

**NATIONAL SECURITY AND LAW ENFORCEMENT:  
BREAKING THE NEW VISA WAIVER LAW TO  
APPEASE IRAN**

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**HEARING**

BEFORE THE

**COMMITTEE ON HOMELAND SECURITY**

**HOUSE OF REPRESENTATIVES**

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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## NATIONAL SECURITY AND LAW ENFORCEMENT: BREAKING THE NEW VISA WAIVER LAW TO APPEASE IRAN

Wednesday, February 10, 2016

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The committee met, pursuant to call, at 11:10 a.m., in Room 311, Cannon House Office Building, Hon. Michael T. McCaul [Chairman of the committee] presiding.

Present: Representatives McCaul, King, Miller, Duncan, Clawson, Katko, Hurd, Carter, Walker, Loudermilk, Ratcliffe, Donovan, Thompson, Jackson Lee, Richmond, Keating, Payne, Watson Coleman, and Rice.

Chairman McCAUL. The Committee on Homeland Security will come to order. The committee is meeting today to examine the administration's flawed implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act. I now recognize myself for an opening statement.

We are holding this hearing today because Congress is confronted with a dilemma, which has grave implications for our National security and for our democratic process. In December, the President signed important measures into law to improve counterterrorism screening of foreign travelers coming into the United States.

These enhancements were urgently needed in the wake of the Paris attacks and in light of the high terror threat environment. But now the President has decided that he is going to break this law.

He plans to do so, in part, to accommodate the world's leading state sponsor of terror, Iran. I believe this decision could have serious consequences for our security and, perhaps, more importantly, far-reaching consequences for our democracy.

This legislation at issue is H.R. 158, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. It was authorized by this committee's Vice Chair, Mrs. Miller, and it implements several major recommendations from the committee's bipartisan Task Force on Combating Terrorist and Foreign Fighter Travel.

The bill passed the House overwhelmingly, 407–19, and it was included in the year-end spending bill signed by the President. This was one of the most significant pieces of security legislation Congress considered last year.

It tightens security checks overseas and makes it harder for terrorists to exploit the Visa Waiver Program to get into the United States. The threat is real. For instance, more than 6,000 Westerners have gone to fight in Syria and Iraq, and many of them are from Visa Waiver Program countries.

This means, they can enter the United States more quickly and easily than other travelers. Nearly 2,000 of these individuals have already come back from the battlefield. Accordingly, the new law sends a clear message to Visa Waiver Program citizens. If you have recently visited Syria, Iraq, Iran, or Sudan, you must go through additional screening before coming to the United States.

The law requires these individuals to get a regular visa, which includes an in-person interview and the submission of their fingerprints. Congress included specific exceptions, including allowing individuals to still travel visa-free to America, if their reason for being in a terrorist hotspot was for military service or official Government business.

But during bipartisan negotiations over the bill, the administration asked for other exceptions. They wanted to let individuals skip the new security procedures if they had traveled to these countries for journalistic, humanitarian, cultural, or business purposes.

Congress explicitly rejected these exceptions, and they did not appear in the final text of the bill signed into law. It was clear that such broad loopholes would undermine the purpose of the law and make it difficult and costly to implement.

Many of us are also aware that jihadists commonly use excuses like humanitarian assistance to disguise their actual reasons for traveling to a terrorist safe haven. In fact, earlier this week, 7 people were arrested in Spain for supplying arms to ISIS, disguised as humanitarian aid workers.

However, Congress did agree to provide a narrow waiver to allow a Visa Waiver Program traveler to avoid the extra step of visiting a U.S. Embassy if it was, "in the law enforcement or National security interests of the United States."

To be clear, this waiver was intended to apply to special circumstances, such as when a foreign traveler is being investigated or monitored. The waiver would ensure that those activities are not disrupted and that a suspect is not tipped off. I believe that the administration clearly understood this. But then Iran weighed in.

In December, the Iranian regime complained to the Obama administration that the law would hurt their economy by deterring European business travelers from visiting. Why? Because doing so would mean they had to go through additional security steps the next time they came to America.

Iran even argued that this was a violation of the nuclear deal. In a rush to appease them, Secretary Kerry wrote a letter declaring that the law could be waived, "So as not to interfere with legitimate business interests of Iran."

Let me be clear. Nowhere does the law include this authority. In fact, Congress explicitly rejected the waivers requested by the White House. I joined other Congressional leaders in writing to Secretary Kerry to remind him what the law actually says.

Yet, last month, the administration announced it would be able to exempt several categories of individuals from these require-

ments. In fact, they claimed that Visa Waiver Program citizens who traveled to terrorist hotspots for humanitarian or journalistic purposes, or to Iran for business purposes, could be exempted from the new security process.

Once again, this law does not include such exemptions. They were proposed by the administration. They were discussed, but they were rejected by Congress. The administration even agreed to the final text and publicly supported the bill.

I cannot overstate how serious I believe this issue is, as a separate, but equal, branch of the Government, the branch of Government that makes the law. The Executive should implement that law according to the will and intent of the Congress.

The President's moving forward with an illegal implementation of the law that he signed only weeks ago, breaching the trust between our 2 branches of Government and potentially putting our Nation's security at risk.

These requirements were imposed for a reason, to ensure individuals who have recently been in terrorist sanctuaries do not pose a threat to our country. The law does not forbid Visa Waiver Program travelers from coming to America. It simply adds an additional layer of security.

But the administration's false reading of the law has Congress and the American people wondering, "How much further will we bend backwards for Iran?" We have paid them ransom to release detained Americans. We freed up billions of dollars for their rogue regime. Now, the President is ignoring our own laws so we don't interfere with Iran's economic growth.

Today you will hear our witnesses say these exceptions will only be used on a case-by-case basis. But you are not allowed to break the law on a case-by-case basis. When you are the President, you are not supposed to break it at all, and certainly not for a state sponsor of terror with American blood on its hands.

[The statement of Chairman McCaul follows:]

STATEMENT OF CHAIRMAN MICHAEL T. MCCAUL

FEBRUARY 10, 2016

We are holding this hearing today because Congress is confronted with a dilemma which has grave implications for our security and for our democratic process.

In December, the President signed important measures into law to improve counterterrorism screening of foreign travelers coming into the United States.

These enhancements were urgently needed in the wake of the Paris attacks and in light of the high terror threat environment.

But now the President has decided he is going to break this law—and he plans to do so, in part, to accommodate the world's leading state sponsor of terror, Iran.

I believe this decision could have serious consequences for our security and—perhaps more importantly—far-reaching consequences for our democracy.

The legislation at issue is H.R. 158, the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015." It was authored by this committee's Vice Chair, Ms. Miller, and it implements several major recommendations from the Committee's bipartisan Task Force on Combating Terrorist & Foreign Fighter Travel.

The bill passed the House overwhelmingly, 407–19, and it was included in the year-end spending bill signed by President Obama. This was one of the most significant pieces of security legislation Congress considered last year—it tightens security checks overseas and makes it harder for terrorists to exploit the Visa Waiver Program to get into America.

The threat is real. For instance, more than 6,000 Westerners have gone to fight in Syria and Iraq, and many of them are from VWP countries. This means they can

enter the United States more quickly and easily than other travelers. Nearly 2,000 of these individuals have already come back from the battlefield.

Accordingly, the new law sends a clear message to VWP citizens: If you have recently visited Syria, Iraq, Iran, or Sudan, you must go through additional screening before coming to the United States.

The law requires these individuals to get a regular visa, which includes an in-person interview and the submission of their fingerprints.

Congress included specific exceptions, including allowing individuals to still travel visa-free to America if their reason for being in a terrorist hotspot was for military service or official Government business.

But during bipartisan negotiations over the bill, the administration asked for other exceptions.

They wanted to let individuals skip the new security procedures if they had traveled to these countries for journalistic, humanitarian, cultural, or business purposes.

Congress explicitly rejected these exceptions, and they did not appear in the final text of the bill.

It was clear such broad loopholes would undermine the purpose of the law and make it difficult and costly to implement. Many of us are also aware that jihadists commonly use excuses like humanitarian assistance to disguise their actual reasons for traveling to a terrorist safe haven. In fact, earlier this week 7 people were arrested in Spain for supplying arms to ISIS disguised as humanitarian aid.

However, Congress did agree to provide a narrow waiver to allow a VWP traveler to avoid the extra step of visiting a U.S. Embassy if it was, “in the law enforcement or National security interests of the United States.”

To be clear, this waiver was intended to apply to special circumstances, such as when a foreign traveler is being investigated or monitored. The waiver would ensure that those activities are not disrupted—and that a suspect is not tipped off.

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But then Iran weighed in. In December, the Iranian regime complained to the Obama administration that the law would hurt their economy by deterring European business travelers from visiting. Why? Because doing so would mean they had to go through additional security steps next time they came to America.

Iran even argued that this was a violation of the nuclear deal. And in a rush to appease them, Secretary Kerry wrote a letter declaring that the law could be waived, “so as not to interfere with legitimate business interests of Iran.”

Let me be clear: Nowhere does the law include this authority. In fact, Congress explicitly rejected the waivers requested by the White House. I joined other Congressional leaders in writing to Secretary Kerry to remind him what the law actually said.

Yet last month the administration announced it would be able to exempt several categories of individuals from the requirements. In fact, they claimed VWP citizens who traveled to terrorist hotspots for humanitarian or journalistic purposes—or to Iran for business purposes—could be exempted from the new security process.

Once again: This law does not include such exemptions.

They were proposed by the administration, discussed, and rejected. The administration even agreed to the final text without them and publicly supported the bill.

I cannot overstate how serious this issue has now become. The President is moving forward with an illegal implementation of a law he signed only weeks ago, breaching the trust between our 2 branches of Government and potentially putting our Nation’s security at risk.

These requirements were imposed for a reason: To ensure individuals who have recently been in terrorist sanctuaries do not pose a threat to our country. The law does not forbid VWP travelers from coming to America—it simply adds an additional layer of security.

But the administration’s false reading of the law has Congress and the American people wondering, “How much further will we bend backwards for Iran?”

We have paid them ransom to release detained Americans, we have freed up billions of dollars for their rogue regime, and now the President is ignoring our own laws so we don’t “interfere” with Iran’s economic growth.

Today you will hear our witnesses say these exceptions will only be used on a “case-by-case” basis.

But you’re not allowed to break the law “case-by-case.” When you’re the President, you’re not supposed to break it at all—and certainly not for a state sponsor of terror with American blood on its hands.



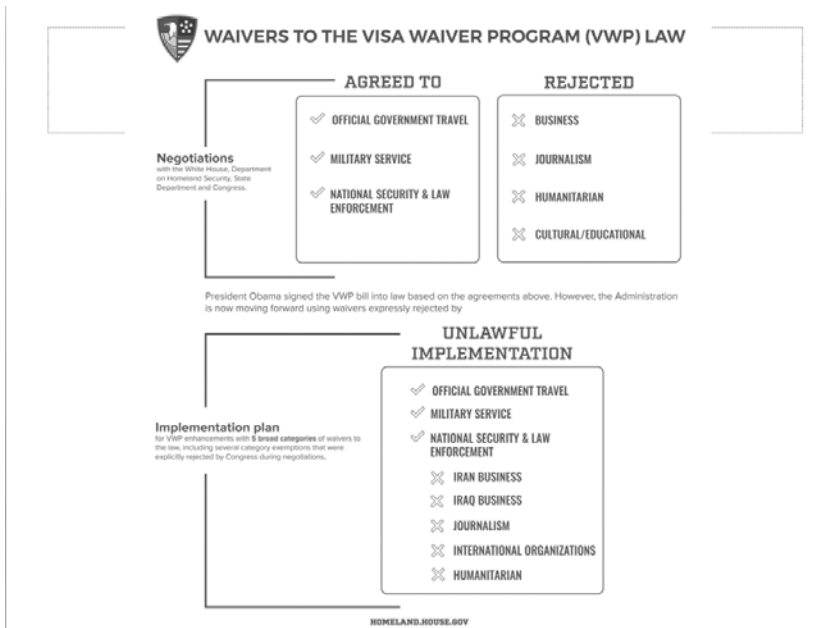
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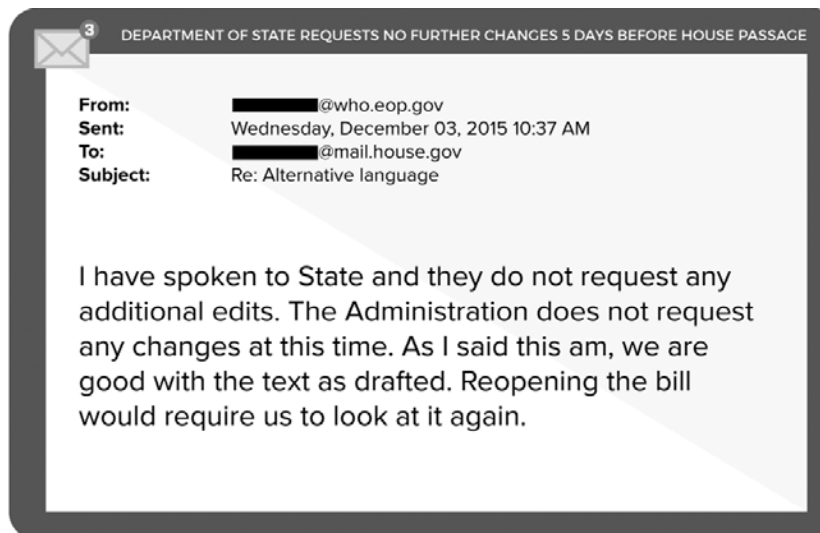
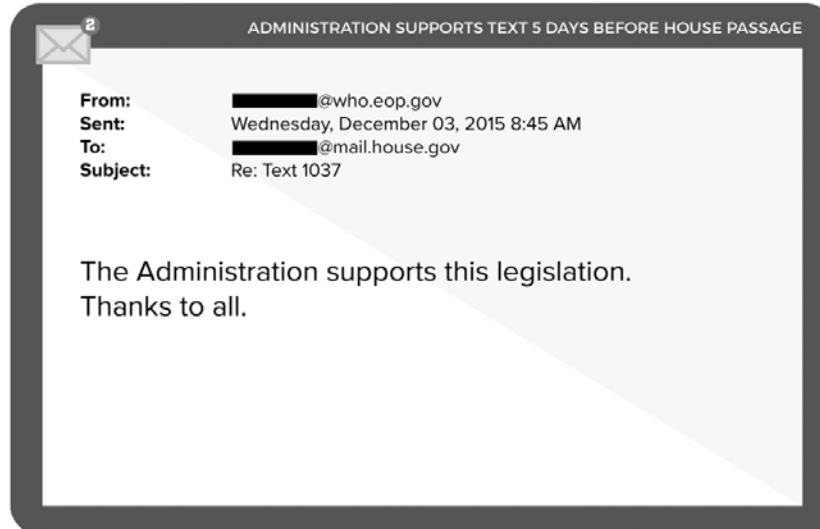
DHS SENDS PROPOSED EXCEPTIONS 7 DAYS BEFORE HOUSE PASSAGE

**From:** ██████████@HQ.DHS.GOV  
**Sent:** Tuesday, December 01, 2015 8:14 PM  
**To:** ██████████@mail.house.gov  
**Subject:** Re: Alternative language

Perhaps you will consider this.

(a) except that documented travel for humanitarian purposes, emergency family-based travel, incidental transit through either country, documented travel for business purposes, documented travel for cultural or educational purposes, travel for journalistic purposes or travel in an official capacity shall not be considered under (i).





Chairman McCAUL. The Chair now recognizes the Ranking Member of the committee, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman, for holding today's hearing.

Commissioner Kerlikowske and Ms. Johnson, thank you, also, for appearing today.

This committee has a long-standing, bipartisan interest in strengthening the Visa Waiver Program. In 2007, with the enactment of legislation I authored the implementation—Implementing Recommendations of the 9/11 Commission Act.

Congress required individualized security checks of travelers participating in a Visa Waiver Program. The program was established

to—is known today as Electronic System for Travel Authorization, or ESTA, program.

Under ESTA, citizens are eligible nationals of Visa Waiver Program countries, must obtain an Electronic Travel Authorization prior to boarding a plane in the United States. I have been pleased to see DHS, over the years, take timely action to adjust aspects of the ESTA program, in response to the demands of the ever-changing threat landscape.

Yet, I came into this Congress, like many of my Republican colleagues, seeing the need for more reform to the Visa Waiver Program to bolster its security. That is why I co-sponsored H.R. 158, the Visa Waiver Improvement and Terrorist Travel Prevention Act, authored by Representative Candice Miller, the Chairman of our Border Security subcommittee.

The Fiscal Year 2016 Consolidated Appropriations Act, better known as the Omnibus, included the language from H.R. 158, requiring changes to the Visa Waiver Program. This comprehensive legislation, which was signed into law by the President on December 18, seeks to strengthen passport security requirements, enhance information sharing, and improve fraud detection.

