



MARCH 12, 2015

VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL SECURITY

UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS

ONE HUNDRED FOURTEENTH CONGRESS, FIRST SESSION

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Opening Statement of Chairman Ron Johnson “Visa Waiver Program: Implications for National Security” March 12, 2015

As prepared for delivery:

Good morning and welcome.

Today’s hearing will evaluate the security, economic and public diplomacy implications of the Visa Waiver Program (VWP). Specifically, we convened this hearing to examine the security screening and information-sharing mechanisms in place to ensure the VWP remains a secure travel program.

The VWP allows nationals from 38 participating countries to visit the United States visa-free for a period of 90 days or less. To prevent terrorists from exploiting the VWP, U.S. Customs and Border Protection uses the Electronic System for Travel Authorization (ESTA) to compare a passenger’s biographic information against law enforcement and national security databases.

The VWP serves as an important economic tool for the United States, promoting tourism, trade and investment. According to the Congressional Research Service, in fiscal year 2012, 19.1 million visitors entered the United States under the VWP, representing 40 percent of all foreign travelers. Similarly, the VWP enhances the United States’ bilateral relationships with participating countries by setting mutually beneficial security standards and providing an instrument to combat terrorist travel.

The recent terrorist attacks in Paris, Brussels and Copenhagen, as well as the more than 3,400 western foreign fighters in Syria and Iraq, remind us of the importance of constantly assessing trusted traveler programs to address potential vulnerabilities. In recent weeks, the Department of Homeland Security (DHS) Secretary Jeh Johnson stated that his department is taking steps to address any potential weaknesses in the VWP’s structure. On March 2, 2015, Ranking Member Carper, Senator Ayotte and I sent a letter to Secretary Johnson asking DHS to perform an evaluation of the security safeguards in the VWP to further this effort. We look forward to his response.

We should work diligently with our foreign partners to continually refine the program to ensure full compliance with membership requirements and ensure VWP travelers are fully vetted. Doing so will ensure that the VWP will remain a viable trusted traveler program that provides many benefits to Americans while benefiting U.S. security.

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Opening Statement of Ranking Member Thomas R. Carper
“Visa Waiver Program: Implications for U.S. National Security”
March 12, 2015

As prepared for delivery:

Today’s hearing considers the important and timely topic of the security of the Visa Waiver Program amid evolving threats to the homeland. As we all know, the Visa Waiver Program is a valuable economic and security tool for the United States.

Congress and the Department of Homeland Security have worked hard to balance the natural tension in the Visa Waiver Program between the need to facilitate international travel and the need to keep Americans safe from the evolving terrorist threats.

When travelers from Visa Waiver countries visit our country, they spend more than \$80.5 billion every year. They stay in our hotels, they buy our goods, they visit our parks, they enjoy our beaches and they eat at our restaurants. All in all, the Visa Waiver tourists support more than 535,000 American jobs.

But the Visa Waiver Program is more than just a revenue generator. It also serves as an important national security tool for the United States. When countries participate in the Visa Waiver Program, they must implement and maintain strong travel screening measures. More importantly, these countries must share robust amounts of traveler information with the United States – information that we would likely not otherwise get. This valuable information has proven to be essential to our counter terrorism officials as they seek to prevent foreign threats from crossing our borders.

With that said, the threats that we face from terrorists have evolved during the life of the Visa Waiver Program. When the Visa Waiver Program was enhanced in 2007, the preeminent threat to the homeland was from Al-Qaeda’s central branch led by Osama bin Laden. Today, bin Laden is no more. Al-Qaeda’s core branch in Afghanistan and Pakistan has been severely weakened. But in their place, Al-Qaeda splinter groups in the Middle East and Africa have arisen and adopted new tactics that pose new threats for our country.

Today, we face the threat posed by ISIS and its determination to use social media to rally recruits and incite attacks against the West, including attacks by individuals who live in Visa Waiver countries. Moreover, conflicts in Syria and Iraq have attracted thousands of foreign fighters from all across the world who have now joined the ranks of those who wish to do us harm here at home. According to reports, more than 3,400 foreign fighters have traveled from western countries to join in these conflicts. Many of these countries have Visa Waiver privileges with the U.S.

As the number of foreign fighters grows, so do the concerns that the fighters from western countries may use the Visa Waiver Program to bypass our screening efforts at consular posts abroad, where State Department officials have the first opportunity to identify dangerous travelers. Late last year, the Department of Homeland Security took steps to enhance the requirements of the Visa Waiver Program to directly address the new threats we face. I commend the Department for proactively taking these measures.

This hearing is an opportunity to examine the Visa Waiver Program more closely and to see if there are additional steps we can and should take to improve the program and ensure that it continues to evolve and adapt as our enemies and their tactics do the same. We’ll never make the program perfect, but our goal should be to see if we can create, to paraphrase our founding fathers, a more perfect program.

This hearing is also an opportunity to remember that the Visa Waiver Program does not exist in a vacuum – there are many layers to the Department of Homeland Security’s system for securing our borders. That includes robust intelligence collection and analysis, passenger prescreening, and inspections by CBP Officers at our ports of entry. Each of these layers contributes to our overall security.

But we should strive for smart improvements where we can. With each of the Department’s key programs, however, we must strike the appropriate balance between security and commerce, between risk and opportunity.

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STATEMENT FOR THE RECORD
BY THE HONORABLE MICHAEL CHERTOFF
CO-FOUNDER AND EXECUTIVE CHAIRMAN OF THE CHERTOFF GROUP
AND FORMER SECRETARY OF THE
U.S. DEPARTMENT OF HOMELAND SECURITY
FOR THE UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENT AFFAIRS

March 12, 2015

I want to thank Chairman Johnson, Ranking Member Carper and members of the Committee for the opportunity to participate in this valuable discussion and share my views regarding the Visa Waiver Program. My comments here today reflect my own personal views and opinions based on my experience with the Visa Waiver Program during my tenure as Secretary of Homeland Security. Today, I serve as Co-Founder and Executive Chairman of The Chertoff Group, a global security and risk management company that provides strategic advisory services on a wide range of security matters, which may include those we are discussing here today. Additionally, I am Senior of Counsel to the law firm of Covington and Burling, LLP.

Today, the United States and our allies around the world face persistent national security threats. These threats are complex, dealing with known nation states as well as adversaries not clearly defined by a flag or set of principles. We see the proliferation of terrorist groups in parts of Africa and east to Pakistan and Afghanistan. We see the rise of groups like ISIS in Syria and Iraq. This is a dangerous time in our world, perhaps more dangerous than any other time in the past ten years, when our nation worked to enhance our homeland security in order to prevent another terrorist attack from occurring on our soil, as we witnessed on September 11, 2001.

As Secretary of Homeland Security from 2005 to 2009, I worked to strengthen our homeland security by creating an effective system that would minimize and reduce the risk of another successful attack on our homeland. One important area of our focus was preventing dangerous people from crossing our borders and entering the U.S. to carry out harm. Today, with the desire and active engagement of groups like ISIS to recruit foreign fighters – meaning

westerners and Americans who can travel to their territory, train and return to the west ready to attack - the same holds true.

Just as we did after September 11, we must raise questions and ensure our travel and security programs remain robust and with that examination, we must look at the Visa Waiver Program. While some have raised questions about the security value of the program and whether it should be scaled back, I firmly believe that any withdrawal or departure from the Visa Waiver Program would be a huge mistake.

I believe the Visa Waiver Program (VWP) is essential to protecting international travel in today's growing and persistent threat environment. It provides necessary information to identify and validate a person's identity, determine if they are a risk, and whether they pose a threat to the United States. The information provided to the U.S. prior to a VWP traveler's departure along with the information sharing and law enforcement cooperation in place between the U.S. and Visa Waiver Program countries, is essential to ensuring our country remains open for legitimate international travel and trade while preventing harmful or more threatening persons from crossing our borders.

