionage by the government of Iran, would the new exceptions carved out for Iranian dual nationals facilitate or hinder attempts to enter the United States for such purposes?

Answer:

We are exploring whether waivers for certain dual nationals is in the national security or law enforcement interests of the United States. Regardless, any waivers would be considered on a case-by-case basis.

Currently, no waivers for dual nationals are being issued.

**Questions for the Record Submitted to
Deputy Coordinator Hillary Batjer Johnson by
Representative Ron DeSantis (#6)
Committee on Oversight and Government Reform
February 10, 2016**

Question:

Please describe in depth the process by which the United States will adjudicate waivers that will allow dual nationals of, and those who have travelled to, countries designated under the Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015 to enter the United States.

Answer:

DHS has established the Terrorist Travel Prevention Cell (TTPC) at the U.S. National Targeting Center. The TTPC will leverage the additional information being collected under the VWP Act to address terrorist travel from countries designated under the Act. As an ancillary duty, the TTPC will implement the national security waiver provisions provided under the VWP Act. The TTPC is a multi-agency coordinating cell leveraging both operational and intelligence resources from across the U.S. Government to make individualized national security waiver determinations for VWP travelers seeking to enter the U.S. U.S. Customs & Border Protection (CBP) and the Department of State are staffing the cell. The cell is currently operational and beginning to review waivers on a case-by-case basis. This cell is expected to use a variety of resources to verify an ESTA applicant's identity and potential eligibility for a waiver. Thus, for

individuals with recent travel in one or more of the identified countries, information provided on the ESTA application would be reviewed before a waiver is granted. Additionally, as for all VWP travelers, all ESTA applicants, including those who have traveled since March 1, 2011 to Iran, Iraq, Sudan, Syria, or to the additional countries of concern designated by Secretary Johnson on February 17 (Libya, Somalia and Yemen), will be screened automatically against USG criminal, terrorist and immigration databases. The TTPC is not currently making national security waiver determinations for dual nationals.