Importantly, it also requires any Visa Waiver country that fails to screen passports against INTERPOL's criminal and terrorism databases, to be terminated from the program. The provision that has garnered the most attention and is the focus of today's hearing, involves the changes in the eligibility for visa-free travel for some travelers from Visa Waiver countries.

Under this new law, most individuals who have visited Iraq, Iran, Syria, and Sudan, in the last 5 years, or who hold dual citizenship with 1 of these 4 countries, would be ineligible for visa-free travel to the United States.

This provision was central to the bipartisan agreement reached between Congress and the White House. During the negotiations, the restriction on dual citizens of Iran, Iraq, Syria, and Sudan, and travel history provisions that the Republicans were advancing, were sticking points.

I was pleased when we were able to reach common ground on a carve-out for certain individuals who traveled to the 4 countries for diplomatic or military service. Reaching agreement for other categories of travelers, including humanitarian aid workers and journalists proved to be elusive.

I appreciate that all involved came together, in the interest of Homeland Security, to strike a compromise that the White House, House Republican leadership, and House Democratic leadership could accept.

In the end, those of us involved in the negotiations understood that enacted would mean that, in most cases, travelers who triggered the citizenship or travel history limitation would have to go through the standard visa application process at a U.S. embassy or consulate.

I was pleased that the law did allow the DHS Secretary to exercise discretion, with respect to these limitations, when doing so was in the law enforcement or National security interests of the United States.

It is important that the Secretary be allowed to exercise discretion, with respect to certain individuals, on a case-by-case basis. Within days of enactment of this law, questions emerged about the implications of the Visa Waiver Program security reforms on the deal that President Obama was able to reach to prevent Iran from becoming a nuclear state.

At the time, I was taken aback, since it was hard to see how this Homeland Security bill had any bearing on the terms of the Iran deal. The issuance of a joint press release by the Departments of Homeland Security and State, on January 21, the day the Visa Waiver Program changes were to begin, did little to squelch those questions about the linkage.

The press release, it was laid out, the administration's plan to exercise its waiver authority, identified 5 categories of travelers who could receive waivers from eligibility limitations set forth in the new law.

One category specifically identified was individuals who travel to Iran for legitimate business purposes after July 14, 2015, the same date the Iran deal was concluded. It will fall to the witnesses today to explain why we should not think that there is a linkage to the Iran deal, when it announces this category in a press release distributed across the globe.

As someone who supported the granting of waiver authority to the Secretary of Homeland Security, I have questions about the approach and the tack that the administration has taken today.

While Secretary Johnson may plan to consider, on a case-by-case basis, whether to allow visa-free travel for National security purposes, the decision to list categories of travelers that can bypass visa screening at our embassies and consulate was a questionable one.

The administration needs to be prepared to answer questions about its decision to create categories for waivers, including the degree to which intelligence informs the parameters. Additionally, the administration needs to explain why it decided to publish the categories, thereby creating an expectation for people who fall into these categories that they will be able to continue to travel, visa-free, to the United States.

We need to understand, particularly, at a time when we know that there are some crafty, would-be terrorists eager to find new ways to work around security enhancements in the Visa Waiver Program, why the administration has chosen to be so public about how the DHS Secretary may exercise this discretion.

In reviewing the categories, I have some questions about how the DHS Secretary will go about determining the legitimacy of the business-related purposes for travel to Iran. I look forward to hearing testimony from the witnesses about how many travelers might be eligible for the waivers identified in the joint press release and what kind of resources CBP will need to put processes in place to fully adjudicate the anticipated flurry of waiver requests from travelers in these categories.

I think, Mr. Chairman, you see a lot of us have questions.

Chairman MCCAUL. I appreciate that.

Mr. THOMPSON. We look forward to the witnesses to provide some of the answers. With that, I yield back.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

FEBRUARY 10, 2016

This committee has a long-standing, bipartisan interest in strengthening the Visa Waiver Program. In 2007, with the enactment of legislation I authored, the Implementing Recommendations of the 9/11 Commission Act, Congress required individualized security checks of travelers participating in the Visa Waiver Program.

The program that was established is known today as the Electronic System for Travel Authorization or ESTA program. Under ESTA, citizens or eligible nationals of Visa Waiver Program countries must obtain an electronic travel authorization prior to boarding a plane to the United States. I have been pleased to see DHS, over the years, take timely action to adjust aspects of the ESTA program in response to the demands of the ever-changing threat landscape.

Yet, I came into this Congress, like many of my Republican colleagues, seeing the need for more reforms to the VWP program to bolster its security. That is why I co-sponsored H.R. 158, the Visa Waiver Improvement and Terrorist Travel Prevention Act, authored by Representative Candice Miller, the Chairman of our Border Security Subcommittee.

The fiscal year 2016 Consolidated Appropriations Act, better known as the Omnibus, included the language from H.R. 158 requiring changes to the Visa Waiver Program. This comprehensive legislation, which was signed into law by the President on December 18, seeks to strengthen passport security requirements, enhance information sharing, and improve fraud detection. Importantly, it also requires any visa waiver country that fails to screen passports against INTERPOL's criminal and terrorism databases to be terminated from the program.

The provision that has garnered the most attention and is the focus of today's hearing involves changes in the eligibility for visa-free for some travelers from VWP countries. Under this new law, most individuals who have visited Iraq, Iran, Syria, and Sudan in the last 5 years or who hold dual citizenship with 1 of these 4 countries would be ineligible for visa-free travel to the United States. This provision was central to the bipartisan agreement reached between Congress and the White House.

During the negotiations, the restrictions on dual citizens of Iran, Iraq, Syria, and Sudan and travel history provisions that the Republicans were advancing were sticking points. I was pleased when we were able to reach common ground on a carve-out for certain individuals who traveled to the 4 countries for diplomatic or military service. Reaching agreement for other categories of travelers, including humanitarian aid workers and journalists, proved to be elusive. I appreciated that all involved came together, in the interest of homeland security, to strike a compromise that the White House, House Republican leadership, and House Democratic leadership could accept.

In the end, those of us involved in the negotiations understood that enactment would mean that, in most cases, travelers who triggered the citizenship or travel history limitation would have to go through the standard visa application process at a U.S. embassy or consulate. I was pleased that the law did allow the DHS Secretary to exercise discretion with respect to these limitations when doing so was "in the law enforcement or National security interests of the United States."

It is important that the Secretary be allowed to exercise discretion with respect to certain individuals, on a case-by-case basis. Within days of enactment of this new law, questions emerged about the implications of the Visa Waiver Program security reforms on the deal that President Obama was able to reach to prevent Iran from becoming a nuclear state.

At the time, I was taken aback since it was hard to see how this homeland security bill had any bearing on the terms of the Iran deal. The issuance of a joint press release by the Departments of Homeland Security and State, on January 21, the day the Visa Waiver Program changes were to begin, did little to squelch those questions about a linkage. The press release, which laid out the administration's plans to exercise its waiver authority, identified 5 categories of travelers who could receive waivers from eligibility limitations set forth in the new law.

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The administration needs to be prepared to answer questions about its decision to create categories for waivers, including the degree to which intelligence informed the parameters. Additionally, the administration needs to explain why it decided to publish the categories—thereby creating an expectation for people who fall into these categories that they will be able to continue to travel visa-free to the United States.

We need to understand, particularly at a time when we know that there are some crafty would-be terrorists eager to find new ways to work around security enhancements in the Visa Waiver Program, why the administration has chosen to be so public about how the DHS Secretary may exercise his discretion. In reviewing the categories, I have some questions about how the DHS Secretary would go about determining the legitimacy of the business-related purposes for travel to Iran.

I look forward to hearing testimony from the witnesses about how many travelers might be eligible for the waivers identified in the joint press release and what kind of resources CBP will need to put processes into place to fully adjudicate the anticipated flurry of waiver requests from travelers in these categories.

Chairman MCCAUL. I thank the Ranking Member for his leadership on this issue, as well.

Other Members are reminded that opening statements may be submitted for the record.

We are pleased to have a distinguished panel of witnesses before us today on this important topic. First, Gil Kerlikowske, was sworn in as commissioner of U.S. Customs and Border Protection in early 2014, taking the helm of the largest Federal law enforcement agency in the United States Government.

He brings 4 decades of law enforcement and drug policy experience to the position. Formerly served 9 years as chief of police for Seattle, Washington. Before, he served as head of CBP—before serving as head of CBP, he led the Office of National Drug Control Policy.

Thank you for being here today.

Next, we have Ms. Hillary Johnson, deputy coordinator for homeland security, screening, and designations in the Bureau of Counterterrorism. Ms. Johnson oversees the designation of foreign terrorist organizations and individuals under the authorities of the Secretary of State, and terrorism screening and interdiction programs.

I want to thank both of you for being here today. I think, given the gravity of the circumstances that we find ourselves here today, I will be administering an oath. If you would both now, please stand and raise your right hand.

[Witnesses sworn.]

Let the record reflect that both witnesses answered in the affirmative. The witnesses' full written statements will appear in the record.

The Chair now recognizes Commissioner Kerlikowske to testify.

**STATEMENT OF R. GIL KERLIKOWSKE, COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. KERLIKOWSKE. Chairman McCaul, Ranking Member Thompson, distinguished Members of the committee, I returned on Sun-

day morning from California, where CBP had an integral role in safeguarding the Super Bowl. I witnessed the numerous aspects of CBP's broad and complex mission all in one place, providing security and surveillance on the ground and from the air, screening cargo and deliveries for weapons and other dangerous items.

CBP has a critical role in securing international travel against the threat of terrorists and their supporters, while facilitating lawful travel and tourism. Every day, we process 1 million travelers.

As you know, before boarding a U.S.-bound flight, most foreign nationals must obtain a non-immigrant visa, issued by a United States embassy or consulate, or the traveler must apply for travel authorization through CBP's ESTA program.

Through ESTA, CBP conducts enhanced vetting of these applicants, in order to assess whether they are eligible to travel and whether they pose a potential risk to the American people. Over the last 15 months, we have worked with the DHS, under Secretary Johnson's leadership, to strengthen the security of the program, through enhancements to ESTA, in order to identify those who may pose a threat to the United States.

We have introduced additional data fields that have increased the ability of CBP and the National Counterterrorism Center to identify applicants with potential connections to terrorism. In addition to these enhancements, this past August, DHS further announced security measures for Visa Waiver Program countries, including increased traveler data collection, analysis, and reporting, the requirement that INTERPOL's lost and stolen travel document database be used, and the required use of electronic passports, which contain additional security features.

On December 18, the President signed into law the Consolidated Appropriations Act of 2016, which includes the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, with some exceptions for official military and Government law.

The law prohibits VWP travel for individuals who have been present, at any time, on or after March 1, 2011, in Iraq, Syria, or countries designated as state sponsors of terrorism, which currently includes Iran and Sudan. It also prohibits VWP travel for the individuals who are dual nationals, as of one of these countries and a VWP country.

Well, we began implementing some of the changes required by the new law very quickly. We have already revoked or cancelled 17,000 ESTA travel authorizations. We have established, in conjunction with our interagency partners, a terrorist travel prevention cell at our National targeting center.

The cell will enhance the Department's efforts to identify and prevent foreign terrorist fighter travel. A subset of that cell's mission will be to scrutinize individual waiver requests on a case-by-case basis that is permitted under the new law.

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

Well, as terrorists change their methods and tactics, and DHS is going to continue to work with our Federal and international partners to counter foreign fighter threats to the homeland.

We will continue to strengthen our travel security programs and systems, enhance our capabilities to secure international air travel against terrorists and others who threaten the safety of the traveling public and the security of our Nation.

Chairman McCaul, Ranking Member Thompson, and Members of the committee, thank you for the opportunity to testify today. I look forward to answering your questions.

[The prepared statement of Mr. Kerlikowske follows:]

PREPARED STATEMENT OF R. GIL KERLIKOWSKE

FEBRUARY 10, 2016

INTRODUCTION

Chairman McCaul, Ranking Member Thompson, and distinguished Members of the committee, thank you for the opportunity to testify on behalf of the Department of Homeland Security (DHS or the Department) and U.S. Customs and Border Protection (CBP) to discuss the Visa Waiver Program (VWP or “the Program”) and implementation of the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*, which was enacted as part of the *Consolidated Appropriations Act of 2016*.

On a typical day, CBP welcomes to the United States nearly 1 million travelers—including foreign nationals who travel to the United States under the VWP—at our air, land, and sea ports of entry (POEs), almost 300,000 of whom arrive by air. The VWP, which is managed by DHS in consultation with the Department of State (DOS), permits citizens of 38 countries<sup>1</sup> to travel to the United States for business or tourism purposes for stays of up to 90 days without a visa. That does not mean VWP travelers are able to board a plane or vessel with no security checks. Rather, DHS thoroughly vets all VWP travelers against U.S. law enforcement and intelligence holdings prior to departure for the United States and, if permitted to depart, at additional points throughout the travel continuum.

In addition to the vetting and eligibility requirements for individual travelers, to be eligible for the VWP, a country must first meet statutory requirements, and then maintain high security standards to retain its VWP status. Additionally, DHS, DOS, and our interagency partners, conduct robust, National-level risk assessments—at least once every 2 years—that assess the impact of each program country’s participation in the VWP on U.S. National security, law enforcement, and immigration enforcement interests. Far from being a security vulnerability, the VWP provides significant security benefits to the United States and its citizens. The VWP offers diplomatic and economic incentives to countries to further provide National security benefits to the United States, such as increased sharing of information on terrorists and criminals.

CBP’s multi-layered, intelligence-driven strategy is integrated into every aspect of our travel security operations at every stage along the international travel sequence. In concert with our international partners, DHS and CBP strive to ensure that travelers who present a potential risk are appropriately vetted and stopped before boarding a flight bound for the United States.

FROM TRAVEL PROGRAM TO SECURITY PARTNERSHIP

When Congress first authorized the VWP in 1986, the program was intended to facilitate low-risk travel to the United States, boost international trade and cultural links, and promote more efficient use of consular resources. Recognizing that global security threats have evolved dramatically since the 1980s, DHS and DOS have adapted the VWP to meet the challenges of the modern threat environment. These efforts have been most successful when working in concert with our partners in Congress.

<sup>1</sup> With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96–8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.



For instance, DHS collaborated with Congress to develop and implement the provisions of the *Secure Travel and Counterterrorism Partnership Act of 2007*, which was included as part of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act). This legislation transformed the VWP from a program that evaluated security threats on a country-by-country basis to a program with the added capability to screen individual travelers for potential threats. Under the 9/11 Act, VWP countries are required to enter into bilateral information-sharing agreements regarding whether citizens and nationals of that country intending to travel to the United States represent a threat to the security or safety of the United States or its citizens, as well as the sharing of lost and stolen passport information, among others.

The 9/11 Act also required DHS to develop the Electronic System for Travel Authorization (ESTA) to pre-vet prospective VWP travelers. Since January 2009, DHS has required all VWP travelers to obtain an ESTA authorization prior to traveling to the United States by air or sea. ESTA applicants must provide extensive biographic information, including their name, date of birth, place of birth, current residence, additional countries of citizenship, passport information, employment information, travel itinerary, and U.S. point of contact, among others. This information is vetted against DHS, DOS, Federal Bureau of Investigation (FBI), and intelligence community databases to determine if prospective VWP travelers pose a National security or law enforcement threat to the United States. If a prospective VWP traveler does not submit this information or is denied travel authorization, he or she may not board a plane or vessel bound for the United States.

ESTA applicants are vetted against the same biographic databases as visa applicants. DHS vets all ESTA application information immediately and automatically against DHS TECS records, the FBI's Terrorist Screening Database (TSDB), and the DOS's Consular Lookout and Support System, as well as international databases, such as INTERPOL's Stolen and Lost Travel Document database. All ESTA applications are also vetted by the National Counterterrorism Center. This comprehensive vetting approach helps to ensure that travel authorizations are not issued to prospective VWP travelers who pose a threat to U.S. National security. Any would-be VWP traveler whose ESTA application is denied is referred to a U.S. Embassy or Consulate, where he or she would have to undergo the normal process to apply for a visa, including an interview by a consular officer and biometric screening.

DHS recurrently vets ESTA data on a daily basis, which means that even though an applicant has an initially-approved authorization for travel, the authorization is continuously screened throughout its validity period against new derogatory information and is subject to further review and subsequent denial if necessary. This includes recurrent vetting against the TSDB (also known as the "Terrorist Watchlist"). CBP adjudicates every ESTA application and subjects those that raise counterterrorism or admissibility concerns to additional scrutiny.

ESTA has been a highly effective security and vetting tool that has enabled DHS to deny travel authorizations under the VWP to thousands of prospective travelers who may pose a risk to the United States, prior to those individuals boarding a U.S.-bound aircraft or vessel. Since ESTA's inception, CBP has approved more than 90 million ESTA applications and has denied more than 5,900 ESTA applications as a result of National security concerns. During that same period, CBP has also denied more than 165,000 ESTA applications for individuals who applied for an ESTA using a passport that had been reported as lost or stolen.