There are certainly many significant benefits to the U.S. by having the Visa Waiver Program in effect. However, we must be clear that security remains at the top. There is no random decision making in place or lack of attention when it comes to authorizing a VWP citizen to travel to the U.S.

As President Bush stated in October 2008 when he announced seven new countries as part of a VWP expansion, "these countries agree to share information about threats to our people. They also agree that their citizens use a new system that requires travelers to register online ahead of their visits to the United States. These citizens will travel to the United States only if they have tamperproof biometric passports."

Security was and remains a top priority. The new system requiring travelers to register online, known as the Electronic System of Travel Authorization or ESTA, was an important

update to the Visa Waiver Program in 2008¹. This system allowed us to facilitate individual travel to the U.S. from visa waiver countries in a modern, simple and straightforward way while enhancing our security by being able to have more information and visibility for those coming to the U.S. prior to their departure. Our goal at the time was to focus on individuals. It is at the individual level that people are being recruited, trained and sent back to carry out attacks and we had to adjust our security posture appropriately.

With ESTA, we modernized the way we interact with travelers from VWP countries by asking them to submit a brief statement and biographical information online through a web portal in advance of their desired trip. This information provides basic eligibility information allowing the U.S. Government to compare the data from appropriate data bases, such as watch lists or lost and stolen passports, and respond within a matter of seconds to determine if the person was approved or not for travel to the U.S. Should a determination be made to not authorize travel, this could be tended to ahead of time and before they arrive at an international entry point to the U.S.

This information created an opportunity for the U.S. to look at the traveler's details early on and based on intelligence, we could determine if the traveler posed a risk or not before they arrived in the U.S. Our ability to analyze basic data helped determine if there was a need or concern to be flagged for further inquiry. It was an unobtrusive and convenient way to collect information in advance, and along with other programs, we could take a deeper look at the kind of connections or contacts we could find and see if there was any concern or risk to the U.S. as well those traveling within the aviation system. The VWP fundamentally enables an early warning system for risky travelers coming from overseas.

With respect to foreign fighters, we must look at U.S. citizens as well as foreigners being recruited and trained with the goal of returning to the west or to enter the US and carry out attacks. With U.S. citizens, the Visa Waiver Program is not an issue as American citizens don't need a visa to return to the U.S. It is the returning fighters from other countries traveling to the U.S. that we need to be concerned about. It is through this program, VWP, and our layered security system that we are able to judiciously and analytically collect information on travelers before they depart and identify potential connections that suggest a closer look. Do we know the

¹ <http://travel.state.gov/content/visas/english/news/dhs-announces-implementation-of-the-electronic-system-for-travel.html>

VWP citizen's recent travel plans? Did it include a trip to the Middle East before returning back home? Was there is a gap in the timeline that can't be accounted for? These questions and the answers to them do not necessarily prove guilt; however, it does suggest a closer look may be warranted for a particular traveler. And that system is in place today.

Using programs like ESTA as a way of collecting information, along with other security programs including passenger name records or PNR, helps identify certain patterns of behavior which may relate to risk of terrorist activity. With September 11th always in the hearts and minds of our nation, some have gone back to look at whether our programs and analysis today, if implemented prior to 9/11, would have picked up connections among the 9/11 hijackers. As I described in my remarks to Members of the European Parliament in May of 2007, we know two of the hijackers who appeared on a U.S. watch list would have been identified when they bought their tickets. Three of the other hijackers used the same addresses as the two who we had on the watch list, so we would have been able to identify three additional hijackers. One of them was Mohammed Atta, a ringleader of the 9/11 attacks who piloted American Airlines Flight 11 which crashed into the North Tower of the World Trade Center. A sixth hijacker used the same frequent flyer number as one of the other hijackers, so we would have identified him as well. Finally, five other hijackers used the same phone number as Mohammad Atta, so those five would have been identified. With these simply analytic moves using the type of data associated with the PNR program and ESTA, we could have identified 11 of the 19 hijackers and potentially stopped them from coming into the United States. I strongly believe these programs can continue to serve us well.

During this unique time, we can and should identify ways to further strengthen security within the Visa Waiver Program, with the goal of identifying suspicious travel patterns, behaviors of concern, and those who are associated with known terrorists and their organizations. Last November, we saw DHS Secretary Jeh Johnson take these steps when [DHS announced](#) additional information relating to passport data, contact information, and additional names or aliases would be required as part of the ESTA process. Without hindering travel, this step provided additional data to better identify travelers during this heightened period of alert. Other things we can do include:

- **Expand preclearance overseas.** At this time, preclearance operations are available in 15 foreign airports in six countries², including Ireland and the United Arab Emirates. The Department of Homeland Security (DHS) is looking at other foreign locations for preclearance operations. By establishing an Agreement between the foreign country and DHS, this Department is able to place Customs and Border Protection (CBP) officers at designated pre-clearance, overseas airports and allow them to conduct immigration and custom operations before travelers board their plane en route to the U.S. This type of program offers convenience to the passengers who now no longer have to arrive at certain U.S. gateways authorized to conduct these same operations and can go anywhere they desire. It also allows federal officials to review the ESTA and PNR information as well as have trained officers look face-to-face with travelers and determine if there is any risk, thereby enabling us to catch potential concerns before they depart and enhance our aviation security at the same time.
- **Continue to support intelligence community programs.** To get the full benefit of these homeland security programs, we must continue to support what is being done by the Intelligence Community to collect information on telephone numbers and e-mail addresses overseas. This does not require looking at content of phone calls or emails. However, being able to identify an IP address or phone number that was previously connected or used in association with terrorist activity and applying that intelligence to information on travelers attempting to enter the U.S. is extremely important and valuable. Today is not the right time to dismantle these programs that have been a cornerstone of protecting our homeland since 2001. With today's growing dangers, we need to enhance our capabilities and leverage technology and data analytics where possible to help us analyze and identify potential concerns worth investigating further.

In addition to the national security benefits, I cannot testify here today without also raising awareness to other benefits that the Visa Waiver Program provides to both the U.S. and designated VWP countries. It is more than broadening our visibility into who is coming to the U.S. but increasing our solidarity with other countries, particularly in Europe.

² <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>

There is no doubt that Europe is facing serious national security issues, with the situation in Ukraine and various threatening voices coming from Russian President Vladimir Putin toward others in the region, including the Baltics. Countries belonging to the VWP view this important program as a symbol of being associated with the West. When President George W. Bush announced the Czech Republic as part of the VWP expansion, news reports quoted then-Prime Minister Topolanek saying "It is really the biggest success we could achieve. It is a removal of the last relic of communism and the Cold War, so I am very happy."

From a strategic standpoint, it would be a significant national security concern for the U.S. if these countries began to feel isolated and that they were being cut loose from the west at the very time Russia is making noises about expanding its sphere of influence and power. One of the things that the Visa Waiver Program allows us to do with these countries is reaffirm our solidarity and belief that new democracies in Europe are every bit of part of western enterprise as familiar democracies such as England, France and Germany. Maintaining that sense of solidarity is important not just to them at this moment but is important to the U.S. as well as NATO national security alliance. Pulling the Visa Waiver Program back from these trusted allies should be considered as giving a boost to President Putin as he continues to show aggressive actions against his neighbors and the U.S.

Certainly, there are also economic benefits that occur with the ability to travel to U.S. and U.S. citizens in return to travel to VWP countries without having to obtain a visa and going through a cumbersome visa process. This program opens doors and stimulates the economies in both the U.S. as well as in VWP countries with regard to increased travel and tourism, exports, job creation and cultural exchange. It also helps free some of these countries from being dependent on other nations who may desire to dominate over a particular region or make other countries weaker and more within their control. Quite the opposite, the VWP helps build stronger and more stable economies for trade and travel as well as increased security and cooperation. Particularly at a time when the global economic climate remains fragile and economic recovery remains uneven (at least), promoting economic development has positive benefits for both the U.S. and designated VWP countries.

