



December 7, 2015

Re: ACLU Concerns With the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015” (H.R. 158)

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU), we urge you to amend the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015” (H.R. 158).

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I. H.R. 158 arbitrarily discriminates against nationals of Iraq, Syria, Iran, or Sudan who are citizens of visa waiver program (“VWP”) countries -- based on their nationality and parentage.

The VWP is a long-established program that permits nationals of certain countries to enter the U.S. as visitors (tourists or business) without a visa, for up to 90 days.¹ H.R. 158 terminates travel privileges for all citizens of VWP countries who are dual nationals² of Iraq, Syria, Iran, or Sudan. This revocation of VWP privileges would apply to all nationals of Iraq, Syria, Iran, or Sudan even if they have never resided in or traveled to Iraq or Syria.³ By singling out these four nationalities to the exclusion of other dual nationals in VWP countries, H.R. 158 amounts to blanket discrimination based on nationality and national origin without a rational basis.

There is no sufficient reason to justify the differential treatment of VWP citizens who are nationals of Iraq, Syria, Iran, or Sudan. There is no evidence to support the blanket assertion that citizens of VWP countries, who are dual nationals of these four countries, are more likely to engage in terrorist acts against the U.S.⁴

¹ As of December 7, 2015, there are 38 VWP Countries: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, Republic of Malta, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom. See, U.S. Customs and Border Protection, “Visa Waiver Program (VWP) Countries” (Nov. 13, 2015), [https://help.cbp.gov/app/answers/detail/a_id/1550/~/visa-waiver-program-\(vwp\)-countries](https://help.cbp.gov/app/answers/detail/a_id/1550/~/visa-waiver-program-(vwp)-countries).

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 Sec. 3. Restriction on Use of Visa Waiver Program (“VWP”) for Aliens Who Travel to Certain Countries, page 5, lines 7-10 (Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, H.R. 158, 114th Cong. (1st Sess. 2015). H.R. 158 specifically names the countries of Iraq and Syria (page 5, line 10) and covers Iran and Sudan by incorporating reference to existing government lists that name Iran and Sudan (page 5, lines 11-22).

⁴ See, e.g., Andrew Higgins and Maia de la Baume, *Two Brothers Suspected in Killings Were Known to French Intelligence Services*, N.Y. TIMES (Jan. 8, 2015),

Not only is H.R. 158 discriminatory, it is arbitrary. Unlike the U.S. which grants citizenship to all children born on U.S. soil, birth within Syria does not automatically confer citizenship.⁵ Rather Syrian citizenship is conferred by naturalization⁶ or descent. With respect to descent, Syrian citizenship is conferred to children “born of a Syrian father, regardless of the child’s country of birth” or children “born of a Syrian mother and an unknown or stateless father.”⁷ The proposal would yield the untenable result of folding such gender-based distinctions into U.S. law.

Therefore, if H.R. 158 were to become law, the following types of travelers would automatically lose their VWP privileges, even if they have never been to Iraq or Syria:

- Dual-national French citizen (born to Syrian father) traveling to U.S. for business conferences and meetings;
- Dual-national German citizen (born to Syrian father) traveling to U.S. with vacation tour group;
- Dual-national Austrian citizen (born to Syrian father) traveling to the U.S. to take care of grandchild.

It is wrong and un-American to punish groups without reason solely based on their nationality, national origin, religion, gender, or other protected grounds.

II. H.R. 158 would end VWP privileges for all recent travelers to Iraq or Syria, including those who traveled there for professional purposes.

H.R. 158 would terminate VWP travel privileges for all who have been present in Iraq or Syria at any time on or after March 1, 2011. This broad travel restriction contains a very narrow exception for certain military personnel and government officials. All other travelers would automatically lose their VWP privileges. Affected travelers would include journalists, scholars, refugee caseworkers, humanitarian aid workers, human rights investigators, and many others.