In addition to ESTA screening, U.S. law requires all private and commercial air carriers operating routes to, from, or through the United States to provide Advance Passenger Information (API) and Passenger Name Records (PNR) data to CBP. These data, which include travelers' biographic and travel reservation information, are screened against U.S. and international law enforcement and intelligence databases to identify high-risk individuals before they depart for the United States and, if they have somehow entered, when they travel by air within the United States. All VWP travelers are subject to this screening.

VWP travelers are also subject to additional layers of screening and inspection upon arrival at U.S. POEs. CBP collects biometric information from all VWP travelers and screens it against U.S. law enforcement and intelligence databases. Moreover, CBP screens the biographic information from VWP travelers' passports against additional U.S. holdings. No VWP traveler who fails to clear these checks will be admitted to the United States.

#### RECENT ENHANCEMENTS TO THE VWP

Over the last 15 months, DHS, DOS, the administration, and Congress have initiated a series of changes to the VWP designed to strengthen its security and ensure

that the Program's requirements are commensurate with the growing threat from foreign terrorist fighters, especially those who are nationals of VWP countries. These recent changes complement traveler vetting and the long-standing, statutory and policy requirements that VWP countries must meet to maintain their Program status.

#### *Policy Enhancements*

In November 2014, DHS introduced additional data fields to the ESTA application that all VWP travelers must complete before boarding a plane or ship to the United States. The enhanced ESTA data fields have enabled CBP and the National Counterterrorism Center to identify a larger number of applicants with potential connections to terrorism who would not otherwise have been known.

On August 6, 2015, DHS introduced a number of additional security enhancements to the VWP, including enhanced traveler vetting, information sharing, and other security requirements for VWP countries to further address any potential threat. Specifically, the August 2015 VWP enhancements require Program countries to:

- Implement the Homeland Security Presidential Directive–6 arrangements and Preventing and Combating Serious Crime Agreements by sharing terrorist and criminal information and utilizing such information provided by the United States;
- Collect and analyze travel data (API/PNR), consistent with United Nations Security Council Resolution 2178, in order to identify high-risk travelers, especially foreign fighters, before they board in-bound planes and thereby keep such travelers as far as possible from U.S. shores;
- Use the INTERPOL Stolen and Lost Travel Document database to screen travelers crossing the VWP country's external borders to prevent the fraudulent use of passports by terrorists and serious criminals;
- Report foreign fighters to multilateral security organizations such as INTERPOL or EUROPOL to enhance our collective efforts to identify and disrupt terrorist travel; and
- Cooperate with the United States in the screening of refugees and asylum seekers to ensure that terrorists and criminals cannot exploit our system.

The August 2015 enhancements also introduced a requirement for all VWP travelers to use electronic passports (e-passports) for travel to the United States.<sup>2</sup>

Finally, in November 2015, the White House announced additional steps it would take to further strengthen the VWP, to include, but not limited to: DHS introducing further improvements to the ESTA application that will grant the Department even greater insight into prospective VWP travelers who have been to Syria, Iraq, and other conflict zones; identifying possible pilot programs to assess the collection and use of biometric information to effectively improve the security of the VWP; and working with Congress to seek authority to increase the Advanced Passenger Information System fines from \$5,000 to \$50,000 for air carriers that fail to verify a traveler's passport data.

#### *Legislative Enhancements*

On December 18, 2015, the President signed into law the *Consolidated Appropriations Act of 2016*, which includes the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*. The new law codifies some of the August 2015 enhancements noted above (such as the requirement for countries to fully implement agreements to share information concerning travelers who might pose a threat to the United States and for all VWP travelers to use e-passports) and puts in place new requirements, most notably travel restrictions.

The law generally restricts VWP travel for nationals of Program countries who are dual nationals of, or who have been present at any time on or after March 1, 2011 in, Iraq, Syria, countries designated as state sponsors of terrorism (currently Iran, Sudan, and Syria), or other countries or areas of concern as designated by the Secretary of Homeland Security. The physical presence-related VWP travel restriction is subject to exceptions for individuals who the Secretary of Homeland Security determines were present in Iraq, Syria, Iran, or Sudan in order to: (1) Perform military service in the armed forces of a program country, or (2) carry out official duties as a full-time employee of the government of a program country. These exceptions do not apply to the dual nationality-related VWP travel restriction.

<sup>2</sup>Currently, citizens of the 27 countries designated into the VWP before 2007 may use a machine-readable non-biometric passport if that passport was issued before October 26, 2006 and is still valid.

Under the new law, the Secretary of Homeland Security may waive these restrictions if he determines that such a waiver is in the law enforcement or National security interests of the United States. On January 21, DOS and DHS announced categories of travelers that provide a framework to administer National security waivers on a case-by-case basis. DOS worked closely with DHS to propose categories for which individuals may be eligible. No waivers have been granted to date. As Secretary Johnson has emphasized, determinations of whether an individual ESTA applicant will receive a waiver will be based on a case-by-case review.

DHS has taken several steps to implement the changes required by the December 2015 law. In coordination with DOS, DHS has increased outreach to all VWP partners to stress the importance of swiftly implementing the required VWP information-sharing agreements. DHS has also submitted to Congress two ESTA-related reports called for in the legislation. Additionally, on January 21, 2016, CBP began to deny new ESTA applications and revoke valid ESTAs for individuals who have previously indicated holding dual nationality with Iran, Iraq, Sudan, or Syria. More than 17,000 ESTAs have been denied or revoked to date. Beginning January 13, 2016, CBP also initiated a protocol to identify ESTA holders with travel to 1 of the 4 countries, to conduct secondary screening and revoke ESTAs for future travel if travel is confirmed and the Government and military exceptions do not apply. Finally, CBP began notifying VWP travelers of the e-passport change in November 2015 and will enforce the mandatory use of e-passports for all VWP travel by the legislative deadline of April 2016.

An updated ESTA application with additional questions is scheduled to be released early this year, to address exceptions for diplomatic- and military-related travel provided for in the new law, and other issues.

The new law does not ban travel to the United States, or admission into the United States, and the vast majority of VWP travelers will not be affected by the legislation. Any traveler who receives notification that they are no longer eligible to travel under the VWP may still be eligible to travel to the United States with a valid non-immigrant visa issued by a U.S. Embassy or Consulate.

#### CONCLUSION

The VWP is a rigorous, multi-layered risk assessment program that promotes secure travel to the United States. VWP countries are required to meet stringent security standards and to share extensive counterterrorism and law enforcement information with the United States in order to remain in the Program. VWP travelers are subject to rigorous screening before departure to the United States and throughout the travel continuum.

DHS, in concert with DOS, the administration, and Congress, continues to strengthen its efforts to ensure that the VWP provides for the security and prosperity of the American people. Consistent with those efforts, DHS is taking good faith measures to implement the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act* expeditiously and in keeping with Congressional intent.

As terrorists change their methods and tactics and technologies continue to evolve, DHS and CBP will work with Federal and international partners—as well as commercial carriers—to adapt and respond swiftly and effectively to new and evolving threats. We will continue to collaborate to strengthen on-going efforts and facilitate the development of new innovative tools to secure international travel against terrorists and others who threaten the safety of the traveling public and the security of our Nation.

Chairman McCaul, Ranking Member Thompson, and Members of the committee, thank you for the opportunity to testify today. I look forward to answering your questions.

Chairman McCAUL. Thank you, Commissioner. We appreciate your service.

The Chair recognizes Ms. Johnson for her testimony.

#### **STATEMENT OF HILLARY BATJER JOHNSON, DEPUTY COORDINATOR, HOMELAND SECURITY, SCREENING, AND DESIGNATIONS, BUREAU OF COUNTERTERRORISM, U.S. DEPARTMENT OF STATE**

Ms. JOHNSON. Good morning Chairman McCaul, Ranking Member Thompson, and distinguished Members of the committee.

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

My written statement, which I request be put into the record, describes how the Department of State has worked closely with the Department of Homeland Security to implement this new law, while ensuring our top priority remains the protection of the U.S. homeland.

As deputy coordinator for homeland security and State's counterterrorism bureau, security of the homeland and the safety of our citizens is my—citizens is my constant focus. I welcome this legislation to strengthen the Visa Waiver Program.

The VWP is a key counterterrorism tool that helps protect our homeland every single day. Our VWP partners must uphold strict security standards, such as sharing information on known and suspected terrorists and criminals, and reporting lost and stolen passports to INTERPOL.

We use VWP benefits to encourage greater information sharing and more systemic screening by our allies. VWP requirements give our partners the impetus to tighten security in ways that can be politically challenging for them.

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

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

As the commissioner has noted, citizens of VWP countries apply to enter the United States via the ESTA. CBP checks ESTA forms against U.S. terrorist and criminal databases before travelers are allowed to use the VWP.

This information that our partners provide, under the information sharing, as part of the VWP, is a vital component of our terrorist and criminal databases. The layer of security continues beyond this step. All travelers are screened by CBP's National Targeting Center before they board an airplane and after they are admitted into the United States.

ESTAs are continuously reviewed and revoked immediately if new intelligence comes to light. Watchlisting, screening, and information intelligence gathering are some of the best tools for countering the threat of foreign terrorist travel.

These tools are most effective when we are working in collaboration with our VWP partners. That is why the VWP is such an important counterterrorism partnership. The 38 countries that are part of the VWP include many of our closest allies, and they are proud of their status. VWP membership is so prized that many countries not in the VWP complete program requirements in the hope of joining.

I would like to speak to the National security waivers authorized under the law. Under the new law, the Secretary of Homeland Security has the authority to waive restrictions, if he determines that such a waiver is in the National security or law enforcement interest of the United States.

We understand that Congress did not want to create blanket exemptions to the law, and that is why these waivers will be implemented on a case-by-case basis. After consulting with the Secretary of State, the Secretary of Homeland Security has determined that is the general matter, it is in the National security interests of the United States to administer waivers on a case-by-case basis and for certain types of ESTA applicants.

I want to stress that these are not blanket waivers. Again, the waivers would be administered on a case-by-case basis and are narrowly tailored to specific National security interests. We publicly outlined categories in which a waiver might apply to provide guidance to citizens of VWP countries.

There is lot of confusion about this law among some of our closest allies, and we needed to let them know which of their citizens might receive a waiver and how the process would work. We noted in our guidance that each ESTA applicant would be considered on a case-by-case basis and reviewed carefully.

In no incidence is travel under the VWP guaranteed for a person in one of the identified categories. I would like to share some examples of why we think these narrowly-tailored waivers are in our National security interest.

For instance, we rely on employees of the International Atomic Energy Agency for the technical expertise to fight the spread of nuclear weapons around the world. Yet, without a waiver, IAEA employees, who went to Iran to pursue our National security objective of preventing Iran from obtaining a nuclear weapon, would be considered security risks.

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

The European Union is an essential partner to us around the world. Without a waiver, representatives of E.U. institutions, including E.U. parliamentarians, would be ineligible to travel to the United States under the VWP.

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

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

In Syria, the world relies on journalists facing grave danger to report on human rights violations, allegations of chemical weapon use, and the brutality of that on-going conflict that we might otherwise never know about. Yet, without waivers, they, too, could be denied VWP travel.

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

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

As I have discussed, we believe there are significant National security interests for the United States to utilize this waiver, and we do so without compromising the safety of our fellow citizens at home and overseas and the security of the traveling public.

Mr. Chairman, Mr. Ranking Member Thompson, and distinguished Members of the committee, thank you so very much for having me here today. I look forward to your questions.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF HILLARY BATJER JOHNSON

FEBRUARY 10, 2016

Good morning Chairman McCaul, Ranking Member Thompson, and distinguished Members of the committee. Thank you for this opportunity to testify today on implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015.

My written statement, which I request be put into the record, describes how the Department of State has worked closely with our Department of Homeland Security (DHS) colleagues to implement the new law while continuing to ensure that our first and utmost priority remains the protection of the U.S. homeland and America's citizens.

I know Congress worked closely with the administration on this legislation to strengthen the Visa Waiver Program (VWP) in order to strike the appropriate balance between ensuring the security of the homeland and allowing for legitimate travel to the United States.

Under the new law, individuals who are dual nationals of—or on or after March 1, 2011 have traveled to—Iraq, Syria, a country designated as a state sponsor of terrorism (currently, Iran, Sudan, and Syria), or other countries of concern, are generally prohibited from using the VWP for travel to the United States. The law grants the Secretary of Homeland Security the authority to waive the travel or dual nationality restrictions if he determines that such a waiver is in the law enforcement or National security interest of the United States. No waivers have been granted to date.

The State Department has worked closely with DHS to identify several groups of potential VWP travelers that may be considered for waivers on an individual basis based on the National security interests of the United States.

It is important to clearly stress that these are not blanket waivers. Rather, the categories of travelers that DHS and State announced provide a framework to administer these National security waivers on a case-by-case basis.

We felt it was necessary to publicly outline categories in which a waiver might apply to provide guidance to citizens of Visa Waiver Program countries. There is a lot of confusion about this new law among some of our closest allies and trading partners. We need to let them know which of their citizens could potentially receive a waiver, and how the process for making those decisions would work. But it is important to stress that our guidance says specifically that each person would be considered on a case-by-case basis, and only if they fall under one of the identified categories. In no instance is travel under VWP guaranteed simply because an individual falls within one of the identified categories.

Before going into more detail, I'd like to note that all travelers coming to the United States undergo checks for ties to terrorism and are subject to multiple layers of security—regardless of how they enter, and regardless of whether they seek travel authorization through the VWP or have a visa issued by the Department of State. Specifically, the VWP leverages multiple layers of security to detect and prevent ter-

rorists, serious criminals, and other potentially dangerous individuals from traveling to the United States.

Citizens of a VWP country need to apply for authorization to travel to the United States via the Electronic System for Travel Authorization (ESTA) program. CBP checks identifiers from ESTA forms against U.S. terrorist and criminal databases before travelers are allowed to use the VWP. DHS recurrently vets ESTA information on a daily basis, meaning that each ESTA is continuously reviewed throughout its validity period for new derogatory information.

All travelers are screened by CBP's National Targeting Center before they board any flight bound for the United States. This vetting continues after they get on an airplane and after they are admitted into the United States. In the case of VWP travelers, they are inspected by CBP Officers and their biometrics are collected upon arrival.

Watchlisting, screening, and intelligence gathering are some of our best tools for countering the threat of foreign terrorist travel. We require all VWP countries to share with the United States information about terrorists, serious criminals, and other mala fide individuals. These tools are most effective when we're working in collaboration with our VWP partners. And, that's what the VWP is, a security partnership.

The 38 countries that are part of the VWP include many of our closest allies. They are proud of their status. In fact, VWP designation is so prized that many countries that are not in the VWP complete program requirements merely in the hope of one day joining. Therefore, we are able to use the benefits of VWP membership as a way to encourage greater information sharing and more systemic screening by our allies.

VWP requirements provide our allies with the impetus to implement security measures that can sometimes be politically challenging for them, like amending legislation and updating their data privacy frameworks. DHS, in cooperation with interagency partners, assesses each VWP country's compliance with program requirements at least once every 2 years. This assessment includes rigorous and thorough inspection of airports, seaports, land borders, and passport production/issuance facilities as well as continuous monitoring. No other program enables the U.S. Government to conduct such broad and consequential assessments of foreign partners' border security standards and operations.

Because effective watchlisting and screening are among our most effective counterterrorism tools, we continue to take advantage of the strong partnerships that the VWP gives us to improve terrorist screening by other countries and prevent threats to our country outside of our borders.

Returning to the waivers, I'd like to take this opportunity to provide insight into the factors that led the Department of State to propose these specific National security waivers by outlining their importance:

(1) *International and Regional Organization Employees.*—As a general matter the United States has a strong National security interest in supporting the work of the United Nations and other international organizations, like the International Atomic Energy Agency, as well as the work of elected officials from regional, sub-national, or federal governments of Visa Waiver Program countries and officials of the E.U. institutions or members of the European Parliament. We would likely lose influence with these organizations were we to tell them and the world that we see their employees as security risks solely because of the official work they do in some of the world's toughest places.

(2) *Humanitarian Non-Governmental Organization (NGO) Workers.*—As a general matter it is in the U.S. National security interest to support NGOs doing vital humanitarian work to alleviate human suffering, to address basic needs of civilians in those countries such as delivering food and medicine in conflict zones, and to identify serious human rights abuses. Humanitarian assistance is also critical to meeting the urgent needs of vulnerable civilians who are targets for extremist groups, and maintaining regional stability.

(3) *Journalists.*—As a general matter the United States has a National security interest in promoting the free flow of information regarding events and activities in Iran, Iraq, Sudan, and Syria. For example, we rely on such reporting for information on serious violations of human rights, allegations of chemical weapons use, and terrorist propaganda.