Constructed in a way to powerfully reduce vulnerabilities in our immigration and travel system, it is my belief that the Visa Waiver Program offers significant benefits to U.S. national and economic security and should not be pulled back in a time like this but further evaluated for ways that can strengthen our security and the benefits it may yield. Thank you again for the opportunity to contribute my personal views on such an important topic.

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Testimony of Marc E. Frey, Ph.D.

Before the Committee on Homeland Security and Governmental Affairs

United States Senate

“Visa Waiver Program: Implications for U.S. National Security”

March 12, 2015

Thank you Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee for this opportunity to testify on the Visa Waiver Program (VWP) and its implications for U.S. national security. My name is Marc Frey. I am a senior director at Steptoe & Johnson LLP, an international law firm. Prior to joining Steptoe I served in several positions at the Department of Homeland Security (DHS), including as Director of the Visa Waiver Program from 2007-2010. In that role I oversaw the successful effort to enhance the security of and expand the VWP and managed the security assessments of member countries.

This is a timely hearing. Following the terrorist attacks in Paris earlier this year commentators have speculated on the possibility of an attack on U.S. soil by terrorists possessing passports from France or other VWP countries. Many in the media and elsewhere labor under the misapprehension that security standards are looser for VWP travelers than for those traveling with a visa, and that this poses a threat to U.S. national security. Concerns have been raised, for example, about the ability of ISIS terrorists with “Western” passports to enter the United States under the VWP by circumventing the consular interview.

Under the VWP, DHS waives the “B” nonimmigrant visa requirement for aliens traveling from the 38 approved countries, permitting stays of up to 90 days for business or tourism. A consular interview is not required. But, that does *not* mean that DHS waives security requirements for these travelers. In fact, it mandates additional, more stringent security

requirements, for both the individual traveler and his or her home country. The result is a system that provides as much security against terrorist or criminal travelers as the visa system.

Like any successful security program, VWP has been closely reviewed over the years, undergoing reform and modernization as new threats arose. It's fitting, then, to discuss potential enhancements to the program in response to today's dynamic threat landscape. At a minimum, DHS must ensure that participating countries are fully meeting their information-sharing obligations. Other options to strengthen the program include steps that DHS can take unilaterally, such as adding new data fields to ESTA, as the Department did last year, or further tightening passport requirements. They also include measures that may require or benefit from legislative action, such as making a handful of discretionary considerations mandatory, upping the frequency of eligibility reviews, or requiring participating countries to screen travelers against databases, such as INTERPOL's Foreign Fighter database or its Stolen and Lost Travel Document database.

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. Therefore, although critics of the VWP often continue to 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 over the past dozen years have successfully addressed this risk to date.

For example, in 2003 new requirements were put in place to tighten passport security standards for VWP travelers and to increase the frequency with which countries are formally reviewed for their designation status. Furthermore, in order to align with the recommendations of the 9/11 Commission, Congress, in 2007, mandated additional security requirements to 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, and past history of visa revocation or deportation. In November 2014, DHS expanded the personal data

required for an ESTA application, to include national identity numbers for those who have them and data from a second passport if that passport is not from a VWP country, among other data elements. As a result, 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 these three pieces of 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. The majority of VWP travelers are required to use electronic passports (e-passports), which have an embedded chip that includes the bearer's biometric information.¹ 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

¹ All passports issued after October 26, 2006, presented by aliens entering under the VWP must be electronic passports.

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 comprehensive 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's security components make so much sense, in fact, that they are setting global standards for countering terrorist travel. A September 2014 UN Security Council Resolution on security measures to better track and deter terrorist travel activity reflects practices the VWP has enforced for member countries since 2008.

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, but increasingly incorporating biometrics – 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.

These three elements – who’s risky, who’s coming here, and who’s who – work together both prior to take off and at the port of entry to help U.S. officials identify terrorists and criminals and prevent them from traveling here.

Strengthening the VWP

It is essential that we continually look to identify possible enhancements to the VWP in the face of current threats, much like DHS continually evaluates participating countries and recommends improvements to their security postures. As noted above, there are a number of sensible ways to strengthen the VWP, but any measure that would curtail the program even temporarily would be damaging and wrongheaded. Rather than enhance U.S. security, such a step would undermine it, resulting in the loss of significant leverage over the security standards of both current and prospective members, to say nothing of the severe economic and diplomatic consequences.

For current VWP members, suspension of the program would undermine current information and intelligence-sharing mechanisms and deprive the U.S. of visibility into their security practices, including those to prevent radicalization and identify foreign fighters. It would also

undermine relationships with our closest allies in the face of common threats ranging from ISIS to a resurgent Russia.

For prospective members, the disappearance of the program would remove a powerful and proven incentive to elevate security standards and to enhance cooperation with the United States on security matters. A number of countries, for example, have unilaterally upgraded to e-passports so as to be eligible for the VWP. Likewise, several prospective members have signed the information-sharing agreements and otherwise increased law enforcement and security-related cooperation with the United States in the hopes of meeting the program's requirements. These actions provide tangible security benefits to the United States and to the international travelling public well in advance of potential VWP designation.

While emotional responses often occur in times of heightened security concerns, any discussion of the VWP and national security must remain focused on the facts. And the facts are that the VWP has proven to be an effective leverage point for raising and maintaining security standards while providing unprecedented levels of information sharing and access, allowing the United States to better manage risk. The program not only has improved overall U.S. security, but it has also facilitated the flow of lawful travel.

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

There Will Be Battles in the Heart of Your Abode

The Threat Posed by Foreign Fighters Returning From Syria and Iraq

Brian Michael Jenkins

RAND Office of External Affairs

CT-426

March 2015

Testimony presented before the Senate Homeland Security and Governmental Affairs Committee on March 12, 2015

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The RAND Corporation

There Will Be Battles in the Heart of Your Abode
The Threat Posed by Foreign Fighters Returning From Syria and Iraq²

Before the Committee on Homeland Security and Governmental Affairs
United States Senate

March 12, 2015

Chairman Johnson, Ranking Member Carper, distinguished members of the committee, I would like to thank you for the opportunity to address this important subject.

My testimony will address two fundamental questions:

1. What is the threat posed by Western fighters who have joined jihadist fronts in Syria and Iraq?
2. How can the United States enhance its ability to identify and intercept returning foreign fighters with passports from European and other countries that are currently covered by the Visa Waiver Program?

Let's begin with the threat.

Over the past eight months, my colleagues at RAND have had several opportunities to offer congressional committees their assessments of the evolving threat posed by jihadist groups in the Middle East and North Africa.⁴ While the focus of my colleagues and their interpretations of the evolving threat vary, I regard my own testimony to be the latest installment this continuing body of work.⁵

¹ The opinions and conclusions expressed in this testimony are the author's alone and should not be interpreted as representing those of RAND or any of the sponsors of its research. This product is part of the RAND Corporation testimony series. RAND testimonies record testimony presented by RAND associates to federal, state, or local legislative committees; government-appointed commissions and panels; and private review and oversight bodies. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

² This testimony is available for free download at <http://www.rand.org/pubs/testimonies/CT426.html>.

⁴ See Seth Jones, *Jihadist Sanctuaries in Syria and Iraq: Implications for the United States*, testimony presented before the House Homeland Security Committee, Subcommittee on Counterterrorism and Intelligence on July 24, 2014; Ben Connable, *Defeating the Islamic State in Iraq*, testimony presented before the Senate Foreign Relations Committee on September 17, 2014; and Rick Brennan Jr., *The Growing Strategic Threat of Radical Islamist Ideology*, testimony presented before the House Foreign Affairs Committee on February 12, 2015.

