

**Updated 12/11/2015*

Senator Mitch McConnell
Majority Leader
U.S. Capitol Building, Room S-230
Washington, DC 20510

Representative Paul Ryan
Speaker of the House of Representatives
U.S. Capitol Building, Room 232
Washington, DC 20515

Senator Harry Reid
Minority Leader
U.S. Capitol Building, Room 2-221
Washington, DC 20510

Representative Nancy Pelosi
Minority Leader
U.S. Capitol Building, Room 204
Washington, DC 20515

December 10, 2015

Re: Concerns with Various Visa Waiver Program Bills Included As Part of Omnibus Spending Bill

Dear Congressional Leadership:

On behalf of the 75 undersigned groups, we write to express our serious concerns about various visa waiver program (“VWP”) bills that may be inserted into the omnibus spending bill. While we recognize the importance of strengthening VWP security, we urge you to oppose the insertion of any VWP proposal that would scapegoat certain nationalities, thereby fanning the flames of discriminatory exclusion, both here and abroad. Specifically, we urge you to ensure that any VWP proposal inserted into the omnibus bill contains the following:

(1) Any proposal SHOULD NOT INCLUDE language that discriminates against nationals of Iraq, Syria, Iran, or Sudan who are citizens of VWP countries.

Both H.R. 158,¹ the Visa Waiver Program Improvement Act and S.2362,² the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, introduced by Senator Johnson, would revoke VWP travel privileges for all citizens of VWP countries who are dual nationals³ 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 these four countries. By singling out these four nationalities to the exclusion of other dual nationals in VWP countries, H.R. 158 and the S.2362 amount to blanket arbitrary discrimination based on nationality and national origin.

¹ 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 14) and covers Iran and Sudan by incorporating reference to existing government lists that name Iran and Sudan (page 5 lines 15-22 and page 6 lines 1-5).

² 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. 2362, 114th Cong. (1st Sess. 2015). S.2362 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).

³ 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.

There is insufficient 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.

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.

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, Syria, Iran, or Sudan:

- 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 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.

(2) Any proposal SHOULD INCLUDE exemptions for citizens of VWP countries who traveled to Iraq, Syria, Iran, or Sudan for professional or educational purposes.

H.R. 158 would terminate VWP travel privileges for all who have been present in Iraq, Syria, Iran, or Sudan 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.⁷ All other travelers would automatically lose their VWP privileges. Affected travelers would include scholars, refugee caseworkers, humanitarian aid workers, human rights investigators, and others.

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

⁴ See OPM, *supra* note 3 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/institutionsgovernance/nationality-law/>).

⁶ See OPM, *supra* note 3 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 The Feinstein/Flake VWP bill (S 2337) contains no exemptions.

- Swiss citizen social worker, traveling to a Kurdish refugee camp in northern Iraq;
- Belgian citizen human rights investigator, traveling to Syria to document abuses committed by ISIL;
- French citizen physician, treating patients in Darfur health clinic;
- Australian Rhodes scholar, conducting research and presenting paper at University of Tehran.

Many of these VWP travelers have gone to Syria, Iraq, Iran, or Sudan for professional or educational 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 these countries.

(3) **Any proposal SHOULD INCLUDE a two-year sunset for all provisions restricting VWP travel privileges.**

Congress has never codified a nationality-based prohibition in the VWP. In view of this extraordinary discriminatory measure, Congress should limit the duration of any VWP restriction and place a two-year sunset on all travel restrictions. A sunset provision would require Congress to reassess in two years whether nationals of Iraq, Syria, Iran, and Sudan warrant such selective targeting for VWP travel restriction purposes.

IV. Conclusion

In sum, we urge you to ensure that any VWP provision inserted into the omnibus spending bill contains the following:

- (1) NO language that discriminates against nationals of Iraq, Syria, Iran, or Sudan who are citizens of VWP countries.
- (2) Exemption for citizens of VWP countries who traveled to Iraq, Syria, Iran, or Sudan for professional or educational purposes.
- (3) Two-year sunset for all provisions restricting VWP travel privileges.

Sincerely,

Alliance for Citizenship
 Alliance San Diego
 American Civil Liberties Union
 American Immigration Lawyers Association
 American-Arab Anti-Discrimination Committee
 Asian American Civic Association
 Asian American Federation of Florida
 Asian Americans Advancing Justice - Atlanta
 Asian Americans Advancing Justice - Los Angeles
 Asian Americans Advancing Justice-AAJC

Asian Americans Advancing Justice-Asian Law Caucus
Asian Americans Advancing Justice-Chicago
Asian Americans United
Asian Chamber of Commerce of Arizona
Asian Law Alliance
Asian Pacific Community in Action
Cabrini Immigrant Services of NYC
California Immigrant Policy Center
Church World Service
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Council on American-Islamic Relations
Disciples of Christ Refugee & Immigration Ministries
Equality New Mexico
Farmworker Justice
Filipino Advocates for Justice
Friends Committee on National Legislation
Gamaliel
Greater Rochester Coalition for Immigration Justice
Hudson Valley Community Coalition
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center
Immigration Equality Action Fund
International Campaign for Human Rights in Iran
International Rescue Committee in San Diego
Iranian Alliances Across Borders (IAAB)
Iranian American Bar Association
Just Foreign Policy
Karam Foundation
League of United Latin American Citizens
Long Island Wins
Massachusetts Immigrant and Refugee Advocacy Coalition
NANAY CEDC
National Immigration Law Center
National Iranian American Council for Action
National Korean American Service and Education Consortium
National Latina Institute for Reproductive Health
National People's Action
New York Immigration Coalition
Northwest Immigrant Rights Project
OCA - Asian Pacific American Advocates
OneAmerica
PAAIA
Pars Equality Center
Peace Action West
Public Counsel
Racial Justice Action Center

Reform Immigration FOR America
Reformed Church of Highland Park, NJ
Refugee and Immigrant Center for Education and Legal Services (RAICES)
South Asian Americans Leading Together (SAALT)
South Asian Fund For Education, Scholarship & Training (SAFEST)
Southern Border Communities Coalition
Syria Relief and Development
Syrian American Medical Society
Syrian Expatriates Organization
The International Rescue Committee
The Modarres Law Firm
UC Davis Immigration Law Clinic
United for Iran
United We Dream
Wayne Action for Racial Equality
We Belong Together
WESPAC Foundation
Women's Action for New Directions
Workers Defense Project

CC:

Chairman Thad Cochran & Vice Chairwoman Barbara A. Mikulski
Senate Committee on Appropriations

Chairman Hal Rogers & Ranking Member Nita Lowey
House Committee on Appropriations
Chairman Bob Corker & Ranking Member Ben Cardin
Senate Committee on Foreign Relations

Chairman Edward R. Royce & Ranking Member Eliot L. Engel
House Committee on Foreign Affairs

Chairman Ron Johnson & Ranking Member Thomas R. Carper
Senate Committee on Homeland Security & Governmental Affairs

Chairman Michael McCaul & Ranking Member Bennie G. Thompson
House Committee on Homeland Security

Chairman Chuck Grassley & Ranking Member Patrick Leahy
Senate Committee on the Judiciary

Chairman Bob Goodlatte & Ranking Member John Conyers, Jr.
House Committee on the Judiciary