(4) *VWP Country Nationals Who Traveled to Iran for Legitimate Business Following the Conclusion of the JCPOA (July 14, 2015).*—Our unified diplomatic efforts with our partners were essential in setting back Iran's nuclear program, something we can all agree is in our National security interest. In some cases, treating an otherwise eligible businessperson from a VWP partner country in Europe or elsewhere as a heightened security risk because of their otherwise legitimate business in Iran

may warrant a waiver to avoid driving an unnecessary wedge between the United States and our partners at a time when we need to maintain a united front.

These are businesspeople from our closest European allies and other partners who are often trying to travel to the United States to work with American businesses, which will benefit our economy.

*(5) Visa Waiver Program Country National who Traveled to Iraq for Legitimate Business-related Purposes.*—The United States has a National security interest in ensuring the political stability of Iraq and enabling the Government to effectively counter ISIL. One of the best ways to achieve these goals is to support the country's weak economy; this would include promoting commercial activities that support the Iraqi government's revenue generation and directly impacts its ability to fund its fight against ISIL. That is why since soon after the fall of the Saddam regime in 2003, it has been the policy of the United States to encourage Western companies to do business in Iraq to help stabilize and rebuild that country's economy. Disadvantaging people who traveled to Iraq expressly for that purpose would therefore be counterproductive to long-standing U.S. policy.

I want to stress that none of these waivers would be administered in a blanket fashion. Every VWP traveler potentially eligible for one of these waivers would be closely and individually examined to determine whether they are eligible to receive a waiver. And a National security waiver would be carefully reviewed and only administered on a case-by-case basis.

The law itself provides the Secretary of Homeland Security the authority to waive the travel or dual nationality restrictions if he determines that such a waiver is in the law enforcement or National security interests of the United States. As I've outlined here today, we believe there are significant National security interests for the United States to utilize this waiver authority without compromising the safety of our fellow citizens at home and overseas, and the security of the traveling public.

Mr. Chairman, Ranking Member Thompson, and distinguished Members of the committee, thank you for the opportunity to testify. I look forward to your questions.

Chairman MCCAUL. Thank you, Ms. Johnson.

I now recognize myself for questioning. You know, after the Paris attacks and the tragedy, the bill that Candice Miller introduced that was marked up out of this committee, I met with our Counterterrorism Task Force at the leadership level. We decided that we needed to respond, in an urgent manner, to the attacks. We moved this bill forward to go to the floor of the House.

Let me just say, Ms. Johnson, I recognize you are a career diplomat. We asked for somebody at the political level to answer the political questions that I am getting ready to ask you. So I just want to say that I understand the position you have been put in by the administration.

But, having said that, as we were deliberating the introduction of the bill on the floor, that had been marked up by this committee, we had discussions at the leadership level, in both House and Senate, and also with the White House, State Department, and Department of Homeland Security.

We had—there was an email exchange. I think it is very enlightening, in terms of looking at the express intent of this law. We came to, both State, Department of Homeland, and the White House. We got this response: Would you please consider an exception for humanitarian purposes, for business purposes, for journalistic purposes?

I remember, I was in the meeting with the Majority leader of the House and the other 3 National security committee Chairmen. We discussed your proposal, the proposal that came from the Department. That proposal was rejected on all counts, expressly rejected by the framers and the authors of this legislation in the Congress.

The response that we got, when we came back with: You know what? We are going to reject your business, journalistic, humani-



tarian, cultural, education exceptions. The response we got was actually pretty clear cut. The response was, “The administration supports this legislation.” “Thanks to all.”

My point is, there is no ambiguity in the intent and express language of the statutes. It seemed to me, at the time, that the administration was fully on-board with the rejection of these exceptions.

Then, finally, we got an email from the White House, after, saying: Does State have any additional edits? The response from the White House was: I have spoken to State. They don’t request any additional edits. Don’t request any changes at this time. As I said this morning, we are good with the text as drafted. In fact, reopening the bill would require us to look at it again.

In other words: Let’s move forward with the bill. You know, the very day this bill was signed into law, Secretary Kerry was meeting with Iranian officials. Apparently, Iran didn’t like the language that Congress had passed, that was going to the President’s desk.

The very next day, the very next day while the ink was still drying on this President’s signature, the Secretary of State sends a letter to the Iranian Foreign Affairs Minister, saying thanks for the constructive meeting yesterday. I want to get back to you in response to your inquiry about our amendments to our Visa Waiver Program.

Basically, he says in his letter, the administration has the authority to waive, and this will not prevent us in any way from meeting our commitments under the deal, the Iranian deal. We will implement them so as not to interfere with legitimate business interests of Iran.

I guess my question to you is: Isn’t it clear, given the exchange that we have between the administration and the Congress and the clear language of the law, isn’t it clear that these exceptions that are not in the law that were expressly rejected by the Congress?

Ms. JOHNSON. Thank you, sir. On that question, in particular, the text of the law is very clear. The Secretary of Homeland Security may waive the travel and dual national restrictions, if he determines that such a waiver is in the law enforcement and National security interests of the United States.

After consulting with the Secretary of Homeland—Secretary of State, the Secretary of Homeland Security has determined that, as a general matter, it is in the National security interests of the United States to administer waivers for certain types of ESTA applicants. Whether those ESTA applicants will receive a waiver will be determined on a case-by-case basis.

We heard your concerns about not wanting blanket exemptions or waivers.

Chairman MCCAUL. But my—wasn’t—these exceptions, the humanitarian, journalistic—you know, I understand the arguments on the merits, but we debated that in the Congress, and we rejected those exceptions, business, humanitarian, journalist, cultural. Those are not in the law, are they?

Ms. JOHNSON. No. These are not blanket exceptions, and they are not blanket waivers.

Chairman MCCAUL. It seems to me that the Secretary of State is creating exceptions that were not—that are not in the law itself.

In fact, he is redefining—in fact, he is rewriting the law that we wrote out of this committee.

Ms. JOHNSON. The text of the law says that if it is in the law enforcement or National security interests of the United States, they can be waived, the dual national and the travel restrictions could be waived.

Chairman McCAUL. Yes, it seems to me, though, the time to object is prior to signing the bill into law, not after. I think that, in my view, the administration didn't like the response they were getting from the Congress, so they just said go ahead and pass it. We will sign the law and then we will just interpret it the way we want to, defying the will and express intent of this Congress.

Ms. JOHNSON. This is not intended to be blanket, again, exemptions or waivers. The intent was to look at these in a very narrowly-focused way, on a case-by-case basis. These waivers will be reviewed very closely, as we mentioned in the terrorist travel prevention cell at the National Targeting Center.

Just because somebody might fall into one of those identified categories, there is no expectation that they automatically are receiving an ESTA.

Chairman McCAUL. Well, I appreciate your opinion, but I don't think you can break the law on a case-by-case basis.

The fact is—and Mr. Commissioner, I just—were you consulted about this at all? Did they come to you and say, you know what we are going to, even though Congress explicitly rejected these exceptions, you know, we are going to put them—that is going to be our interpretation. Were you consulted?

Mr. KERLIKOWSKE. I was not consulted concerning the letter that went out shortly after by the Secretary, by Secretary Kerry. I can tell you that there has been a huge amount of consultation and work, in a team effort, every moment since.

Chairman McCAUL. I mean, it seems to me that, you know, in our effort to put Iran first and the Iranian negotiation first and appease Iran, the State Department made a call overriding, basically, breaking the law that we passed, and then went to you and said, you know what? This is our interpretation. It is your job to implement it, and they put it on your lap. Is that a fair assessment?

Mr. KERLIKOWSKE. I would say the assessment is more of this, is that Secretary of Homeland Security, Secretary Johnson, made it explicitly clear to me 2 days ago, until there is a process in place in the cell, that absolutely no waiver would be granted.

Further, I think that the fact that we will work together and even though, as Hillary mentioned, these—this framework provides information, it doesn't mean that someone that applies as a journalist, or as some type of request in that way, will actually even be granted that. Of course—

Chairman McCAUL. Well, this committee will be providing that oversight. We have requested documents from both of your departments, and I hope you will comply with that request. This committee does have subpoena power. We will be looking at the case-by-case analysis and make our judgment as to whether that is a National security issue.

But you have been in law enforcement, sir, for many, many years. Do you really believe that doing business in Iran rises to level of a National security interest?

Mr. KERLIKOWSKE. I think there are two issues that are really important in this, and one is that many of the organizations, people that are from Visa Waiver partners, Germany, Sweden, France, et cetera, either as dual nationals, who, by the way, have already been cancelled, but many of those individuals in those countries want to do or are going to do work.

We share vital security information every day with those Visa Waiver Program countries. Keeping good communication, good relationships, the ability to sign those international agreements with them is critical.

So I certainly see the nexus with the National security interest in some parts. But, again, I would go back and say it doesn't mean that if an application is received in one of those framework areas that it would necessarily be granted. We would look at it very carefully, and Secretary Johnson would look at it very carefully.

Chairman MCCAUL. The Congress will be looking at this very carefully, as well. I gotta tell you, I am—this really defies the will and express intent of the law that we passed in the Congress. I am very—I am deeply disturbed by this, and this committee will be exercising its oversight authority very strongly on this.

We are not saying they can't come into the country. We are just saying they have to go through the extra, additional layer of security and apply for a visa. In my opinion, once again, the President has put the best interests of Iran over the security interests of the American People.

With that, I recognize the Ranking Member.

Mr. THOMPSON. Thank you very much, Mr. Chairman. I think it is clear that Congress spoke in as clear a fashion as it could when this language was put into the omnibus. There is concern that since that language has been included, there has been a different interpretation.

Now, Ms. JOHNSON, can you tell the committee the exact date the State Department made the decision to offer exemptions in the broad category?

Ms. JOHNSON. Just to be clear, these are not exemptions. They are waivers, again, as under the law. This—there is an on-going process and discussion with our counterparts at the Department of Homeland Security, and we announced that decision on January 21, with the Department of Homeland Security.

Mr. THOMPSON. So you don't see a waiver and an exemption as the same thing?

Ms. JOHNSON. No. The waivers are—again, we are not talking about blanket waivers. These are done on a case-by-case basis. Each individual is reviewed very carefully. Again, as mentioned here, both by the commissioner and myself, just because somebody might fall into one of those categories does not mean they would be granted a waiver.

Mr. THOMPSON. Were you involved in this process to—

Ms. JOHNSON. Yes, sir.

Mr. THOMPSON. At what level?

Ms. JOHNSON. I am a deputy coordinator. So I was working with my counterparts, but it has been from the working level all the way up through my level, and all the way up. This is a very important issue.

Mr. THOMPSON. The decision to write the press release and the other things, were you involved in that?

Ms. JOHNSON. Yes, sir.

Mr. THOMPSON. Mr. Commissioner, your testimony is that no waivers have been granted at this point.

Mr. KERLIKOWSKA. Correct.

Mr. THOMPSON. Can you tell me the financial burden to review these waivers on a case-by-case basis? What does that pose for you as an agency?

Mr. KERLIKOWSKA. So, I can't tell you the number of people or what the number of applicants would be, or what the number actually would be expected. I can tell you that the National Targeting Center, and particularly by standing up this cell with our partners at the Department of State is helpful, but that National Targeting Center is incredibly flexible and agile.

If you go back to the Ebola crisis with well over 30,000 people then with travel from one of those Ebola-affected countries, our Customs and Border Protection people, an organization of over 60,000 personnel, could move very quickly to address these types of things.

Whether it was in the air cargo attempted bombing, or others—but I don't know the numbers.

Mr. THOMPSON. So you don't know?

Mr. KERLIKOWSKA. I don't know what we would expect, and then how long it would take to carefully and thoroughly vet or screen anyone who made that request.

Mr. THOMPSON. So you don't anticipate coming back to Congress asking for additional monies to support this effort?

Mr. KERLIKOWSKA. In the President's budget request that has gone up, there is a request for 40 additional personnel for the National Targeting Center. Now, I would tell you that that is not based upon, particularly, this, which came about very quickly.

But the fact that that National Targeting Center has proved invaluable, whether it is for Ebola or whether it is screening foreign fighters. It is—as many Members of Congress have visited it, it is a very important and necessary organization that needs to be adequately staffed.

Mr. THOMPSON. So we included a new provision in the law with that announcement. Ms. Johnson, what went into producing that press release that you participated in, and what were the financial implications of this new provision?

Ms. JOHNSON. Do you mean financial implications to the State Department, or—

Mr. THOMPSON. Yes.

Ms. JOHNSON. That I would have to take back. I don't know the answer to that question. The working level, the mid-level and higher levels, all of us, as we normally do with press releases, worked very closely together with our Department of Homeland Security colleagues.

Mr. THOMPSON. So at the—you are a witness before us today, indicating that you participated in the drafting of a document, but nowhere in the drafting did anybody talk about what this new effort would cost?

Ms. JOHNSON. No on cost, at least in any discussions I was involved in. The threat cell of the State Department already participates in the National Targeting Center over at CBP, and we also work very closely with DHS on a regular basis with the screening capabilities.

Mr. THOMPSON. Well, Mr. Commissioner, did you participate in the drafting of the press release?

Mr. KERLIKOWSKA. I did not.

Mr. THOMPSON. So one agency drafted the release, and the responsibility was put on you?

Mr. KERLIKOWSKA. Well, I think there is a very—I would tell you that many people within Customs and Border Protection—I have broad authority over a very large number of issues. Our people, as she stated, our people participated very closely and worked on all of the aspects that have been mentioned. I did not, myself.

Mr. THOMPSON. You were aware of it?

Mr. KERLIKOWSKA. I have been aware of the—certainly, of the law as it was being debated, yes.

Mr. THOMPSON. Mr. Commissioner, I know you were aware of the law. But you understand where I am getting at. In terms of the drafting of the release and the cost associated with this new process, Ms. Johnson just said she wasn't involved at that level.

So, obviously, you are the only other witness we have. Is your testimony, you were not involved in that either?

Mr. KERLIKOWSKA. I was not involved in the drafting of the press release, but I certainly have been involved in how CBP would work to enforce the new law passed by Congress and signed by the President.

Mr. THOMPSON. After the fact.

Mr. KERLIKOWSKA. After the fact.

Mr. THOMPSON. Not the law, now, but the drafting of this new waiver or exemption provision.

Mr. KERLIKOWSKA. I was not involved in the drafting of the categories or the framework.

Mr. THOMPSON. Thank you.

I yield back.

Chairman MCCAUL. Chair now recognizes the author of the Visa Waiver Program bill, Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Chairman. I certainly appreciate you holding this hearing today. This is an important issue, and I appreciate the witnesses being here.

Ms. Johnson, as the Chairman mentioned, you are a career diplomat, not really a political type. I think we would have preferred someone—because it seems to me to be a political determination made by this administration.

You mentioned, in your testimony, there, you were mentioning various people, people or groups, that would be inconvenienced by this bill. But, again, as the Chairman mentioned, these issues were not either raised, or they were negotiated away during the negotia-

tions. He did put up some of these slides. I won't ask the staff to do that again.

But I will just mention these, because I think it does bear note, here, because we were negotiating, we, being the Congress, were negotiating in very good faith with the White House and the various agencies included.

Here is a—and this particular issue, by the way, somebody mentioned and it sort of went quickly because it went in the omni, but the reality is, really, we had introduced this legislation a couple of years ago and then, again, reintroduced it during this Congress.

It went through—we had a number of hearings. Mr. Commissioner, you have been—you had the opportunity to testify before our subcommittee, as well as the full committee, as well, on numerous occasions.

So this is an issue that went through regular order, through our subcommittee, through our full committee. We were—there were many, on both sides of the aisle, who were very desirous of having floor action on this. We were, you know, really—then came Paris. So, we had this bill ready to go, and that is really how it ended up in the omni, there, at the end.

But at one time we were—these emails showing—I was just going to briefly say, proposed exemptions for journalists, relief workers, business and humanitarian travel, they accept only exemptions for government officials and military personal. Okay. Everybody agreed to that, when we were negotiating this just 3 months ago.

Here is another email. Negotiations continue, bipartisan House committee leadership staff—bipartisan. The White House, the Department of Homeland Security, State Department, the exemption for humanitarian travel are, once again, rejected by everybody. Rejected. Here is the email that was up on the screen. The administration supports this legislation, thanks to all.

Then here is another one. I am not going to say who sent all these, but here, “I have spoken to State. They do not request any additional edits. The administration does not request any changes at this time.”

So I just point those out, because it is certainly clear, I believe, abundantly clear, that the White House negotiated in very bad faith. Again, it is not a partisan issue. It is a very bipartisan issue, and I don't know how Congress can come to an agreement with the White House, with an administration that simply turns around and then breaks the agreement, certainly violates the law, in my estimation, as well.