⁵ This testimony also builds on my recent previous research, as reported in *The Dynamics of Syria's Civil War*, Santa Monica, Calif.: RAND Corporation, 2014; *Brothers Killing Brothers: The Current Infighting Will*

Syria's civil war, Assad's brutal repression, the spread of jihadist ideology, the growing sectarianism of the conflict in Syria and Iraq, the military victories achieved by the Islamic State of Iraq and the Levant (ISIL), and, perhaps above all, ISIL's announced re-creation of the Caliphate have galvanized would-be jihadist warriors throughout the world.

According to the latest reported intelligence estimate, 20,000 foreign fighters have traveled from other countries to join the fight in Syria and Iraq.⁶ Most are believed to have joined ISIL. "Estimate" is the operative word here, but if the number is close to correct, this would mean that foreign fighters now comprise a large portion of ISIL's total strength—estimated to be as many as 31,000 fighters—and enough to influence its trajectory. Most of the volunteers come from other Arab countries, but an estimated 3,400 have come from Europe and other Western countries and are therefore theoretically eligible to enter the United States without a visa. Most of these Western volunteers are believed to have joined ISIL, which now calls itself the Islamic State.

The coalition bombing campaign—which was intended to (1) contain ISIL by supporting partners on the ground, such as the Kurdish Peshmerga, who are reclaiming territory lost earlier to ISIL; (2) prevent ISIL from being able to move freely in Syria and Iraq; (3) disrupt and degrade its command and control; (4) reduce its logistical capabilities; and (5) target key leaders where possible—has taken a toll on ISIL's operational capabilities. But it does not appear to have significantly reduced the flow of Western fighters to Syria and Iraq: The reported numbers have continued to increase since the bombing campaign began in September 2014. In part, the growing numbers may reflect a time lag as authorities learn about those who departed before the bombing campaign began. However, there is evidence that the flow of recruits continues.

ISIL's Recruiting Attracts the Violence-Prone

ISIL operates a sophisticated recruiting program, which includes its highly publicized victories and its equally well-recorded atrocities. Its message is disseminated through its official outlets on the Internet and reinforced by a distributed recruiting campaign by its own members using social media. ISIL appeals to potential recruits' sense of religious duty—faith undeniably plays a role in recruitment, even though volunteers may not possess a profound knowledge of Islam. Like all true believers, recruits may be attracted by a simple black-and-white, us-versus-them belief

Test al Qaeda's Brand, Santa Monica, Calif.: RAND Corporation, 2014; and *When Jihadis Come Marching Home: The Terrorist Threat Posed by Westerners Returning from Syria and Iraq*, Santa Monica, Calif.: RAND Corporation, 2014.

⁶ Nicholas J. Rasmussen, Director of the National Counterterrorism Center, *Current Terrorist Threat to the United States*, testimony before the Senate Select Committee on Intelligence, February 12, 2015.

system. Poverty and oppression may explain why people in some countries embrace violent extremism, but it does not explain the flow of Western volunteers. Individual biographies of those who have gone to participate in jihad or have attempted to go suggest a variety of personal motives—alienation, perceived insults, personal crises, dissatisfaction with empty spiritual lives, adolescent rebellion, or other discontentment.

ISIL is a dangerous group. It distinguishes itself from other jihadist groups by continuing to publicize its limitless violence. This attracts a self-selecting assembly of individuals who are not repelled by graphic images of mass executions, beheadings, crucifixions, and burnings and who indeed may be attracted by opportunities to participate in such atrocities. They exult in violence. Gathering as a group in Syria and Iraq, they may reinforce each other's savagery, creating a constituency within ISIL that supports escalating violence.

This dynamic is present in most terrorist groups. For the ideologues who initiate terrorist campaigns, violence is instrumental—a means to achieve an end. Violent campaigns attract others who subscribe to the ideology but actually seek membership in a terrorist group as a source of status. For a third cohort, the prospect of violence is the principal attraction—ideology offers a license to kill.

Over time, the harder members of a group dominate decisionmaking. Their argument is always the same—if the group is not doing well, it must become more ruthless. If the group is doing well, escalation will accelerate progress. Hardliners cannot easily be reined in, even if the leaders want to restrain them. Commanders who counsel moderation risk being branded as traitors and eliminated, or hardliners may break off to form their own groups. This is not to say that we have any evidence at all of attempts by ISIL's leaders to moderate the group's activities; instead, they appear to encourage barbarity. Still, there must be some tension between those who want to build a state and those whose increasing barbarity makes them appear determined to trigger its destruction.

Transgression demonstrates conviction and binds the perpetrator to the cause. ISIL seems determined to separate its fighters from normal society. There are reports that the group forces recruits to commit atrocities to ensure their loyalty and reduce chances that they can ever return home.

The accumulation of atrocity increasingly precludes any resolution other than continuing warfare or death. For the group as well as for the individual, having crossed the line into nihilism, there is no way back.

ISIL's Calculated Ruthlessness—Strategic Calculation or Collective Madness?

To the outside world, ISIL's escalating murder and destruction is incomprehensible. Rational explanations are required.

We invent strategic calculations (or miscalculations) that make mayhem logical. Analysts posit that ISIL's leaders intend its atrocities to provoke the rage that draws in foreign ground forces, where casualties and captures will erode resolve and impose a time limit on foreign military achievement, will incite responses that divide the coalition, or will precipitate action before ISIL's foes are fully prepared to take it on.

Continuing warfare changes the individual outlooks of those involved. Armed conflict can brutalize its participants. Violence, not just on the battlefield but in executions, torture, and mistreatment of prisoners, hostages, and the civilian population, becomes matter-of-fact. Atrocities become routine. This has effects on the mental condition of both the individual and the collective. A gathering of violent zealots can lead to collective madness in which sadistic cruelty becomes an end in itself, requiring no strategic explanation.

It may be unpleasant to contemplate, but we cannot dismiss the power of belief. ISIL has attracted the most fervent disciples to an extreme (many would say discredited) version of Islam, recruits who believe in the imposition of the cruelest form of Islamic law without compromise. This belief system may include apocalyptic thinking; the idea that escalating violence will hasten the final confrontation between true believers and the forces of evil. There is a fierce debate over whether ISIL represents or perverts Islam, but the fact that ISIL's theological pretensions are widely rejected by Muslim clerics, both militant and centrist, is not the point here. Polling data and a continuing flow of recruits from Europe indicate that ISIL's religiously justified violence resonates with some.

There will be Caligulas. To possess unchallenged power over other human beings, beyond the reach of retribution, immune from any restraining moral authority, allows license and cruelty.

Through its strategy of terror, exaltation of violence as a recruiting theme, attraction to and assembly of the most fervent and most ruthless followers, and deliberate rejection of any constraints, ISIL is creating a dangerous population that cannot be easily pacified or reabsorbed into normal life.

There Are Scenarios of Immediate Concern

A long-term terrorist threat that survives the destruction of ISIL warrants our attention, but there also are several scenarios of immediate concern. These include the following:

- A 9/11-like scenario in which foreign volunteers on their way to the front lines in Syria or Iraq are instead recruited and supported to carry out a major terrorist strike in the United States. This is the 9/11 scenario, where the attackers were on their way to an active combat zone when they were instead diverted to a terrorist mission. It seems unlikely that in today's more vigilant environment, terrorists could mount an operation of that scale without being detected.
- A shoe-bomber or underwear bomber scenario in which a single volunteer is recruited and equipped for a suicide mission. There were reports in 2014 of such plotting by al Qaeda's Khorasan cell, a group of veterans sent from Afghanistan to Syria to recruit and deploy fighters with Western passports.
- 7/7 scenarios, named after the 2005 bombing of public transport in London, in which Westerners are provided with specialized training and dispatched to the West without further support.
- Low-level attacks carried out based on individual initiative. These could involve returning foreign fighters or homegrown terrorists responding to calls by ISIL or al Qaeda's affiliates to carry out attacks. These might include active shooter attacks and hostage situations as we have seen in Ottawa, Paris, Sydney, and Copenhagen.