<http://www.nytimes.com/2015/01/08/world/two-brothers-suspected-in-killings-were-known-to-french-intelligence-services.html>; David Gauthier-Villars, Noemie Bisserbe, and Julian E. Barnes, *Suspect in Charlie Hebdo Attack Was Trained in Yemen*, WALL ST. J. (Jan. 8, 2015), <http://www.wsj.com/articles/suspect-in-paris-massacre-was-trained-in-yemen-1420773315>; Rukmini Callimachi and Higgins, *Video Shows a Paris Gunman Declaring His Loyalty to the Islamic State*, N.Y. TIMES (Jan. 11, 2015), <http://www.nytimes.com/2015/01/12/world/europe/amedy-coulibaly-video-islamic-state.html>; Bisserbe and Margaret Corker, *Wife of Paris Shooter Coulibaly Surfaces in Islamic State Magazine*, WALL ST. J. (Feb. 12, 2015), <http://www.wsj.com/articles/wife-of-paris-shooter-coulibaly-surfaces-in-islamic-state-magazine-1423767821>; Ben Farmer, *Who were the terrorists? Everything we know about the Isis attackers so far*, THE TELEGRAPH (Nov. 20, 2015), <http://www.telegraph.co.uk/news/worldnews/europe/france/11996120/Paris-attack-what-we-know-about-the-suspects.html>; Victoria Shannon, *Paris Attacks: What We Know and Don't Know*, N.Y. TIMES (Nov. 15, 2015), <http://www.nytimes.com/2015/11/15/world/europe/paris-attacks-what-we-know-and-dont-know.html>; Higgins and Kimiko de Freytas-Tamura, *Paris Attacks Suspect Killed in Shootout Had Plotted Terror for 11 Months*, N.Y. TIMES (Nov. 19, 2015), <http://www.nytimes.com/2015/11/20/world/europe/paris-attacks.html?mtrref=undefined>.

⁵ 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

http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312738/Syrian_Arab_Republic_report_2013.pdf.

⁶ “Naturalized citizenship may only be acquired upon marriage to a Syrian citizen and by living in the country for over 10 years.” (OPM, *supra* note 2 at 192.) [https://www.ecoi.net/file_upload/1930_1292966964_ibn34193.pdf.

⁷ OPM, *supra* note 2 at 192.

Under H.R. 158, the following types of travelers would automatically lose their VWP privileges based on their travel to Syria or Iraq since March 2011:

- British citizen, working as a reporter for the London-based *Daily Telegraph* who traveled to Syria to cover the civil war;
- Swiss citizen, working as a social worker in a Kurdish refugee camp in northern Iraq;
- Belgian citizen, working as a human rights investigator to document abuses committed by ISIL against Syrians.

Many of these VWP travelers have gone to Syria or Iraq for professional purposes and are producing reports and providing services that the U.S., indeed the whole world, depends upon, now more than ever. They should not lose their VWP travel privileges for their work in Syria or Iraq.

III. Congress must place a time limit on measures to revoke VWP travel privileges.

When Congress created the VWP years ago, Congress authorized the Attorney General, in consultation with the Secretary of State, to designate certain countries as VWP countries.⁸ Congress has never codified any nationality-based prohibitions for VWP program designation. If the House passes this bill, it will be enshrining into statute that VWP citizens, who happen to be Iraqi or Syrian nationals, are categorically ineligible for VWP travel privileges even if they have never been to Iraq or Syria.

In view of this extraordinary discriminatory measure, Congress should limit the duration of this VWP restriction and place a two-year sunset on this travel restriction. A sunset provision would require Congress to reassess in two years whether nationals of Iraq and Syria warrant such selective targeting for VWP travel restriction purposes.

IV. Conclusion

While the ACLU recognizes the importance of a Congressional response to the increase in recent terrorist attacks, we urge Congress to exercise caution and to avoid passing legislation that would broadly scapegoat groups based on nationality, and would fan the flames of discriminatory exclusion, both here and abroad. We, therefore, urge the House to amend H.R. 158 by:

- (1) Deleting the language that categorically strips VWP privileges from all Iraqi, Syrian, Iranian, and Sudanese nationals⁹;
- (2) Expanding the exemption¹⁰ to include journalists, researchers, human rights investigators, and other professionals; and
- (3) Inserting a two-year sunset date to the travel restrictions on the use of VWP.

In the absence of such changes, we have grave reservations about this proposal.

⁸ 8 U.S.C. §1187(c)(1); 8 U.S.C. §217(c)(1).

⁹ H.R. 158, Section 3, starting at page 5, line 7.

¹⁰ H.R. 158, Section 3, page 6, lines 8-18.

For more information, please contact ACLU Legislative Counsel Joanne Lin (202-675-2317; jlin@aclu.org), or Policy Counsel Chris Rickerd (202-675-2339; crickerd@aclu.org).

Sincerely,



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