So, I guess, my question, Ms. Johnson, you know, to be very clear of the changes of the law, they don't bar people who have traveled to either Iran, Iraq, Syria, or Sudan from entering the country. They just simply have to go through the same processes that countries in 100—people from 150 other countries have to use, when they come into the country.

I would say, Ms. Johnson, do you think, from the Department of State, do you think that the visa interview is an unreasonable bar for an individual who actually has visited a country that is a state sponsor of terrorism?

Ms. JOHNSON. Thank you for the question. I mean, the visa—sorry, again, under the Visa Waiver Program, it is important to note that all of those travelers go through the same rigorous screening as visa applicants do.

So, I think if visa applicants, obviously, have an interview and biometrics are collected—that is really only the difference that takes place between the Visa Waiver Program and a visa interview.

I think the important question is, I know for some people, for particularly our Visa Waiver Program partners, a visa interview and a visa process, the whole point of the Visa Waiver Program for them is, they are going through and meeting these stringent security standards.

They are participating in this counterterrorism partnership with us that actually enhances our National security quite beneficially, because, again, the information that we receive from them on known and suspected terrorists and criminals goes into our databases, and we screen against that.

So having a number of individuals, affected individuals, who have traveled to these countries under these—traveled to these countries, be treated as a heightened security risk, because we may have been doing legitimate business in Iran or might be a humanitarian worker in Darfur, I think it is been a real big effect for our foreign partners under the VWP.

In fact, I met yesterday with one country who was very concerned about this. They fully respected the VWP's stringent security requirements, and they certainly want to respect and focus on the security of the U.S. homeland. But they were very concerned about the fact that their citizens are treated as heightened security risks, when they are conducting National security-related activities.

Mrs. MILLER. Thank you.

Mr. Chairman, I know my time is out. If I had more time, I would ask a question about are there any limits to their interpretation to these individuals, and maybe someone could ask—could we have an example of what is the limit of their interpretation of who could have a waiver?

Chairman MCCAUL. I would just add, if the ESTA program is better than the VISA process, why did we even pass the bill in the first place? The Chair recognizes Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman and Ranking Member.

Commissioner, while the recent VWP legislation prohibits individuals with recent travel to citizenship in Iraq, Iran, Sudan, or Syria from traveling to the United States under the program, it authorizes the Secretary of Homeland Security to issue the waiver, if in doing so in the law enforcement or National security interests of the United States.

What circumstances would warrant a waiver? What process will be used to determine whether a traveler would be issued a waiver? What role will CBP play in that process?

Mr. KERLIKOWSKA. So the process that would be outlined for us, standing up this cell at our National Targeting Center, would be this. The request would come in. For example, if it is a non-governmental organization doing humanitarian work, that Electronic System for Travel Authorization, ESTA, has a new series of questions.

Those questions will be ready and be on-line by February 23. The questions involve not only, of course, have we identified that person, but what organization do you work for. Is the organization noticed by the United Nations for humanitarian work?

Who would be the person that would say that you are an employee and that the work that you were doing in that country is part of that nongovernmental or humanitarian organization? What—you were there, in fact, on their behalf and doing their work.

Any derogatory information would result in a default position, where they would be denied travel and then told to go to a United States embassy or a consulate. So that is an example of the kinds of questions we would ask.

Mr. PAYNE. To the both of you, if Congress were to temporarily suspend the VWP, what would be the ramifications for State and DHS? What impact would there be on embassies and consulates in VWP countries? What impact would there be on CBP operations? Also, what impact would there be on U.S. business interests and U.S. travelers to VWP countries?

Mr. KERLIKOWSKA. From the Customs and Border Protection standpoint, the information that we get from ESTA, which has been around many decades and 90 million people have traveled, many more people—many people, of course have been denied entry, as a result of that information.

All of that combines together. These countries that have been talked about that are members of VWP are great partners. We secure information and share information with them. We depend on them. We are only going to be a safer country when, in fact, we engage in those kinds of things.

I would think the suspension of ESTA, the suspension of VWP, would have some significant effects on those relationships and that ability that we have now to share information. At our National Targeting Center, we have members from—who have been fully vetted from other organizations in other countries.

So working together is critical, and I think the VWP program is a security and safety program, as much as in the past, when it was designed to facilitate tourism and the ease of travel. It is a security program now.

Mr. PAYNE. Ms. Johnson.

Ms. JOHNSON. I would absolutely echo everything the Commissioner just said. I mean, again, and as I mentioned in my opening remarks, this is a—a hugely beneficial counterterrorism tool, particularly for the United States, because of the information we receive from these foreign partners, but, also, for those foreign partners, again, which are key allies and trading partners, for their security.

They take our information and they screen against it. So it is a hugely collaborative counterterrorism partnership. I know that it would be a very big impact against—on that relationships that we have with those countries, both on the counterterrorism side, but for foreign policy reasons, as well, certainly, from sitting at the State Department.

I sit in the counterterrorism bureau. I see how that partnership is extremely important, and I think we can leverage that partner-



ship to a variety of degrees. The VWP security requirements, I just want to note, have become kind of universal standards, as well, for importance for counterterrorism tools, broadly.

A number of these security requirements are now, again, best practices that we have highlighted in U.N. Security Council resolutions, particularly, UNCSCR 2178, to combat terrorist fighters. So other countries, beyond the VWP, are benefitting from those kind of lessons learned.

So, I think, we would have a huge—a huge negative impact. I can't answer on the economic side, but I know it is a very large contribution to our economy, because it is a reciprocal program, and, certainly, for our foreign partners, as well.

Mr. PAYNE. My time is up. I just think, Mr. Chairman, those are some things that we should keep in the back of our minds, as we move forward on this discussion.

I yield back. Thank you, sir.

Chairman MCCAUL. The Chair recognizes Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Mr. Commissioner, could you define, as in the law, what law enforcement and National security interests of the United States are?

Mr. KERLIKOWSKE. I think the law enforcement interest is a narrower interest and would be involving where someone is coming back into the United States, and, as the Chair mentioned, would be under surveillance, or we would want to have, because that person is being targeted. Perhaps, that person is also being part of extradition.

The National security interest, as has been explained, in keeping Visa Waiver Program countries in partnership, in collaboration with us on information sharing, on using these finite resources to take a look at that.

Mr. DUNCAN. Thank you.

Mr. KERLIKOWSKE. Remember, these are just frameworks.

Mr. DUNCAN. Thank you. I appreciate that.

Mr. KERLIKOWSKE. Sure. Okay.

Mr. DUNCAN. I want to go back to what Mrs. Miller was talking about. During the negotiations, there were proposed exemptions for journalists, relief workers, business and humanitarian travel, and they were rejected. It goes on to say, later, that the DHS, State Department, leadership staff, the White House, the exemptions for humanitarian travel were, once again, rejected, due to Members' concerns.

Ms. JOHNSON, are you aware of a State Department memo, "VWP Waiver Recommendation Paper"?

Ms. JOHNSON. I believe so, yes.

Mr. DUNCAN. Internal memo?

Ms. JOHNSON. Yes.

Mr. DUNCAN. Okay.

Mr. Chairman, I would like to, without objection, I would like to submit this for the record and ask all the committee Members to actually read this at some point.

Chairman MCCAUL. Without objection, so ordered.

[The information follows:]

SUBMITTED FOR THE RECORD BY HON. JEFF DUNCAN

## VWP WAIVER RECOMMENDATION PAPER

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, enacted as part of the Consolidated Appropriations Act, 2016, amended the Immigration and Nationality Act to make ineligible for participation in the Visa Waiver Program (VWP) any person who has been present in Iran, Iraq, Sudan, or Syria since March 1, 2011, with 2 very limited exceptions (travel to perform military services in a VWP country's armed forces and travel to carry out official duties as an employee of a VWP government).

The law gives the Secretary of Homeland Security authority to waive this ineligibility if the Secretary determines that such a waiver is in the law enforcement or National security interests of the United States. As discussed in the legal paper, this is a lesser standard than that imposed by other statutes that require a finding that a waiver is "vital to" or "essential to" the National security interests of the United States. Furthermore, there are no findings of fact or other determinations required to be made before exercise of the waiver authority. Additionally, as discussed in the legal paper, the National security waiver can be exercised by category, not just individuals.

State recommends waivers for the following classes of persons:

1. *Business-related travel to Iran following the conclusion of the JCPOA (July 14, 2015).*

*Rationale.*—The VWP legislation and its implementation do not violate U.S. commitments under the JCPOA. Nevertheless, these provisions do have the potential to cause citizens of VWP countries to hesitate to travel to Iran for business, which could adversely affect normalization of trade with Iran and, in turn, Iran's commitment to implementing the JCPOA. Moreover, these provisions could adversely affect the strength of our partnership with the E.U. and with non-E.U. states in addressing Iranian (and other) issues. Thus, it is in the National security interest of the United States to waive the VWP ineligibility for individuals who have traveled to Iran for legitimate business purposes after July 14, 2015, or will travel to Iran for legitimate business purposes in the future.

*Iranian Dual nationals.*—This category should also include dual nationals of Iran who have traveled to Iran for legitimate business purposes since that date. Including dual nationals is appropriate for both of the National security reasons listed above, since these individuals will be important facilitators for companies that want to trade with Iran.

*Legal argument.*—This limited approach is directly tied to JCPOA implementation and avoids burdening close allies whose nationals traveled to Iran for legitimate business purposes after the deal was concluded. As discussed in the legal paper, this approach is defensible based on the specific National security interests associated with maintaining the strength of international partnerships, as well as JCPOA implementation. DHS, in consultation with State, would have to determine what business travel would be viewed as "legitimate" and hence covered by the waiver. A baseline would be travel to Iran for business-related activities that were not prohibited or sanctionable under U.S. law and regulations or pursuant to UNSC resolutions at the time when the travel occurred.

*Specific ESTA language.*—Questions should be added to elicit whether individuals traveled to Iran for legitimate business purposes. Possible questions include: "Was your travel to Iran after July 14, 2015? If yes, was the travel for business purposes? If yes, please describe the travel, including the company or other entity for which you were traveling and all entities in Iran with which you had dealings." This last question would require some manual intervention by DHS to ensure the travel was for "legitimate business purposes," so State and DHS need to collaborate on the mechanics of such an approach. If it was considered important to elicit further information to validate the applicant's answers to these basic questions, additional questions that could be considered might include: For a dual national, whether the individual traveled with family members to Iran, as this could be an indicator that the purpose of travel was not solely business. Additionally, the travel question could ask, was the travel exclusively/solely for business purposes?

2. *Employees of International and Regional Organizations and Sub-National Governments who traveled on official duty.*

*Rationale.*—The current law does not include an exemption from ineligibility for: Employees of international organizations such as U.N. officials, IAEA inspectors, and employees of international humanitarian organizations; officials of the E.U. institutions or members of the European Parliament; sub-national parliaments of

VWP countries; or similar bodies. It is in the National security interest of the United States to waive the VWP ineligibility for individuals who traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011, on official duties on behalf of one of these institutions.

*Dual nationals.*—This category should also include dual nationals who are employees of one of these institutions, regardless of whether the individual has traveled to 1 of the 4 countries. Otherwise, we would undermine our National security interest in maintaining relationships with these institutions by placing restrictions on certain employees of these institutions.

*Legal argument.*—As discussed in the legal paper, the United States has a National security interest in: (1) Supporting engagement and other activities conducted by such institutions in each of these countries; and (2) maintaining strong relations and enhancing cooperation with those entities on a variety of objectives, including, among other things, counterterrorism, nonproliferation, and humanitarian assistance in conflict zones.

*Specific ESTA language.*—The ESTA form could include a drop-down question asking whether the individual traveled to 1 of the 4 countries for official duties as an employee of 1 of the following entities, with a list of specific institutions or categories of institutions to choose from.

3. *Employees of Humanitarian Non-Governmental Organizations (NGO) who traveled on official duty.*

*Rationale.*—VWP country citizens who have worked for humanitarian NGOs in any of the 4 countries since March 2011 would be ineligible for the VWP.

*Legal argument.*—It is in the National security interest of the United States to waive the VWP ineligibility for individuals who traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011 on official duties on behalf of non-governmental humanitarian organizations who, for example, provide humanitarian assistance in those countries. We could consider including employees of other NGOs that promote other specific objectives that are in the U.S. National security interest, such as NGOs from VWP countries doing work in Iran, Iraq, Sudan, and Syria that supports the U.S. National security interest in the advancement of civil society in repressive environments. Further, this restriction may have the consequence of making it more difficult for these organizations to recruit personnel from VWP countries, which would impact programs aimed at helping civilians in those countries.

*Dual nationals.*—Since the National security interest is in the promotion of the work of these NGOs, this category should also include dual nationals who are employees of one of these NGOs, regardless of whether the individual has traveled to 1 of the 4 countries. Otherwise, we would undermine our National security interest by placing restrictions on certain employees in these organizations.

*Specific ESTA language.*—The ESTA questions could include a drop-down question asking whether the individual traveled to 1 of the 4 countries as an employee of such an NGO. A possible follow-up question would ask on behalf of which organization did the individual travel. Again, this may require some manual intervention by DHS regarding the legitimacy of the named NGOs.

4. *Accredited Journalists who traveled for reporting purposes.*

*Rationale.*—The current law does not include an exemption from ineligibility for journalists, who are essential for understanding the situation in Iran, Iraq, Syria, and Sudan.

*Legal argument.*—The United States has a National security interest in promoting the free flow of information regarding events and activities in Iran, Iraq, Sudan, and Syria. A waiver of the VWP ineligibility for accredited journalists who traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011, would help facilitate this National security interest of the United States.

*Dual nationals.*—This category should include dual nationals who are accredited journalists and traveled to 1 of the 4 countries, especially in Iran. As a result, excluding this group could have a significant impact on the promotion of the free flow of information.

*Specific ESTA language.*—The ESTA could include a drop-down question asking whether the individual traveled to 1 of the 4 countries as an accredited journalist. A possible follow-up question would ask on behalf of which organization did the individual travel.

5. *Dual-Nationals who emigrated from Iran in the aftermath of the Revolution.*

*Rationale.*—The current law excludes individuals who emigrated from Iran in the wake of the Revolution. This is a distinct group who merit special treatment.

*Legal argument.*—The United States has a National security interest in Iran moderating politically over time. Penalizing those who emigrated from Iran in the after-

math of the Revolution runs counter to this objective because it alienates a group that largely support the United States' goal of encouraging Iran to moderate politically.

*Specific ESTA language.*—The ESTA could include a drop-down question asking a dual national from Iran, when he/she emigrated out of Iran. Further discussions are needed to assess the appropriate year for categorizing those who emigrated in the aftermath of Revolution.

6. *Dual-Iranian nationals who were born outside of Iran.*

*Rationale.*—The current law excludes nationals of a VWP country who are also nationals of Iran, even if the Iranian nationality was acquired by operation of law, rather than an affirmative act by the individual.

*Legal argument.*—The United States has a National security interest in Iran moderating politically over time. Penalizing those who were born outside of Iran runs counter to this objective because it alienates a group that largely support the U.S. goal of encouraging Iran to moderate politically.

*Specific ESTA language.*—No additional language is needed.

7. *Dual-Iranian nationals traveling to the United States for business purposes or as part of official duties as an employee of a Humanitarian Non-Governmental Organizations (NGO).*

*Rationale.*—The current law excludes nationals of a VWP country who are also nationals of Iran from traveling to the United States under the VWP. While this would be a broad category to include in a waiver, this group is engaged in activity that is important for the U.S. National security interest. Placing restrictions on humanitarian employees will make it harder for those organizations to recruit personnel from VWP countries, which would impact programs aimed at helping civilians in those countries.

*Legal Argument.*—The United States has a National security interest in promoting business and humanitarian ties with our closest allies in VWP countries. The United States also has a National security interest in Iran moderating over time, and thus in not alienating those who largely support that U.S. goal. Placing restrictions on dual nationals from Iran engaging in these activities will undermine that interest.

*Specific ESTA language.*—ESTA questions would need to be updated to seek the purpose of the travel to understand whether it was solely for business purposes or as an employee of a humanitarian NGO on official duties.

8. *Business-related travel to Iraq*

*Rationale.*—We have a National security interest in ensuring the political stability of Iraq and enabling the government to effectively counter ISIL. One of the best ways to achieve these goals is to support the country's weak economy, which is overly dependent on declining oil revenue and is a threat to Prime Minister Abadi's ability to govern. That is why the United States has spent years trying to encourage international investment in Iraq, not only in oil infrastructure, but also in diversifying the economy to increase its resilience. The current law would undermine these efforts and our National security interests by placing restrictions on citizens of VWP countries who traveled to Iraq for business and engaged in key commercial activities that support the Iraqi government's revenue generation and directly affect Baghdad's ability to fund its fight against ISIL.

*Legal argument.*—This approach is defensible based on the specific National security interests associated with maintaining the stability of Iraq and enabling the government to focus on countering ISIL.