ISIL Is not yet Committed to Attacking Western Foes on Their Own Territory, but Its Containment Could Change Its Strategy

There is no indication yet that ISIL has initiated a terrorist campaign aimed at directly attacking its Western foes on their own territory. It has taunted and threatened the West in widely disseminated videos showing gruesome murders of Western nationals. It has called upon its supporters abroad to carry out similar acts of terrorism and has praised those who have done so.

However, unlike al Qaeda, which continues to follow a strategy of attacking the "far enemy," ISIL appears more focused on the expansion and defense of the territory it controls as the Islamic State. This reflects necessity. With an economy based on plunder and an army of fanatics, it is doubtful that the Islamic State could survive as a normal state within static borders even if its enemies were to allow it to try. It must continue to expand or it will consume itself.

Squeezed by ground offensives supported by foreign airpower, ISIL may at some point alter its strategy and carry out attacks abroad in an effort to break the coalition's political resolve. If ISIL does decide to launch attacks abroad, it will be able to draw upon its substantial financial resources and a deep bench of Western volunteers from among its existing fighters.

The defeat of the Islamic State could turn into a scenario of slaughter, as victims of its cruel occupation and even its one-time Sunni allies turn against it if only to preempt Shi'a retribution. But its destruction could also shatter the enterprise into a host of small, desperate groups, on the run, bent upon revenge.

If the Islamic State is brought down, where will its foreign fighters go? Facing a hostile reception if they had returned home, foreign volunteers who went to Afghanistan to fight Soviet invaders in the 1980s gathered under al Qaeda's banner. Some ISIL veterans will migrate to other fronts in Afghanistan, where ISIL has already set up shop; to the Caucasus, from which a large number of its foreign fighters, including a number of its commanders, come; or to Libya, where ISIL has found new allies. Some Western volunteers, disillusioned by their experience and with nowhere else to go, will simply want to come home. Others will direct their wrath toward the West.

Most face arrest if they return to their home countries, although European countries are divided on how to deal with returning fighters. Instead of prison, some countries want to offer rehabilitation and reintegration into society, at least to some returnees. It will likely be hard to determine the degree of individual participation in atrocities. Given ISIL's record, "re-humanization" may be a prerequisite to rehabilitation. Clearly, there are some advantages to offering a way back if it requires an open declaration of return and willingness to cooperate with authorities.

But rehabilitation programs have had mixed results, and resources for surveillance are already stretched by the number of people going to or returning from jihadist fronts. Authorities may not have the resources needed to effectively monitor significant numbers of individuals at large. This clearly was France's problem in dealing with the rapid rise in the number of persons going to Syria or contemplating going there. And jihadists have shown remarkable persistence, which means they may have to be monitored in some fashion for years.

I think it is safe to assume that foreign fighters from other countries seeking to enter the United States are more likely to have malevolent intentions than returning Americans. Their capabilities for putting together large-scale terrorist operations here may be limited, but not their intentions. ISIL's fighters have set a new benchmark for brutality. They have rejected all arguments to curb

their enthusiasm for bloodshed, whether from Islamic theologians or even al Qaeda's own leaders.

The American Experience

Although the numbers continue to grow, the number of individuals from the United States going to jihadist fronts is, fortunately, not anywhere near the number that have gone from Europe. The most recent estimate puts the total of American volunteers at 150, including those who went for reasons related to the conflict in Syria but not to join jihadist fronts, those who attempted to go and were arrested on the way, and those who have gone and been killed while fighting for ISIL or other jihadist groups.

The historical experience of Americans going to other jihadist fronts (in Afghanistan, Pakistan, Somalia, and Yemen) indicates that, of 124 publicly identified Americans who went or tried to go abroad to join such fronts between 9/11 and the end of 2014, approximately one-third were arrested on the way. Of those who managed to connect with jihadist groups abroad, 24 were killed (six in suicide bombings), 13 were arrested while abroad, and 13 more are still at large. Of the 35 who returned, nine were involved in subsequent terrorist plots. Only three homegrown jihadist attacks in the United States resulted in fatalities. These were carried out by individuals who are not known to have received any terrorist training abroad.⁷ (These figures represent only the publicly identified would-be jihadists; they do not include the total number of those who reportedly traveled to Syria or Iraq.)

Returning American fighters add a layer of threat, but—given their still-modest numbers—it is a threat that I believe is manageable within existing laws and resources. More-effective leveraging of local police can provide needed reinforcements.⁸ As our focus here is on the Visa Waiver Program (VWP), returning Americans are a separate problem. Nevertheless, dealing with that problem should be viewed as part of an overall strategy.

⁷ Jenkins, *When Jihadis Come Marching Home*.

⁸ Brian Michael Jenkins, Andrew Liepman, and Henry H. Willis, *Identifying Enemies Among Us: Evolving Terrorist Threats and the Continuing Challenges of Domestic Intelligence Collection and Information Sharing*, Santa Monica, Calif.: RAND Corporation, 2014. See also Business Executives for National Security, *Domestic Security: Confronting a Changing Threat to Ensure Public Safety and Civil Liberties*, Washington, D.C., 2015.

There Are Several U.S. Lines of Defense

There are several potential lines of defense, each of which offers opportunities to identify and intercept foreign fighters before they are able to carry out acts of terrorism in the United States.

1. The first line of defense consists of all international efforts to reduce the number of volunteers going to jihadist fronts. While such efforts depend nearly entirely on foreign actions, the United States can nonetheless encourage and support them.
2. The United States could push for broader international efforts to intercept returning fighters, primarily efforts by Turkey and the European Union—especially front-line countries, such as Bulgaria and Greece, whose land borders returning fighters may try to cross. However, foreign fighters may deliberately take roundabout routes to evade detection. Right now, Turkey, as the entry and exit point for virtually all foreign fighters, is key to stemming the flow.
3. Intelligence sources may identify groups engaged in planning terrorist attacks against the West and disrupt their activities or specific plots while the would-be attackers are still abroad. The U.S. bombing of suspected Khorasan cells in Syria is an example of such an effort.
4. The Terrorist Identities Datamart Environment (TIDE), No Fly List, and other databases derived from intelligence sources are currently the primary mechanism for identifying returning foreign fighters. The question is how much they could be improved by better sharing arrangements with foreign partners in VWP countries. Intelligence-sharing arrangements are complicated and beyond the scope of my testimony. An agreement is in place that allows EU countries to share Passenger Name Record (PNR) information with the United States. In the wake of the recent terrorist attacks in Paris, EU interior ministers have proposed a Europe-wide plan that would require passengers to provide additional information, which would remain available to terrorism-related investigations for up to five years. The collection and sharing of such data would provide additional confidence that authorities in the EU and the United States will be able to accurately identify returning fighters. There is, however, strong opposition from civil libertarians. Meanwhile, 14 EU countries are setting their own PNR protocols. America's VWP partners clearly share our interests and will look for ways to enhance their own security at the same time.
5. The Electronic System for Travel Authorization (ESTA) is now in place and has recently been enhanced. It offers the rough equivalent of a visa application, and information obtained through ESTA is checked against the terrorism databases, which are managed by the National Counterterrorism Center (NCTC). Matches have been found, preventing

potential terrorists from entering the United States. The question here is, could ESTA be further enhanced?

6. Pre-boarding passenger screening offers a number of possibilities. Computer-Assisted Passenger Pre-Screening (CAPPS) was a program implemented on the recommendation of the White House Commission on Aviation Safety and Security in 1997. Using PNR information, CAPPS reportedly identified nine of the 19 hijackers on 9/11, although by that time the system had been effectively disconnected from the security checkpoint. CAPPS II, an improved version, was abandoned as unworkable. It was replaced by Secure Flight, which relies primarily on matching names with current watch lists.

