

STATEMENT FOR THE RECORD
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FOR THE UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENT AFFAIRS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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