*Specific ESTA language.*—Questions should be added to elicit whether individuals traveled to Iraq for business purposes. Possible questions include: "Was your travel to Iraq after March 1, 2011? If yes, was the travel exclusively for business purposes?"

Mr. DUNCAN. Thank you.

Within that paper, it talks about law enforcement and National security interests. It also references a legal paper. So I am assuming that is a white paper within this white paper. Are you familiar with that legal paper?

Ms. JOHNSON. Yes, sir. I am.

Mr. DUNCAN. Has that been provided to this committee?

Ms. JOHNSON. I would have to go back and check. I don't know.

Mr. DUNCAN. Has any—Mr. Chairman, do you know if that—

Chairman MCCAUL. Thus far, we have had no document production. I believe the deadline is this Friday.

Mr. DUNCAN. Okay. I would request that that legal paper be provided, because I think it is important.

This white paper, Visa VWP Waiver Recommendation Paper, says that there are no findings of fact or other determinations required to be made before exercise of the waiver authority.

Let's talk about this. Why does it state that? Why does it state that there are no findings of fact or other determining—determinations required to be made before the exercise of waive authority? Why does it say that in the State Department's white paper?

Ms. JOHNSON. I am not a lawyer, but I know that the text of the law is clear that the Secretary of Homeland Security can utilize the waiver to waive the dual national and travel restrictions, if it is in the law enforcement and National security interest of the United States.

Mr. DUNCAN. It was shown very clearly by Mrs. Miller, and during the negotiations, that the intent of Congress, as the Chairman pointed out, was to not offer visa waivers to these classifications of people.

But, yet, the State Department will come out, after the law was signed, with an internal document that references another legal paper to say we are gonna allow business-related travel. We are gonna allow people from international and regional organizations, some national governments. We are gonna allow humanitarian, nongovernmental organizations.

We are gonna allow accredited journalists. We are gonna allow dual nationals who immigrated to—from Iran, after the revolution. We are gonna allow dual Iranian nationals who were born outside of Iran. We are gonna allow dual Iranian nationals traveling to the United States for business purposes.

We are gonna allow business-related travel to Iraq from these waiver countries. Congress, in the negotiations, said no, we are not going to give those exemptions. But the State Department now is saying, here is justification. Here is our rationale that we are gonna allow that to happen.

How does this kind of lawlessness happen in defiance of Congress? Explain that to me.

Ms. JOHNSON. So those are internal deliberations. That document is a series of discussions on how we can utilize the waiver that is allowed for, under the law. Again, working internally within the Department, we broadly discussed the options, the potential of utilizing this waiver, all throughout the Department, both with the legal advisors' office and the regional bureaus, which we do on a policy basis for any other topic.

Those are internal deliberations. They were looking at what kind of potential, you know, categories we might look at, under the National security waiver, as, again, called for under the law.

But that is, in no way, shape, or form, the final position. Again, we consulted with Congress. We understood you did not want blanket waivers or blanket exemptions. That was not the intent, to have any, as we have mentioned here clearly today, to do a blanket waiver or blanket exemptions. We were looking at narrow—

Mr. DUNCAN. If you read this, it, absolutely, looks like that is the intent of the State Department.

Ms. JOHNSON. So, again, it is a deliberative document. But then we—

Mr. DUNCAN. I think it looks like a way to rationalize getting around the intent of Congress. That is what it looks to me. I believe if I share that with the American people, and it is on the record now, and ask the American people to look at it, they would come to the same conclusion. They would come to the same conclusion.

I mean, one of the questions that you are asking a business traveler from—that had gone to Iraq, after March 20—March 1, 2011, is this. Was your travel to Iraq after March 1, 2011? If the answer is yes, was the travel exclusively for business purposes? That is a pretty benign and open-ended question. If they answer, yes, it was exclusively for business, we are gonna probably grant you a visa waiver. Really?

I think the American people expect us to do a better job, before we allow folks, based on the intent of the law passed by Congress, before we allow folks to get a visa, to not have to get a visa and be waived from that to travel this country.

I think you are using this white paper to rationale that. I disagree with that.

Mr. Chairman, I would encourage everyone to really delve into this a little further, because I believe the administration is acting lawlessly, in this regard, because Congress said a certain thing. We negotiated with the White House along certain lines, and this seems to be violating that intent. With that, I yield back.

Chairman MCCAUL. I was in those negotiations. It was pretty clear, the understanding between all the parties to the—in the negotiation.

With that, the Chair recognizes Ms. Jackson Lee.

Ms. JACKSON LEE. Let me thank the Chairman and the Ranking Member. This is an important hearing. But let me also thank the witnesses. I come with a, sort-of, a dual approach in my questions, respecting both of you.

Commissioner, thank you for your service.

Thank you, Ms. Johnson.

I am going to join the Chairman and wish that we had a person in the level of Secretary, assistant secretary. When I say that, no disregard to your expertise, and to thank you for your presence here today.

As I said, when I say dual purpose, I am going to be a little bit askance. Let me ask the commissioner, Mr. Commissioner, are you—do you have an intent to break the law?

Mr. KERLIKOWSKA. No, ma'am.

Ms. JACKSON LEE. Ms. Johnson, do you have an intent to break the law?

Ms. JOHNSON. No, ma'am.

Ms. JACKSON LEE. So I would just take issue with our hearing topic. I think we have public servants who are here who have no intent on breaking the law. I feel a little bit uncomfortable to suggest that they are here in the context of breaking the law.

But I do believe that we want to give you counsel, and I hope both of you will take back the definitive concern of this committee. Our name came about after 9/11. If the American people know anything, they understand homeland security.

It would fall at the feet of the Department, less so State, who collaborates on these Visa Waiver Programs, when the American people think, "Why have I not been protected?" They will look to the Homeland Security Department, Commissioner. They will look to this committee, just by the very name.

So, I can appreciate my colleagues, who were in negotiations and made the very best effort. I hope you can appreciate them as Members of Congress, trying to do their job. But I want to say that I don't think any of you are attempting, or have, broken the law.

But let me raise this and try to probe from you. Section 203 of the negotiations of H.R. 158, which never passed the House or Senate, it passed its committee, did, however, get into the Consolidated Appropriations Act.

The exact language is, as you have noted, is that the Secretary of Homeland Security can waive the prohibition against travel under the VWP waiver—the Visa Waiver Program, due to recent travel to a specified country or because of citizenship in a specific country, if the Secretary determines that such a waiver is in the law enforcement or National security interests of the United States.

Commissioner, have you heard that language? Has that language been brought to your attention?

Mr. KERLIKOWSKE. I have heard it, yes.

Ms. JACKSON LEE. Ms. Johnson, has that language been brought to your attention?

Ms. JOHNSON. Yes, ma'am.

Ms. JACKSON LEE. So can I assume that the Secretary of Homeland Security and the Secretary of State thought, in their responsibilities of National security and law enforcement—am I to assume that they felt compelled to answer the many inquiries that they were getting, panic inquiries, outrage on the diplomatic level, to come up with a resolution?

Ms. JOHNSON. Do you think that is where we are today?

Ms. JOHNSON. I think there is a lot of confusion with the law from our foreign partners, who have repeatedly asked how this law will be administered. I think they are very concerned about dual nationals, in particular, and that it felt very discriminatory. So I think there were a lot of concerns raised.

Ms. JACKSON LEE. Mr. Commissioner, is it that you needed to inform your personnel and the Secretary of Homeland Security felt compelled, either by his dialogue with the Secretary—where do you think this, sort-of, machinations and changes, of sorts, came about?

Mr. KERLIKOWSKE. So the agreement and the understanding that I have had from Secretary Johnson is, certainly, and, certainly, not one to be pushed or pulled into any one direction, since the day we met when we were both awaiting confirmation, the protection of the American public is first and foremost with him.

So putting these—this framework to be helpful, even though no waiver has been granted and no request has been made, putting this framework together with his partner at the Department of

State, is one that, I understand, we will continue to push forward and develop processes to make sure that someone is thoroughly, completely, and absolutely vetted before any waiver would ever be granted.

Ms. JACKSON LEE. So with no intent to undermine the protection of the American people?

Mr. KERLIKOWSKE. No, ma'am.

Ms. JACKSON LEE. But complying with Section 3 that, if a case comes up, under National security and—or law enforcement necessity, that that case could be considered. So let me ask you this. In the broad base of business purpose, could you have, in your framework, what would define as a legitimate business person?

Let's start with Ms. Johnson. What would we define as a legitimate business person—purpose? Excuse me.

Ms. JOHNSON. Well, I think, we are still in deliberations on, again, how to administer these waivers. Certainly, in the case of Iran or Iraq, it would be making sure that they are not sanctionable activities and, certainly, in an Iran case, or illegal against U.S. laws.

But I think, you know, our first and foremost—and, again, I will—straight from the Department of State, as well, is the security of the U.S. homeland and the American public. I work in the counterterrorism bureau. It is, again, what we do all the time.

So that is where we would be starting with. I think what we would be discussing is how we would go about reviewing those waivers and, certainly, could talk about it at a future date in a closed session. I think what we don't want to do is advertise how to work around those, publicly.

Ms. JACKSON LEE. Let me close by saying, first of all, I want it to be very clear that I asked the witnesses, on the record, did they have the intent or have they broken the law? Let me add that point.

Have you broken the law? Commissioner.

Mr. KERLIKOWSKE. No.

Ms. JACKSON LEE. Ms. Johnson.

Ms. JOHNSON. No, ma'am.

Ms. JACKSON LEE. I think that you have not done so. But I think it is important that you hear the concern of this committee, that what was represented in negotiations seems to be, if you will, has turned into an amoeba and has begin to crawl in different directions.

For the security of the American people, I think we need negotiations, discussions, again. I think it should be restated that the Commissioner said no waiver has been asked for or granted, at this point in time, on February 10, 2016. That is somewhat of a good thing.

But when you think of countries like Iran and Syria, you raise concern in others. But I will close my comments by saying I have empathy for humanitarian purposes. Certainly, military and diplomatic have their own waiver.

I would, probably, look to narrowing that to those dealing with humanitarian issues, those dealing with legitimate business versus dealing with the Joint Comprehensive Plan of Action, but raise questions about others who would need this waiver, except for the



fact that you come back and show us a strict, restricted, point-by-point, in a briefing that is not public, of how you would assess journalists and others, because I am not here to deny the legitimacy of individuals like that who would have been engaged in travel.

But, Mr. Chairman, I just want to be on record to say that I do not believe this administration is in the business of breaking the law. I yield back.

Chairman MCCAUL. The Chair recognizes Mr. Loudermilk.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

Ms. Johnson, maybe you can help me clarify something. You said you are not a lawyer. I am not a lawyer. But something you had said earlier, maybe you can help me clarify. There appears to be two exceptions that we are talking about to this law.

One was in response to Mr. Thompson in his questioning. He brought up waivers, and you said that these are not waivers, they are exceptions—or exemptions. Is that correct?

Ms. JOHNSON. No. I know that, under the law, there are exemptions for categories for Government, official Government business, as well as military. In this case, in the waivers, we would be looking at this as an individual basis, so, again, case-by-case, whereas exemptions, I think, are broad categories of people.

So if—and I don't know, in the sense of how CBP would look at those. But if someone presented military documentation of official Government business, that is my understanding for—

Mr. LOUDERMILK. Okay. So waiver and exemption—

Ms. JOHNSON. None of them—it is not a blanket waiver, I think, is the main thing to—

Mr. LOUDERMILK. Okay. But they are both exceptions, categorically, I guess? Different—to different degrees. I guess, that will explain, too—I was a little confused with—when you responded to Mr. Duncan that the law gives the Secretary the ability to grant waivers, a type of exception.

So, with that, Mr. Conyers, the Ranking Member of the Judiciary Committee, actually voted against this bill when it came to the floor. The reason he voted against the bill is because it didn't provide the waivers for certain categories.

Let me read his quote: "It contains no exceptions for journalists, researchers, human rights investigators, or other professionals." Again, "It contains no exceptions for journalists, researchers, human rights investigators, or other professionals."

To me, that is pretty clear that he said it contains no exceptions, whether waiver or exemptions. This bill contains no exceptions. So do you see that that is clear that, based on the testimony of the Ranking Member, who was opposed to the bill, because it didn't do exactly what the Department is claiming that it does now—do you—does the Department know more about the intent of the law than the actual Members of Congress?

Ms. JOHNSON. No, sir. I think, again, the text of the new law is clear that the Secretary of Homeland Security has the ability to waive the dual national and the travel restrictions, if it is found in the law enforcement or National security interests of the United States.

I think when we were looking at the waivers, again, we were looking at categories of travelers under the National security provi-

sions. I think that we were trying to look at, again, a limited scope and reviewing those on a case-by-case basis.

I don't know if they were looking at—for broader exemptions, but the intent is, again, to look at it in a very limited and narrow focus and on a case-by-case basis.

Mr. LOUDERMILK. Well, there is nothing in Mr. Conyer's statement that says case-by-case. He says it contains no exceptions. When we were talking about a moment ago, there are waivers and exemptions. Both are types of exceptions.

He says it contains no exceptions. Not case-by-case. Not individual. It contains no exceptions. I don't know how you derive anything different. This is, again, I think, the Ranking Member of the Judiciary Committee, would be pretty knowledgeable about what the intent of the law is.

Given that, there is clear legislative history here that this bill, including the floor statements and other statements, did not intend to do what the Department is doing. Under oath, you are under oath here today, are you willing to say that this law provides for these broad categorical exemptions?

Ms. JOHNSON. These are, again, the text of the law is clear. The Secretary of Homeland Security has the ability to waive those dual national and travel restrictions, if it is in the National security interests of the United States.

We are not asking for blanket, categorical waivers. We are looking at a limited and narrow focus, and, again, reviewing them on a case-by-case basis. I think this approach is consistent with other waivers, such as under the Immigration and Nationality Act, where there are broad categories, but we look at them in an individual basis.

Mr. LOUDERMILK. Oh. One last question. How many meetings did the Secretary Kerry and Secretary Johnson have regarding these exemptions, prior to the announcement? Do you know?

Ms. JOHNSON. I don't. I know they talked frequently. I know there was one meeting that I, personally, sat in on.

Mr. LOUDERMILK. There was one meeting before the decision, the announcement was made?

Ms. JOHNSON. Yes. Yes.

Mr. LOUDERMILK. How many meetings since then?

Ms. JOHNSON. I don't know if they have talked on a regular basis or not. But there was one meeting that I sat in, before the announcement. Yes, sir.

Mr. LOUDERMILK. All right.

Mr. Chairman, I yield back.

Chairman MCCAUL. The Chair recognizes Mr. Richmond.

Mr. RICHMOND. Mr. Chairman.

I guess I will pick up where my colleague just left off, in trying to determine the exemptions which, my understanding, would be outright exemptions of categories of people, and then waivers, as you all define as on a case-by-case basis and the Secretary has the authority to do that.

My colleague quoted John Conyers, who I certainly respect and made him an authority, but John Conyers is also asking for us to vote on voting rights. I don't hear anyone quoting him or moving to do that.

What it sounds like to me is that you all were asking for the blanket exemption for those categories, and, when you didn't get it, some lawyer in your office said, well, it is not a big deal, because you can do it by waivers on a case-by-case basis.

Is that probably fair, that someone came to you and said that you could do exactly what you want to do by waiver, as opposed to, I guess, continuing to negotiate an exemption?

Ms. JOHNSON. The law actually says that the Secretary of Homeland Security has the ability to utilize a waiver to waive the dual national and travel restrictions, if it is in the law enforcement and National security interests of the United States.

Mr. RICHMOND. Did we have any conversations about taking that waiver provision out of law, or striking that, so that the Secretary would not have the authority to waive on a case-by-case basis? Did anyone raise a concern about that?

Ms. JOHNSON. I was not part of any of those discussions, so I don't know.

Mr. RICHMOND. Let me just ask you, in terms of cost, how much more time and energy and resources are you all gonna use to look at a waiver on a case-by-case basis, or if the person had to actually go through the visa process?

Ms. JOHNSON. I have Consular Affairs here that might be able to speak to the consular side of the house. I think, through this terrorism threat prevention cell, which, again, is part of the National Targeting Center, State Department already has bodies there that work this.

Yes, it will be a few more resources. I think, again, what we are looking at is, through the Visa Waiver Program, the ability to get the information we receive from these foreign partners, under the requirements of this program, actually help with those resource issues. They provide more information on known and suspected terrorists and criminals that we can screen against to protect our homeland.

So, without that information, it is certainly difficult to do that kind of screening, even in the visa context.

Mr. RICHMOND. Well, and let's move on to, I guess, what your ultimate goal is when you say the National security interests, which is why you now have implemented waivers, or planning to, because of our partners.

What have our partners done, in terms of how they treat travel to Syria or any of the other conflict zones that support terrorism?

Ms. JOHNSON. You mean, our Visa Waiver partners, in particular?