Israel has historically relied heavily on pre-boarding interviews to screen passengers. The approach, however, is labor-intensive and is more difficult to apply to passenger loads more diverse than those flying on El Al, although in 2001, ICTS, a private security company contracted to interview passengers on U.S.-bound flights using the Israeli approach, correctly identified Richard Reid, the Shoe Bomber, as a person warranting further questioning.

The Transportation Security Administration (TSA) has spent nearly a billion dollars to train and deploy behavioral-detection officers in an effort to identify high-risk passengers, but the approach remains controversial. Many regard behavioral detection as bogus science, although it may have value as a deterrent. The criticism that behavioral techniques have not led to the apprehension of any terrorists is misleading. In fact, none of the security measures in effect at U.S. airports have led to the apprehension of any terrorists here, and insofar as I can recall, only one terrorist was actually intercepted at a checkpoint abroad. A number of new technologies based on detecting subtle physiological responses to questions or images are in development. We still have no “x-ray” for a person’s soul.

Screening programs like TSA’s Automated Targeting System (ATS) aim at flagging those who may pose a higher risk. An alternate strategy is to identify populations of passengers unlikely to pose any risk, thereby allowing security officials to more efficiently focus their efforts. An example is TSA’s Pre-Check program for trusted frequent fliers. It may be possible for U.S. officials to develop algorithms aimed at identifying travelers entering the United States under the VWP who similarly are likely to pose little risk. The NCTC now works with the State Department and Customs and Border Protection (CBP) to establish screening rules that narrow the screeners’ field of view so that they can concentrate on those they should be most worried about.

7. Pre-clearance procedures are being extended to a number of foreign airports. These allow passengers to complete immigration and customs formalities before boarding, but they also provide opportunities for interviews and behavioral observation.

8. Arrival screening and secondary interviews by U.S. Immigration and Customs Enforcement (ICE) and CBP offer the final line of defense before entry into the United States. It has already been recommended by a number of intelligence practitioners and experts that both agencies expand and enhance their intelligence capabilities.⁹

If all else fails, domestic intelligence efforts, which have already detected terrorist plots by foreigners coming here intending to carry out attacks, may thwart future terrorist plots. Arriving terrorists would still have to acquire weapons or explosives, which would increase their risks of exposure.

I, personally, have not done any research to determine precisely how each of these lines of defense might be improved. No doubt, some of the elements mentioned are already being examined by those in government, but from the perspective of congressional oversight, it is worth asking whether such examinations are in fact occurring. The challenge will be to integrate them into a national and international strategy aimed at intercepting foreign fighters before they enter the United States and before they return to VWP as well as non-VWP countries

The VWP offers considerable commercial, diplomatic, and cultural benefits. Abandoning the program could overstretch consular office resources and would not necessarily offer improved security. In fiscal year 2012, nearly 19 million people entered the United States under the VWP; in FY 2013, approximately 11 million residents of non-VWP countries applied to enter the United States on non-immigrant visas, of which 9 million were approved and 2 million were refused entry.¹⁰ The application and review process requires extensive documentation by the applicant and extensive investigation by U.S. authorities, including an in-person interview with a consular official. Abandoning the VWP would more than double the current workload. The VWP is not perfect, but neither are non-VWP procedures. The objective should be a level of security higher than the level we had before the VWP was initiated.

The conflicts in Syria and Iraq will continue for the foreseeable future. We will be dealing with their effluent for many years. It is therefore incumbent upon us to develop effective means for preventing the spillover of terrorist violence.

⁹ Jenkins, Liepman, and Willis, *Identifying the Enemies Among Us*; and Business Executives for National Security, *Domestic Security: Confronting a Changing Threat to Ensure Public Safety and civil Liberties*.

¹⁰ U.S. State Department, "Worldwide NIV [Non-Immigrant Visa] Workload by Visa Category FY 2013," 2013 (<http://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVWorkload/FY2013NIVWorkloadbyVisaCategory.pdf>). See also Alison Siskin, *Visa Waiver Program*, Washington, D.C.: Congressional Research Service, February 12, 2014.

TESTIMONY

OF

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U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE

**THE SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS**

ON

**“VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL
SECURITY”**

MARCH 12, 2015

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to testify on behalf of the Department of Homeland Security (DHS) on the Visa Waiver Program (VWP).

The VWP permits nationals from 38 countries to travel to the United States for business or tourism without a visa for up to 90 days, provided they meet certain requirements and provide us with information we need for our security. The VWP enables more than twenty million of these travelers to travel without visas to the United States each year, if they receive authorization to do so after being screened against terrorist, criminal, and immigrant databases. In exchange for participation in the VWP, countries must adhere to stringent security cooperation standards that are not typical of other nations. Additionally, DHS itself maintains several layers of security to identify any possible risks, including rigorous vetting by Customs and Border Protection (CBP) for all travelers flying into and out of the United States, including those traveling under the auspices of the VWP. CBP serves as the frontline in defending America's borders from terrorism and protects our economic security by facilitating lawful international travel and trade. Not only does the VWP promote legitimate trade and travel it also promotes international travel security initiatives and enhances law enforcement and security cooperation with foreign governments. We will elaborate on the evolution of the VWP and the security benefits that it provides throughout this hearing.

Background

Congress first authorized the VWP as a pilot program in 1986 to facilitate low-risk travel to the United States, boost international trade and cultural links, and promote more efficient use of consular resources. Since the program's inception, Congress and the Executive Branch have worked together to implement a number of security enhancements. Over time the U.S. Government put new requirements in place to tighten passport security standards and increase the frequency with which the U.S. Government carries out assessments of countries' compliance with VWP security standards. The VWP has evolved into an important tool for increasing security standards, advancing information sharing, strengthening international partnerships, and facilitating legitimate trade and travel to the United States.

The Secure Travel and Counterterrorism Partnership Act of 2007, which was enacted as part of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (the "9/11 Act"), 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 that they may pose to the security or welfare of the United States and its citizens. In addition, the 9/11 Act mandated more robust information sharing between the United States and its VWP partners. Since the enactment of the 9/11 Act, DHS and its partner agencies have implemented those new requirements.

Rigorous Travel Screening

Independent from the security partnerships strengthened through the VWP, DHS retains strong mechanisms for vetting any individuals traveling under the program. CBP operates the Electronic System for Travel Authorization (ESTA),¹ a web-based system through which eligible individuals traveling under the VWP must apply for travel authorization prior to boarding an aircraft destined for the United States. Through ESTA, CBP conducts enhanced vetting of VWP applicants in advance of travel to the United States in order to assess whether they are eligible to travel under the VWP or could pose a national security risk or public safety threat. Through interagency information sharing agreements, CBP provides other U.S. Government agencies ESTA application data for law enforcement and administrative purposes to help assess risk and make a determination about an alien's eligibility to travel under the VWP without a visa. Additionally, CBP requires air carriers to verify that VWP travelers have a valid authorization before boarding an aircraft bound for the United States.

ESTA has been a highly effective security and vetting tool that has enabled DHS to deny travel 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. Since ESTA's inception in August 2008, CBP has approved over 80 million ESTA applications and has denied over 4,300 ESTA applications as a result of vetting against the U.S. Government's known/suspected terrorist watchlist. During that same period of time, CBP has also denied over 35,000 ESTA applications for individuals who applied for an ESTA using a passport that had been reported as lost or stolen. ESTA applications are also subject to continuous re-vetting, which means that even though an applicant has an approved authorization for travel, that authorization is continuously reviewed throughout its validity period for new derogatory information and is subject to further review and subsequent denial if necessary.

