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

ON

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

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

The VWP permits nationals from 38 countries to travel to the United States for business or tourism without a visa for up to 90 days, provided they meet certain requirements and provide us with information we need for our security. The VWP enables more than twenty million of these travelers to travel without visas to the United States each year, if they receive authorization to do so after being screened against terrorist, criminal, and immigrant databases. In exchange for participation in the VWP, countries must adhere to stringent security cooperation standards that are not typical of other nations.

Additionally, DHS itself maintains several layers of security to identify any possible risks, including rigorous vetting by Customs and Border Protection (CBP) for all travelers flying into and out of the United States, including those traveling under the auspices of the VWP. CBP serves as the frontline in defending America's borders from terrorism and protects our economic security by facilitating lawful international travel and trade. Not only does the VWP promote legitimate trade and travel it also promotes international travel security initiatives and enhances law enforcement and security cooperation with foreign governments. We will elaborate on the evolution of the VWP and the security benefits that it provides throughout this hearing.

Background

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

The Secure Travel and Counterterrorism Partnership Act of 2007, which was enacted as part of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (the "9/11 Act"), transformed the VWP from a program that evaluated security threats on a country-by-country basis to a program with the added capability to screen individual travelers for potential threats that they may pose to the security or welfare of the United States and its citizens. In addition, the 9/11 Act mandated more robust information sharing between the United States and its VWP partners. Since the enactment of the 9/11 Act, DHS and its partner agencies have implemented those new requirements.

Rigorous Travel Screening

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

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

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

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

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

DHS vets travelers at several points along the travel continuum:

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

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

Thorough and Regular Reviews of VWP Countries

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

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

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

Information Sharing Requirements

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

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

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

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

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

Evolution of the VWP

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

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

Conclusion

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

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

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