Mr. RICHMOND. Yes.

Ms. JOHNSON. I can take that question back, if you are looking for more specifics down per country. I think they are very concerned about travelers from these countries, certainly. But, again, I think the important focus here, when we are looking at these waivers, we are not looking to have random people who go to Syria and come back.

We are looking at very limited scoped waivers for individuals, again, on a case-by-case basis, who might be working—that are working on these National security objectives.

So, again, it is not just somebody who goes to Sudan or Syria and comes back. But I believe these countries are, you know, just as concerned. But, again, this partnership, under the VWP program, means they also receive information from us on known and suspected terrorists. They receive our—a good chunk of our database and our terrorism screening watch list, which helps them—aid in their screening, as well, to protect their borders.

Mr. RICHMOND. So it is—I mean, it is mutually beneficial, and I would say beneficial. But it is absolutely mandatory that all of the partners cooperate, in order to make not only them safer, but us safer, also.

Was this becoming a problem, in terms of the relationship with our partners?

Ms. JOHNSON. You mean the law, or—

Mr. RICHMOND. The law, yes.

Ms. JOHNSON. I think they were very concerned that their citizens were being—you know, the affected travelers, under this law, were considered heightened security risks. So, they had registered a number of concerns about that.

I had, again, conversations yesterday. They were very—they want to protect the U.S. homeland, but are very concerned about the perception that individuals that go to, again, work for humanitarian organization in Darfur are suddenly being considered a heightened security risk. That was a very big concern of theirs, yes.

Mr. RICHMOND. Well, I would just tell you that I do have a concern, when it comes to protecting the homeland. I think that we are on a very slippery slope, in terms of how far we go. But, to the extent that the experts believe that it creates a better relationship with our partners and the fact that it will keep us more secure, I think that language is clearly within the law, that says that you have the right to waive it, if it is in the National security interest.

If our negotiators had a problem with that, they should read that line, take it out, and then I think that all the emails and everything else we went back and forth and talked about today, they would have every right to be upset about, because you asked for an exemption and you didn't get it. But if they were—wanted to outlaw the waivers, then that language just shouldn't be in there.

But if it is in there, we can't come back and get mad that you are using language that is already there. I think that you have to make sure that you are confined to the spirit of what those waivers are and not go too far with defining National security interests and—because, at the end of the day, we just don't want the American people less safe. We don't want to be negligent in our responsibility to make them safe.

With that, I will yield back.

Chairman MCCAUL. I thank the gentleman.

Now, the Chair recognizes Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman.

Ms. Johnson, I, based on your testimony earlier, I know that you played a role, with respect to the negotiation of text, for H.R. 158. Because of that, I know that you were aware that these special categories of exemptions, travel for humanitarian purposes, for business purposes, and for journalistic purposes, were requested by the State Department and were rejected by Congressional negotiators,

as reflected in the emails that Chairman McCaul put on the screen earlier. Correct?

Ms. JOHNSON. I was not involved in the discussions, the negotiations of the law, but I am very aware of those discussions. Yes, sir.

Mr. RATCLIFFE. Okay. You were aware, because those special categories were rejected and left out of the text, that groups like the ACLU opposed this bill becoming a law?

Ms. JOHNSON. I was not aware of that.

Mr. RATCLIFFE. Okay. That organizations were opposed to it for that reason?

Ms. JOHNSON. Not aware of that, no.

Mr. RATCLIFFE. Okay. Well, were you aware that Members of Congress, like Ranking Member Conyers, actually voted against the law, because those specific exemptions were not included?

Ms. JOHNSON. Yes, we discussed that earlier. I understand he, also, came out with a statement in support of the waiver categories.

Mr. RATCLIFFE. So, despite the opposition of Members like Mr. Conyers, you know, of course, that the bill passed into law with an overwhelming vote of 407–19, and the President signed it into law on December 18.

Now, I ask you all that, because, you know, your written testimony and your verbal testimony today really seems to talk about a need and a justification for some of these special categories. To me, I have to tell you, that really just seems like a re-litigation of an issue that has already been lost by the State Department.

Congress acted here. I don't think there is any ambiguity, with regard to Congressional intent. These exceptions were rejected, and the President signed them into law. Because of that, I hope that you can appreciate why so many of the folks that have been in here today see it as the height of arrogance by the administration and Secretary Kerry to send a letter to the Iranian Minister of Foreign Affairs less than 24 hours after the President signed this into law, stating an intent to disregard the law.

In so doing, to place the interests of the Iranian economy in front of the National security interests of Americans. Can you see why folks are upset by that?

Ms. JOHNSON. I would note that, for the letter that Secretary Kerry wrote to Foreign Minister Zarif was in response to the Iranians publicly claiming that this law violated the commitments of the JCPOA. In fact, in that letter, he was actually defending the law and stressing that it was not a violation of the commitments against the JCPOA.

He writes many of these letters—

Mr. RATCLIFFE. Well, let me ask you about that. Do you have a copy of the letter?

Ms. JOHNSON. We have one here, yes.

Mr. RATCLIFFE. Okay. Well, great, because—and let me read this. I want to make sure I get it right. This is a letter from Secretary Kerry to the Foreign—to the Minister of Foreign Affairs in Iran.

In the second paragraph, he says, “I am also confident that the recent changes in visa requirements passed in Congress, which the administration has the authority to waive, will not in any way prevent us from meeting our JCPOA commitments, and that we will

implement them so as not to interfere with the legitimate business interests of Iran.”

Did I read that accurately? Did I read that accurately?

Ms. JOHNSON. Yes, sir.

Mr. RATCLIFFE. Okay. So this letter doesn't say that the administration has the authority to waive for law enforcement purposes or National security purposes. Does it?

Ms. JOHNSON. No, sir.

Mr. RATCLIFFE. Okay. It doesn't say the administration has the authority to waive on a case-by-case basis, as you have said today. Does it?

Ms. JOHNSON. No, sir.

Mr. RATCLIFFE. All right. It just tells the Iranian government that the administration has the authority to waive so as not to interfere with the legitimate business interests of Iran.

Now, it, also—I want to make sure I read that correctly—doesn't say that we may implement them. Doesn't the language say we will implement them so as not to interfere with the legitimate business interests of Iran?

Ms. JOHNSON. Yes, sir.

Mr. RATCLIFFE. Okay. It doesn't say we may implement these. It doesn't say we might do it. It doesn't say we might do it on a case-by-case basis, as you have said today. It says we will implement them so as not to interfere with the legitimate business interests of Iran.

Now, we can have a debate about whether there even is such a thing as a legitimate business interest in Iran, but we really can't debate whether or not an Iranian business interest has anything to do with law enforcement in this country, can we?

Ms. JOHNSON. The law does say that they can waive for National security and law enforcement purposes. This letter was defending the law, in response to a public assertion by the Iranians that it was violating the commitments of the JCPOA.

Mr. RATCLIFFE. Well, you know, it is funny, because when you talk about what is in the National security interests of our country, for the last several decades, our National security interest has been to sanction Iran. It has been to cripple the business interests in Iran. It has been to cripple their economy. Those sanctions, frankly, were working pretty well, until this administration did away with them.

You know, Ms. Johnson, I don't want to shoot the messenger. Maybe we need to bring Secretary Kerry here. Maybe we need to remind Secretary Kerry that he is no longer Senator Kerry, that he doesn't get to make laws anymore.

I would like to know, frankly, from Senator Kerry whether he ever intended to honor Congressional intent, or whether this negotiation with Congress was ever in good faith, or whether the administration had already planned to force these special categories into the National security waiver.

Either way, it is this type of gotcha attitude, it is this defiance of the rule of law, which make the American people not trust this administration. I don't blame them.

With that, I yield back.

Chairman MCCAUL. Chair recognizes Mr. Walker.

Well, okay. On my list—I am sorry. Mr. Carter.

Mr. CARTER. Thank you, Mr. Chairman. Mr. Chairman, let me preface my remarks, my questions, Mr. Chairman, by just saying that, while I am very respectful of the Commissioner and Ms. Johnson being here and appreciate them being here, very much, they are, Mr. Chairman, in my opinion, they are just overseers and implementers of this.

We need the people here, testifying before us, who have actually had the responsibility of doing this. That is the White House, the Secretary of State, the Secretary of Homeland Security.

So, Mr. Chairman, I hope that we can work toward getting them here to answer these questions, again, respectfully, to the witnesses who are here today.

Having said that, Mr. Chairman, Ms. Johnson, respectfully, I remind you, you are under oath. Whose decision was it? Whose decision was it to ignore the intent and the plain language of the law? Whose decision was that? To create these 5 categories of exemptions, whose decision was it?

Ms. JOHNSON. Sir, the text of the law provides for a waiver to—against those—

Mr. CARTER. Whose decision was it?

Ms. JOHNSON. So, just like all policy that we do, both at the State Department—it was an entire deliberation around the Department. We worked very closely, again, taking into consideration Congress's concerns with blanket waivers. We worked with our Department of Homeland Security colleagues, in tandem, to look at what might be possible under this waiver exemption, under the law.

Mr. CARTER. So you are saying that it was the State Department? It was everybody in the State Department was involved in this decision?

Ms. JOHNSON. We have regional bureaus, certainly, that are very concerned about—

Mr. CARTER. Did you consult with anyone at the White House? Was anyone at the White House, anyone in the administration—

Ms. JOHNSON. Yes, we talked—

Mr. CARTER. Were they involved in that?

Ms. JOHNSON [continuing]. To the White House. It was a White—this is a collaborative effort. This was State Department, Department of Homeland Security, and the White House, yes.

Mr. CARTER. So it was people who were, also, involved in the agreement, the agreement that Congress had with the administration? They were involved in this decision?

Ms. JOHNSON. Yes.

Mr. CARTER. You know, we used to have a Governor in the State of Georgia, who also served as a United States Senator. It was Al Miller. He used to—one of his favorite sayings was always that, you know, if you are walking in the woods and you see a turtle on a fence post, you can bet that somebody put that turtle on that fence post. It didn't get there by itself.

Somebody did this. Somebody had the intent of doing this. That is what bothers us so much. You know, Ms. Johnson, you don't know my daddy. My daddy is the smartest man I have ever met, not the most educated, but the smartest. He always told me, he

used to say, “Son, whenever you think you are the only one who is right and everybody else is wrong, you have to stop for just 1 minute. You have to think, you know, it might not be everybody else. It might just be you.”

I always remember that. Here we had 407 Members of Congress, of the United States House of Representatives—now I have been here almost 14 months now. I can tell you, when you get 407 Members to agree on something, that is strong.

Here we had 407 Members agree on this and vote in favor of this, under the auspices of this administration, or this agreement with this administration. Yet, the administration goes and voids this agreement altogether.

Don’t you find that to be somewhat disrespectful of the American public, in general? I mean, if we are elected by the people, that has gotta be disrespectful, in my book. What do you think?

Ms. JOHNSON. The text of the law offers up a waiver.

Mr. CARTER. What about the intent? Don’t tell me that intent doesn’t matter, because it does, in this case, because the administration knew the intent. They agreed, and they knew the intent.

Ms. JOHNSON. Again, we understood the intent, very clearly, in the text of the law, very clearly—

Mr. CARTER. Then why did—why did you go against the intent?

Ms. JOHNSON. I am saying that these are not blanket waivers and, again, we are very clear that these would be used on a very limited, case-by-case basis in a narrow and tailored focus.

Mr. CARTER. Well, let me ask you this. You know, it is something else that concerns me greatly is that, if we were talking about tax policy, if we were talking about the economic issues, it would be one thing. But we are talking about Americans’ safety. That is what is so concerning to me.

Let me ask you, the administration didn’t decide on their own to provide an exemption for the journalists, the researchers, the human rights investigators and the other professionals. If they weren’t getting this exemption, could they still get here?

Ms. JOHNSON. They can go get a visa, as well, yes.

Mr. CARTER. Well, why not do it that way, then? Why not just leave it to the visa process?

Ms. JOHNSON. Well, as we discussed, and I mentioned in my opening remarks, I mean, the partnership with these VWP partners is a counterterrorism tool. Very—they are very concerned about the fact that a number of their citizens, affected by this law, are treated as heightened security risks—

Mr. CARTER. You know—

Ms. JOHNSON [continuing]. And are participating—

Mr. CARTER. I am sorry. I have to disagree with you on that. I think that if they had wanted them in here, the visa process would have been the way to go.

Mr. Chairman, again, respectfully, thank both of these witnesses for being here. I know, I have worked with the commissioner before. I know him to be an honorable man. But we ain’t got the right people here. We need the Secretary of State. We need the Secretary of Homeland Security. We need someone from the White House.

Mr. Chairman, I yield back.



Chairman MCCAUL. In response, the Secretary will be here fairly soon, in a budget hearing, and I am sure this issue will come up at that time. We did request a higher-level political appointee.

In response, not to diminish your testimony, Ms. Johnson, but I think you were, sort-of, thrown under the bus, to be honest with you, on this.

The Chair now recognizes Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

Ms. Johnson, I want to go back to something you said a little earlier. I think you were touching on it just a few minutes ago, in responding to my colleague from Georgia, Mr. Carter, about this Iranian's—if you used the word are offended by the travel bans, or it is a problem there. I don't understand why that is an overwhelming concern of ours, that is offensive to them. Can you expound on that make and make sure I heard that correctly, or is that—

Ms. JOHNSON. No, sir. It was that they were publicly complaining that the law violated the JCPOA. The Secretary's response was to defend the law. So that is what my point was there.

Mr. WALKER. Yes, and that is confusing to me, because, you know, in the 13, 14 months that I have been here in Congress, it is very rare that you have both sides of the aisle coming together. Sixty-three percent of the House voted against the Iranian deal, even to begin with. So it is already something that, in the flavor of the American people, there are great concerns.

So being overly-worried about the tenor of what this is doing in the mood of the country, I don't know that that is our primary concern. Just yesterday, CNN article was quoting Lieutenant General Vincent Stewart. He said, "ISIS will probably attempt to conduct additional attacks in Europe and attempt to a direct attacks on the United States homeland in 2016."

James Clapper, as you know, the director of national intelligence, also said, "Taking advantage of the torrent of migrants to insert operatives into that flow." Now, these are people who study this daily. He also added that they were pretty skilled at phony passports, so they can travel ostensibly as legitimate travelers.

Then, finally, he also added, speaking of the nuclear deal, the aforementioned that we were just talking about, he said, "We, in the intelligence community, are very much in the distrust and verify mode." May I remind you again, that this is the world's leading sponsor of state terrorism?

So why we are erring on the side of being more concerned with what somebody might think about it, when we know that there is an intent, obviously, historically, to do us harm? Here is a specific question I do have for you, though.

Is it your understanding that these waivers are being applied in a manner to appease Iran, speaking of the context of what we are talking about, and protect President Obama and Secretary Kerry this whole agreement is—do you feel like that is part of it? There is an appeasement here of trying to keep this deal structured the way that it is?

Ms. JOHNSON. No, sir. This is not about Iran. This is about protecting the U.S. homeland and American public. I think what we

have said is there is an option for a waiver into this law. We were looking at that in the National security objectives.

Again, the partnership under the VWP is a huge counterterrorism tool. I just stress that, again, that just because someone might fall under this identified category of a waiver does not mean they would get a waiver or be able to travel under the VWP.

I think one piece of information that the CBP commissioner I have heard say multiple times in DHS, if there is any concern, they don't offer, you know, travel under the VWP. So if there is not enough information, they don't.

Again, the VWP partnership provides us with information that enhances our screening capabilities. That way, we are able to protect the homeland in a better way than we would otherwise.

Mr. WALKER. Are you under the impression, or the understanding, that holding a tougher line and opposing these VWPs are going to increase the threat to our homeland security? Is that the point that you are making?

Ms. JOHNSON. No. I am saying we leverage this Visa Waiver Program, in order to be able to get a lot of information from these foreign partners. Again, I also said, it is become an international standard, a lot of these security requirements.

It also helps us with other countries to improve their screening capabilities. But it is an important program. We are screening all of these individuals, whether they come through the VWP or through a visa. In the exact same way, we are screening against all of our terrorism databases, our criminal databases, the INTERPOL lost and stolen passport database, again, with information provided by these countries under the VWP.

Mr. WALKER. Thank you.

Commissioner Kerlikowske—is that close? Okay. All right. How can we be sure that business travelers, these humanitarian workers and journalists—I spent two decades as a minister. I have lots of friends that are connected in the missionary communities. I want to make sure that no one is connected with these terrorist activities.

What is the full—I mean, what is your advice on how we can make sure of that?

Mr. KERLIKOWSKE. So on February 23, Congressman, there will be a series of questions on that Electronic System for Travel Authorization. In particular, will be questions for not only the humanitarian organizations, that I outlined earlier, but, for example, on businesses.

If you were doing business in Iran under—and, of course, they would get you would have to have a visa from that country. You would have a specific business visa. So we ask for that information.