In response to increasing concerns regarding foreign fighters attempting to enter the United States through the VWP, DHS strengthened the security of the program through enhancements to ESTA. These improvements are designed to address the current foreign fighter threat, and provide an additional layer of security for the VWP. DHS determined that these ESTA enhancements would improve the Department's ability to screen prospective VWP travelers and more accurately and effectively identify those who pose a security risk to the United States. In addition, these enhancements to ESTA help the Department facilitate adjudication of ESTA applications. By requiring ESTA applicants to provide additional information, DHS can more precisely identify ESTA applicants who may be known or suspected terrorists. These enhancements also reduce the number of inconclusive matches that would previously have resulted in an ESTA denial.

¹ ESTA is not required for citizens of countries under other visa exempt authority, such as Canada. Citizens of countries under visa exempt authority entering the U.S. via air and sea are subjected to CBP's vetting and inspection processes prior to their departure for the United States and inspection prior to admission. In the land environment, they are subjected to CBP processing upon arrival at a U.S. port of entry.

No single ESTA data element or security solution will completely address the challenge of preventing *mala fide* travel to the United States. It is the combined totality of ESTA alongside other DHS programs that forms our layered approach to strengthen security and help the U.S. Government address evolving threats. These layers of security are in place for visa holders as well as VWP travelers.

DHS vets travelers at several points along the travel continuum:

- During the travel planning phase, when a traveler seeks a visa or ESTA;
- Pre-departure, when a traveler seeks to board a commercial carrier or vessel, via collection and analysis of travel data (API/PNR) and liaison partnerships focused on travel security through the Immigration Advisory Program teams in certain VWP countries;
- Upon arrival at a port of entry, when a traveler seeks admission into the United States, including arrival processing programs such as the Counterterrorism Response (CTR) protocols;
- Partnerships with the Terrorist Screening Center (TSC), the National Counter Terrorism Center (NCTC), Immigration and Customs Enforcement (ICE), and the Federal Bureau of Investigation (FBI) and National Joint Terrorism Task Force (NJTTF) augment the screening process throughout;
- During the period of stay in the United States, when a non-U.S. person travels by air within the United States; and
- Upon departure, when a traveler leaves the United States.

In addition, DHS relies on domestic and international criminal records (e.g., investigative case files domestically, and INTERPOL notices internationally) to identify potential criminal movements. Moreover, DHS, through the Transportation Security Administration (TSA) as well as CBP, implements rigorous physical security requirements in the form of airport checkpoint and airline security standards, as well as through physical detection methodologies (e.g., drug sniffing canines) at ports of entry. DHS, including the U.S. Coast Guard, cooperates with commercial carriers and vessels to also review information about travelers, including their identity and travel documents, prior to arrival at a U.S. port of entry.

Thorough and Regular Reviews of VWP Countries

DHS—in cooperation with other departments and agencies—conducts intensive reviews of VWP countries focusing on five core areas: counterterrorism, law enforcement, border security, immigration and travel document security. These reviews take place at least once every two years and sometimes annually, last six to nine months, and incorporate participation from the Department of State, Department of Justice, and the Intelligence Community. Often they include site visits to the VWP country being reviewed as well. Whenever DHS identifies any recommendations for improvement or a specific remedial action, DHS follows up to ensure changes are carried out. In between the formal review cycles, DHS regularly monitors security, law enforcement, and immigration enforcement issues in all VWP countries to ensure continuing compliance with the program requirements.

Here are several unclassified examples of changes made by other countries as a result of DHS's intensive reviews:

- Prior to a VWP designation, DHS required one candidate country both to change its passport numbering system and to agree to accept the more rapid return of individuals with final orders of removals from the United States.
- DHS secured from another country new legislation on the reporting of lost and stolen passports to its domestic authorities and obtained a series of commitments to improve information sharing among its domestic law enforcement agencies.
- As recently as 2014, DHS placed one country on provisional VWP status due to issues related to passport fraud. During the period of provisional status, DHS is requiring the country in question to take certain actions to address concerns with passport fraud.

Information Sharing Requirements

Turning to other security measures required of VWP countries, the 9/11 Act mandates that VWP countries enter into agreements with the United States to share information regarding whether citizens and nationals of those countries represent a threat to the security or welfare of the United States and its citizens, as well as to share information on lost and stolen passports. DHS, with the support of our interagency partners, has determined that the preferred mechanisms to meet the information sharing requirements with VWP countries include: a bilateral Homeland Security Presidential Directive-6 (HSPD-6) Arrangement to exchange terrorism screening information; a bilateral Preventing and Combating Serious Crime (PCSC) Agreement to exchange information on possible perpetrators of serious crimes; and an exchange of diplomatic notes memorializing the intent to report lost and stolen passport data according to INTERPOL's standards.

When certain longstanding cooperation between the United States and a VWP country demonstrates an equivalent or superior level of information sharing, the U.S. Government may deem that to be a sufficient substitute for the above mentioned agreements. Without the leverage the VWP provides, the U.S. Government likely would not receive the same amount and quality of information. The information that VWP countries provide makes DHS pre-departure vetting, such as ESTA applications, even more valuable.

- All VWP countries have concluded an exchange of diplomatic notes with the United States confirming their intent to report lost and stolen passport data to the United States via INTERPOL or another acceptable mechanism. Furthermore, VWP countries have provided more than 70 percent of the total records in INTERPOL's Stolen and Lost Travel Document Database. DHS screens every ESTA application and every arriving traveler against this database. DHS has also seen a sharp decline in border encounters of lost and stolen travel documents after having mandated these provisions. This is particularly important in the context of the Syria and Iraq conflicts where terrorist groups may seek to obtain such documents for travel.

- PCSC Agreements establish the framework for a 21st century method of law enforcement cooperation by providing each party with electronic access to the fingerprint databases of the other party on a case-by-case basis. All VWP countries have signed a PCSC Agreement or its equivalent. The first exchanges of biometric information under the PCSC Agreements took place with a select group of countries in January 2012. Since then, DHS and the Department of Justice have begun exchanging information through an interim mechanism with several pilot countries. Through the first exchanges of data, DHS and the Department of Justice received actionable information that was previously unknown to U.S. law enforcement authorities.
- The Terrorist Screening Center implements HSPD-6 arrangements on behalf of the U.S. Government. Information provided through the HSPD-6 arrangements has enhanced DHS's traveler screening capabilities and bolstered the Department's ability to prevent known and suspected terrorists from traveling to the United States.

Information the United States provides VWP member countries under these agreements also helps those governments identify and disrupt criminal and terrorist travel to, from, and within their own borders.

Evolution of the VWP

Let us now turn to additional ways that DHS is addressing the concern that foreign terrorist fighters who are citizens of VWP countries might attempt to travel to the United States under the VWP. Even with layers of security, including pre-travel ESTA vetting of all prospective VWP travelers and the regular sharing of watchlists and other information on known and suspected terrorists with VWP countries, DHS is driving the program to respond even better to emerging threats and thus become even more secure.

As noted above, DHS has already taken administrative action to strengthen the security protections of the VWP by enhancing ESTA data collection, changes that went into effect on November 3, 2014. The acceptance of these ESTA enhancements by VWP countries, in particular our European partners, is both an indication of the seriousness with which they take the threat of returning terrorist fighters and a testament to the global security partnership the VWP promotes. As has been widely reported in the media, in recent months several European and other countries have also taken steps to strengthen their abilities to detect and prevent the travel of terrorist fighters. Furthermore, the European Union as a whole is taking steps to address this new threat. DHS has shared lessons learned and discussed some of these practical steps with its international partners. DHS continues to review the security safeguards of the VWP and is prepared to consider both administrative and legislative steps that might achieve our goals of even stronger security for the United States and increased security partnerships with VWP countries, while maintaining the economic benefits of the VWP. We will continue to partner with Congress to explore ways to enhance program's security requirements while promoting secure travel to the United States via the VWP.

