



December 8, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20510

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Re: ACLU Concerns With the Senate Version of the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015”

KARIN JOHANSON
DIRECTOR

Dear Chairman Johnson and Ranking Member Carper:

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On behalf of the American Civil Liberties Union (ACLU), we submit this letter to the U.S. Senate’s Committee on Homeland Security and Governmental Affairs for its roundtable meeting: “Strengthening the Visa Waiver Program After the Paris Attacks.” We write to urge you to amend the Senate version of the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015.

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

I. The Senate version of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act 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.

ROBERT REMAR
TREASURER

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 This bill 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

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 (MPI), “Dual Citizenship in an Age of Mobility” (2008), www.migrationpolicy.org/transatlantic/docs/Faist-FINAL.pdf.

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, this bill 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

Not only is this bill discriminatory, it is arbitrary. Unlike the U.S. which grants citizenship to all children born on U.S. soil, birth within Syria,⁵ Iran,⁶ or Sudan⁷ 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. This Senate bill would yield the untenable result of folding such gender-based distinctions into U.S. law.

Therefore, if this bill 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 Iranian father) traveling to U.S. on vacation;
- Dual-national British citizen (born to Sudanese father) traveling to the U.S. to take care of grandchild.

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, S. ___, 114th Cong. (1st Sess. 2015). S. ___ specifically names the countries of Iraq and Syria (page 5, line 4) and covers Iran and Sudan by incorporating reference to existing government lists that name Iran and Sudan (page 5, lines 5-20).

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),

<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 Isil 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

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

⁶ 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/institutionsgovernance/nationality-law/>).

⁷ 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.”

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. The Senate version of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act would end VWP privileges for all recent travelers to Iraq or Syria, including those who traveled there for professional purposes.

This bill 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.

Under this bill, 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 a London newspaper 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 Congress 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, the Committee 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 the Committee 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 Committee to amend the bill by:

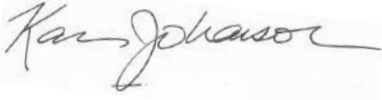
⁸ 8 U.S.C. §1187(c)(1); 8 U.S.C. §217(c)(1).

- (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 restrictions on the use of VWP.

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

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

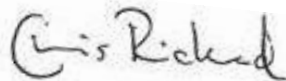
Sincerely,



Karin Johanson
Director
Washington Legislative Office



Joanne Lin
Legislative Counsel



Chris Rickerd
Policy Counsel

⁹ Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, S.____, Section 3, page 5, lines 1-25.

¹⁰ Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, S.____, Section 3, page 6, lines 1-11.