I would tell you, we have also reached out to multinational organizations, multinational businesses that we know already have interest or are doing, or would like to do, business in that country, and asking them for information about, well, who is going to be there from your organization.

Who can we be in contact with or get information from, so that we can verify that that person is, in fact, who he or she says they are, is doing business there on behalf of your company or—and is an employee of your company? So there is a whole series of vetting.

Mr. WALKER. Well, thank you for your response.

Thank you. Yield back, Mr. Chairman.

Chairman MCCAUL. Thank you. The Chair recognizes Mr. Katko.

Mr. KATKO. Thank you, Mr. Chairman.

Chairman MCCAUL. You want to sit in the chair?

Mr. KATKO. Mr. Kerlikowske, I seem to remember your name in supervisory circles when I was an OCADEF prosecutor for many, many years. So it is nice to see you in person, after all these years.

Just, for both of you, this doesn't require long answers, but I think you both admit that the issue of the waivers and extent of the waivers that were discussed in the bill were actually pretty well-discussed before it became law. Is that fair to say to both of you?

Mr. KERLIKOWSKE. Yes.

Ms. JOHNSON. That is my understanding.

Mr. KATKO. Okay. So they were discussed, and they were—and the very things that you are talking about now were rejected, as part of the final bill. So, now, we are at this process where I understand from your testimony before my—the whole time today, that you are going to great lengths to make sure that the people that are part of this—these exceptions that you are developing are properly vetted. Is that fair to say to both of you?

Mr. KERLIKOWSKE. Yes, it is.

Ms. JOHNSON. Yes, sir.

Mr. KATKO. I have got a simple question for you, then. Why the heck didn't you just go along with what the law said and expedite the visa process for these people, instead of going to—driving these gigantic exceptions into the law that was clear, and you both acknowledge were fully discussed beforehand?

Why didn't you just go with the—why didn't you just expedite the Visa Waiver—I mean, the visa process for these individuals that were no longer eligible for Visa Waiver? Why not just take the visa process and say we are going to put this on steroids? We are gonna follow the letter of this law, instead of driving trucks through it with exceptions?

Why not just say, we are gonna make the visa process more streamlined for these individuals, so we—so they won't be too inconvenienced?

Ms. JOHNSON. So, as I mentioned earlier, I mean, the—they certainly can apply for visas. I know they can get expedited—

Mr. KATKO. No, no. That is not my question. My question is, quite simply, why didn't you just take these individuals that were—that are now no longer eligible for a visa—visa waivers, and simply say, okay, now that you are not—you are inconvenienced by this, but we are gonna make it as simple as possible, because we don't want to disrupt travel. We don't want to disrupt everything.

Instead of sweeping them all under the umbrella of National security, which is, quite frankly, B.S., and why didn't you just do it the right way and just simply say those of you who now have to have visas, we are gonna make it—we are gonna expedite this, so you are minimally inconvenienced? Why didn't you do that?

Ms. JOHNSON. The Visa Waiver Program, again, the partners were very concerned, and we are very concerned of the fact that a

number of these individuals would be affected by this, would be treated as heightened security risks, when——

Mr. KATKO. But that is basically——

Ms. JOHNSON [continuing]. In fact——

Mr. KATKO [continuing]. What you are treating them as right now, because you are doing an extra screening on them now. So what is the difference?

Ms. JOHNSON. So, again, there is an option for a waiver under the law. We were pursuing that under the National security objectives of the United States.

Mr. KATKO. Okay. I understand this. You are starting to sound like Marco Rubio did Saturday night, here, okay? What I want to know is, from a—did you—first of all, I mean, a simple question. Did you even discuss or examine the possibility of simply expediting the visa process for these individuals, instead of just blowing an exception into this law?

Ms. JOHNSON. We are offering expedited visas to people who are affected under this law now.

Mr. KATKO. Okay. So, if you are doing it for some people, right? That are affected by this, correct?

Ms. JOHNSON. Yes.

Mr. KATKO. Why didn't you do it for these whole other categories that you guys grafted in here, knowing that you were going to incur the wrath of Congress, knowing that you were ignoring what Congressional intent was?

Ms. JOHNSON. Not trying to sound like Marco Rubio, but there is an option for a waiver under the law.

Mr. KATKO. Well, okay. Well, we disagree. Let's—we disagree on that one. Okay? All right. Mr. Kerlikowske.

Mr. KERLIKOWSKE. I think there are a couple of things that are helpful. One, I wouldn't know what it would take for the State Department, with resources, personnel, et cetera, and where those locations of consulates and embassies are.

I do know that we depend very clearly on a close working relationship with these Visa Waiver countries under all of the different guidelines that are now, or restrictions that are now in place to share information, and that by telling them that a number of people would not be considered, or would be considered at a heightened risk and additional security could have a negative impact on that communication that we value, very clearly, with them.

So I would—and remember, too, even though we have not had a single application, if there is any information that would be of a derogatory nature or cause us concern, we will default, at CBP, to denying admissibility and requiring that that person show up at the embassy or the consulate for, in fact, a visa application.

Mr. KATKO. Right. I understand what you are saying, but—and I understand, you know, relationships are important. But there are ways to smooth over the relationship without ignoring the law. It just seems to us, here, and I think bipartisan, mostly, that the law was being ignored and the Congressional intent was being ignored.

I guess I would urge you to maybe explore the possibility of going back and rethinking this policy, and maybe, maybe, thinking about messaging to your—our partner countries, we want your business, but we are also concerned about National security. So, work with

us, here. We will expedite the visa process for ya, and do it the right way.

That is—I would suggest you contemplate that. Thank you.

I now yield back.

Chairman MCCAUL. Okay. Just, in closing, first I want to thank the two of you for being here today. But I just want—you know, having chaired the committee before the bill was marked up, having been intimately involved in the discussions between the Congress and the White House and State Department and the Department of Homeland Security, you know, in my judgment, you have taken exceptions that were rejected by Congress and just approved them on your own authority under this waiver authority that was in the legislation.

It is very disturbing to us. We will continue our oversight authority on this on, as you say, a case-by-case basis, but we can—we also have legislative authority to fix this. In this legal memo—now, I know you said case-by-case, but you said additionally, as discussed in the legal paper, the National security waiver can be exercised by category, not just by individuals.

That doesn't sound like case-by-case basis to me. That sounds like a broad category, like what we have seen by Executive Order in immigration. Can you explain that?

Ms. JOHNSON. Again, this is a deliberative memo. So, under the INA, I know there are categories of waives, which we also, then again, assess on an individualized basis. But the process of that, again, was looking at the broad options under the waiver, that is under the law, and looking at those, again, as a deliberative process throughout the Department, taking into, obviously, Congressional intent and our conversations on regular consultations with the Department of Homeland Security.

Chairman MCCAUL. Well, and, Commissioner, if I can just say, in this memo, and this is your internal deliberations, legally, and I am an attorney, “the law gives the Secretary of Homeland Security authority to waive this ineligibility, if the Secretary determines such a waiver is in the law enforcement or National security interests.”

“As discussed, this is a lesser standard than that imposed by other statutes that require finding that a waiver is vital to, or essential to, the National security interests of the United States.”

Perhaps we didn't draft this per the administration's liking, but I would argue that there may be another option here, and that is to pass another law that had the language vital to or essential to the National security interests of the United States.

I know neither of you are attorneys, but would that close the loophole on these exceptions, if we did that?

Mr. KERLIKOWSKE. Mr. Chairman, I couldn't answer that, but I could tell you that in all of the conversations and the discussion, the many meetings I have had with Secretary Johnson, he is going to be assured of a narrow interpretation of reviewing these—the process and to make sure that the process is in place.

I know you have made it very clear about the oversight that you and the committee will provide on this. So, I would tell you that even though we have never entered into a process yet, or had a request for a waiver, that the Secretary has no interest or intention

of issuing a waiver, if that should come about, without making sure that—

Chairman MCCAUL. And I have discussed this—

Mr. KERLIKOWSKE [continuing]. It is foolproof.

Chairman MCCAUL. I have discussed this with the Secretary, and, you know, he is a—I know the pressure he is under. I think this is a State Department call and Homeland was put in a difficult position. That is my assessment.

In my judgement, just in my final closing remarks, I believe that we, in this case, as always in the State Department, with this foreign policy, have put the Iran deal over the National security interests of the American people.

With that, I do want to thank the witnesses for being here. Members of the committee may have some additional questions that we will ask you to respond in writing. Pursuant to the rules, it will be held open for 10 days. Without objection, the committee stands adjourned.

[Whereupon, at 1:01 p.m., the committee was adjourned.]

## A P P E N D I X

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QUESTIONS FROM RANKING MEMBER BENNIE G. THOMPSON FOR R. GIL KERLIKOWSKE

*Question 1a.* The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 prohibits individuals with recent travel to citizenship in Iraq, Iran, Sudan, or Syria and such other countries designated by the Secretary of Homeland Security from traveling to the United States under VWP. What specific changes to Customs and Border Protection's Electronic System for Travel Authorization (ESTA) will be necessary to determine whether someone is prohibited from traveling to the United States pursuant to the law?

Answer. As of February 23, 2016, CBP added several new questions to the ESTA application to help CBP determine if an individual is prohibited from traveling to the United States under the VWP. The new questions include:

- Have you traveled to, or been present in, Iraq, Syria, Iran, or Sudan on or after March 1, 2011?
- If yes, provide the country, date(s) of travel, and reason for travel.
- Have you ever been a citizen or national of any other country?
- If yes, other countries of previous citizenship or nationality?
- Are you a citizen or national of any other country?
- If yes, what country?

*Question 1b.* What is the status of those changes?

Answer. CBP launched the updated website with new questions on February 23, 2016.

*Question 2a.* The Act authorizes the Secretary of Homeland Security to issue a waiver if doing so is "in the law enforcement or national security interests of the United States" and DHS has announced it intends to consider waivers from certain categories of prospective VWP travelers.

What specific process will be used to determine whether a traveler will be issued a waiver?

Answer. As it currently stands, the waiver process is a case-by-case determination related to certain categories of aliens for which waivers may serve the National security or law enforcement interests of the United States. Categories under consideration include:

- Individuals who traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011, on behalf of an international organization, regional organization, or sub-national government of a VWP country on official duty;
- Individuals who traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011, on behalf of a humanitarian NGO on official duty;
- Individuals who traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011, as a journalist for reporting purposes;
- Individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015);  
or
- Individuals who have traveled to Iraq on or after March 1, 2011, for legitimate business-related purposes.

Visa Waiver Program (VWP) applicants complete the new Electronic System for Travel Authorization (ESTA) application on-line and must respond to questions regarding travel to Iran, Iraq, Sudan, and Syria. The information provided by the applicant is used to determine if the subject may qualify for a waiver, which causes the application to be electronically referred to the Terrorist Travel Prevention Cell (TTPC) for manual review. The TTPC is a multi-agency coordinating cell leveraging both operational and intelligence resources from across the U.S. Government to make individualized National security waiver determinations for ESTA applicants seeking to travel to the United States. The TTPC will utilize a variety of border security, counterterrorism, and law enforcement systems as well as open-source data

in conjunction with information provided through ESTA to determine if the subject may qualify for a waiver.

*Question 2b.* What role will CBP play in that process?

Answer. U.S. Customs and Border Protection (CBP) developed and maintains the Electronic System for Travel Authorization (ESTA) website as well as the case management and screening system for ESTA applications. CBP will coordinate with interagency partners and issue waivers of VWP) ineligibilities where appropriate.

CBP's National Targeting Center (NTC) is the lead for the multi-agency coordinating Terrorist Travel Prevention Cell (TTPC) leveraging both operational and intelligence resources from across the U.S. Government to make individualized National security waiver determinations for VWP travelers seeking to enter the United States. TTPC will utilize law enforcement systems as well as open-source data in conjunction with information provided on the ESTA application to determine if the subject may qualify for a waiver. CBP will accept the applications, refer eligible applications to the TTPC, and upon adjudication, notify the traveler of the determination.

*Question 2c.* What circumstances would warrant a waiver?

Answer. Waivers will be granted where a determination is made, on a case-by-case basis, that a waiver will serve the law enforcement or National security interests of the United States.

*Question 2d.* What will the costs be to CBP for adjudicating waivers?

Answer. CBP has determined that the TTPC will be initially established with 10 CBP Officers and staffed 7 days a week for up to 16 hours a day. The TTPC will be funded by CBP's portion of the ESTA fee (which is currently \$4 per ESTA application). CBP will adjust its staffing and cost estimates based on the number of waiver applications the TTPC receives.

#### QUESTIONS FROM HONORABLE BARRY LOUDERMILK FOR HILLARY BATJER JOHNSON

*Question 1a.* Recently, U.S. intelligence confirmed that over 6,600 suspected ISIS fighters have passports from Western countries. Are you all aware of this?

Answer. We are aware of reports indicating ISIS fighters have passports from Western countries. We closely monitor reports of this type and work within the interagency to develop and disseminate the information necessary to ensure that such individuals are not able to enter the United States.

*Question 1b.* If so, what are you doing to ensure these ISIS fighters do not "legally" come into our country on stolen Western passports?

Answer. All countries participating in the Visa Waiver Program are required to report their lost and stolen passports to Interpol, and the passport numbers of all visa applicants also are searched against Interpol's Stolen and Lost Travel Document database.

The Department of State is dedicated to the protection of our borders, and we have no higher priority than the safety of our fellow citizens at home and abroad. We and our partner agencies throughout the Federal Government have built a layered visa and border security screening system. We continue to refine and strengthen the 5 pillars of visa security: Technological advances, biometric innovations, personal interviews, data sharing, and training. This layered approach enables us and our partners to track and review the visa eligibility and status of foreign visitors from their visa applications throughout their travel to, sojourn in, and departure from the United States.

We continuously match new threat information to existing visa records. We have long recognized this function as critical to the way we manage our records and processes. This system of continual vetting evolved as post-9/11 reforms were instituted, and is now performed in cooperation with the Terrorist Screening Center (TSC). All records added to the Terrorist Screening Database are checked against the Consular Consolidated Database (CCD) to identify matching visa records. Matches are sent electronically from the Department of State to TSC, where analysts review the hits and flag cases for possible visa revocation. In addition, we have disseminated our data widely to other agencies that may wish to learn whether a subject of interest has a U.S. visa.

Adapting technology to secure our borders is a critical component of our work. For example, the Department of State has deployed software to embassy consular sections world-wide designed to enhance our ability to detect falsified or fraudulent Syrian and Iraqi passports. DHS and the Department of State are cooperating in this effort. Furthermore, the Department of State has watchlisted all known lost, stolen, or otherwise invalid Syrian and Iraqi passports in the Consular Lookout and Support System (CLASS) database against which consular officers screen all visa applications.



*Question 2a.* Back in October, this committee held a hearing on Worldwide Threats and Homeland Security Challenges, where I asked DHS Secretary Johnson, NCTC Director Rasmussen, and FBI Director Comey about the refugee crisis. These questions were never answered, so I would like to re-ask them: There have been varying data reports on the ratio of men to women and children coming into our borders. Most of the statistics I have come across indicate that the majority of Syrian refugees are predominately males, while a small percentage remains women and children. Is this true?

If so, what is the ratio of Syrian refugee men to women and children?

*Question 2b.* As we welcome an additional 10,000 Syrian refugees in fiscal year 2016 alone, how are you and your partner agencies planning to monitor admitted refugees to ensure violent extremists have not infiltrated their ranks?

*Question 2c.* Is the United States prioritizing Christian refugees, who are focal persecution targets in Syria?

Answer. Regarding the U.S. admission of Syrian refugees to the United States, the U.S. Refugee Admissions Program (USRAP) prioritizes admitting the most vulnerable Syrians, particularly female-headed households, children, survivors of torture, and individuals with severe medical conditions. Single men not traveling with family members and or joining friends or family in the United States make up only 2 percent of Syrian refugees admitted to the United States to date. In each instance, these individuals are only admitted after clearing intensive security screening—a process which pays additional attention to the relatively rare unattached, military-aged male applicant to the USRAP.

Of the 2,978 Syrian refugees admitted to the United States since September 11, 2001, not a single one has been arrested or deported on terrorism-related grounds.

The United States is committed to assisting people of all ethnicities, religions, and nationalities fleeing persecution. Since September 2011, the United States has admitted 2,833 Syrian refugees, 4 percent of whom are members of religious minorities, including Christians and other religious minorities, such as Yezidis. Pre-war demographics indicated that Christians made up around 10 percent of the population in Syria, or about 1.8 million Christians; however, Christians account for only about 1.2 percent of the approximately 2 million Syrian refugees in Egypt, Iraq, Jordan, and Lebanon who are registered with the United Nations High Commissioner for Refugees (UNHCR). In Turkey, which hosts another 2.6 million Syrian refugees, we do not possess data on the religious composition of such refugees, which the Turkish Government, vice UNHCR, has registered.