Conclusion

DHS uses mutually reinforcing layers at all points in the travel continuum to secure VWP travel to the United States. The DHS security posture is flexible, and will continue to evolve as threats warrant and environments change. The VWP and all its elements are a vital part of a robust travel security system. They include the ESTA requirement; the mandatory bilateral information sharing on potential terrorists and criminals; sharing of lost and stolen passport data; thorough inspections of VWP countries' airport, border control, and identity and travel document security standards; and vigorous, ongoing monitoring of changing conditions in VWP countries.

We testify before you today as the United States and many of its VWP partners consider and respond to the new and evolving threat posed to us by foreign fighters traveling to or from the battlefield. DHS and all VWP countries have a joint stake in identifying foreign fighters due to common security interests. DHS will continue to work with our interagency partners, international partners, and industry partners to address emerging threats and identify potential security vulnerabilities. DHS is committed to facilitating legitimate trade and travel while maintaining the highest standards of security and border protection.

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to appear before you today and for your consideration of this important topic. It would be our pleasure to address any questions that you might have.



DEPARTMENT OF STATE

**WRITTEN STATEMENT
OF
EDWARD J. RAMOTOWSKI**

**DEPUTY ASSISTANT SECRETARY
FOR VISA SERVICES
DEPARTMENT OF STATE**

**BEFORE THE
UNITED STATES SENATE
HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE**

**HEARING
ON
THE VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL
SECURITY
MARCH 12, 2015**

Good morning Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. I thank you for calling this hearing today and for your unwavering commitment to the Department's twofold mission to keep America safe while welcoming legitimate visitors who grow the U.S. economy and create jobs. The Visa Waiver Program is a vital part of our strategy to safely and effectively achieve both of these national interests, and I thank you for the opportunity to elaborate how this important program enhances the security of the United States.

State's Role in the Visa Waiver Program Structure

DHS is the lead agency for determining a country's eligibility for the Visa Waiver Program (VWP). Working in close cooperation with DHS, the Department of State's role in the process is to nominate countries for participation once they have met all the statutory requirements of the program. We will not nominate any country for VWP membership until all the conditions of U.S. law have been fulfilled. The Department is also usually the agency a candidate country reaches out to first in order to express interest in VWP, often through one of our missions abroad. We explain the VWP requirements that must be met before a country can be considered and facilitate communication between the host country and DHS. We play this role throughout the nomination and assessment process.

Once a country is in the VWP, its continued participation depends upon successful completion of a DHS-led review, done at least once every two years, of the security of its travel documents, its border controls, immigration and nationality laws, law enforcement policies and practices, other law enforcement, immigration, and national security concerns, as well as how wider political, social, and economic conditions impact the security environment.

Pushing Borders Out

Since 9/11, a risk-based approach grounded on greater and more effective domestic and international information sharing has become a key principle of visa processing policy. This approach enables the United States to channel more resources toward the prevention of high-risk travel while simultaneously increasing the number of legitimate visitors arriving by land, air, and sea. The VWP operates in concert with the U.S. Government's interagency watchlisting and screening enterprise, our increasingly automated and secure visa adjudication process, and DHS's multiple screening initiatives to enhance our national security.

The Electronic System for Travel Authorization (ESTA) for VWP travelers, which is administered by DHS, is an example of how U.S. agencies effectively use information collected from visitors in advance of travel to prevent terrorists and serious criminals from boarding a flight headed to the United States. Intending VWP travelers must first receive approval through ESTA. This involves filling out an online questionnaire with biographic information and paying an administrative fee, after which, similar to a visa application, ESTA screens against interagency databases for watchlisted individuals. If there is a positive match, DHS may deny the authorization, meaning the individual cannot utilize the VWP to board a U.S.-bound air or sea carrier. An individual denied an ESTA authorization must apply and be issued a U.S. visa in order to enter the United States. State and DHS recently collaborated on an enhanced list of questions for VWP travelers through the ESTA program. These questions will help to identify possible high-risk individuals attempting to travel through the VWP regime, without introducing an onerous administrative burden or privacy infringement on a potential traveler.

Individuals denied an ESTA authorization are not permitted to travel to the United States under the VWP and are referred to the appropriate U.S. Embassy or Consulate for visa screening. Should the would-be traveler wish to pursue travel to the United States by applying for a U.S. visa, he or she would undergo the comprehensive biographic, biometric, and interagency screening applied to all U.S. visa applicants. Consular officers review the results of Consular Lookout and Support System namechecks, 10-print fingerprints, facial recognition checks, Kingfisher Expansion counterterrorism checks, and, as it deploys around the world, DHS PATRIOT vetting, which will further improve the extensive information-sharing agreement that our two departments already manage.

Should the results of any of these checks or a consular officer determination so warrant, an interagency Security Advisory Opinion request would be transmitted to Washington and further action on the visa application would be suspended pending resolution of the particular concern.

This process ensures that a would-be traveler with a VWP-eligible passport cannot avoid vigorous interagency counterterrorism screening; it allows us to focus our scrutiny where it is most warranted; and it fosters the most efficient use of our homeland security resources.

Layered Security and the Added Value of International Data Sharing

The Department embraces a layered approach to border security screening. The data we obtain through information-sharing agreements required by the VWP is a key element in this approach. In the Implementing Recommendations of the 9/11 Commission Act of 2007 Congress amended the primary VWP provisions of the Immigration and Nationality Act to require several enhanced security measures for participating countries, including more robust information sharing between the United States and its VWP partners. This is achieved through the completion of both a Preventing and Combating Serious Crime (PCSC) Agreement and a Homeland Security Presidential Directive-6 (HSPD-6) arrangement or their equivalent instruments with our VWP partner nations.

Under HSPD-6, issued in 2003, the U.S. Government was tasked with creating a plan to engage foreign partners, beginning with those in the VWP, to obtain information on known or suspected terrorists. The plan, submitted to the President in 2005, envisioned the Department engaging foreign partners to exchange terrorism screening information, and assigned the Terrorist Screening Center (TSC) to implement these agreements. In 2009, a National Security Staff-led Transborder Security Interagency Policy Committee reaffirmed that PCSC and HSPD-6 agreements are appropriate vehicles for satisfying the statutory information-sharing requirements in the 9/11 Act. Section 711 of the Act requires, among other actions, that the United States strengthen the security of the VWP by adding requirements that partner nations actively cooperate with the United States to prevent terrorist travel, including sharing counterterrorism and law enforcement information. To date, the U.S. Government has negotiated over 40 agreements with foreign partners to exchange terrorist screening information through the HSPD-6 model.

The Department coordinates closely with DHS on information sharing and border security programs with VWP partners, in order to provide our foreign partners the most comprehensive package to screen and interdict terrorist travel at the borders and ports. With our interagency counterparts, the Department has also engaged numerous VWP countries to better identify and counter foreign terrorist fighter threats.

Countering Violent Extremism with our International Partners

In its countering violent extremism (CVE) initiatives and programming abroad, the State Department focuses on and supports counter-radicalization, counter-recruitment and counter-messaging. In its multilateral CVE initiatives, in particular, State collaborates with DHS to both (1) design capacity building

activities, and (2) integrate DHS 's domestic CVE expertise and experience into those capacity building activities so that the expertise and experience are shared with international partners.

Conclusion

The Department recognizes that the United States' long-term interests and security are served by continuing the flow of commerce and ideas that are the foundations of our prosperity and security. We also recognize the need to ensure that this flow does not include anyone who seeks to do us harm. The Visa Waiver Program is the key to protecting both of these vital pillars of our national security, enabling ever-increasing numbers of visitors to experience U.S. culture and contribute to our economy, while identifying those who pose a threat to our nation before they seek to board a plane. We have built strong partnerships throughout the interagency and with our international partners to ensure the real-time flow of information necessary for keeping our borders secure.

This concludes my testimony today. I will be pleased to take your questions.