



**TESTIMONY**

**OF**

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**U.S. DEPARTMENT OF HOMELAND SECURITY**

**BEFORE**

**THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM:  
SUBCOMMITTEE ON NATIONAL SECURITY**

**ON**

**“TERRORISM AND THE VISA WAIVER PROGRAM”**

**DECEMBER 10, 2015**

## **Introduction**

Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, and distinguished Members of the Subcommittees, thank you for the opportunity to testify on behalf of the Department of Homeland Security (DHS) about the security benefits of the U.S. Visa Waiver Program (VWP).

The VWP permits citizens of 38 countries<sup>1</sup> to travel to the United States for business or tourism for stays of up to 90 days without a visa. That does not mean travelers are able to board a plane with no security checks. “Waiver” does not mean waiving security. There are a host of security checks conducted on each VWP traveler, prior to travel to the United States, as a result of each applicant being required to have an approved Electronic System for Travel Authorization (or ESTA). To be eligible for the Visa Waiver Program, each country must first meet statutory requirements, and then maintain security standards throughout its membership. Additionally, DHS, with interagency partners, conducts robust, national-level risk assessments – at least every two 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. I look forward to going into more detail about these strong security requirements.

## **From Travel Program to Security Partnership**

When Congress first authorized the VWP, 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 has 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. 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 that they may pose to the security of the United States and its citizens. It also requires countries seeking designation in the VWP to, among other measures:

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<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.

- Enter into agreements with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or safety of the United States or its citizens;
- Report lost and stolen passport information via INTERPOL or other means designated by the Secretary of Homeland Security; and
- Be subject to an independent assessment by the Director of National Intelligence (DNI) that includes a review of all current, credible terrorist threats of the subject country; an evaluation of the subject country's counterterrorism efforts; an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions; and, an assessment of the risks associated with including the subject country in the program and recommendations to mitigate the risks identified therein. The independent DNI assessments supplement comprehensive assessments that DHS conducts pursuant to existing statute.

All current VWP countries meet these requirements. In fact, VWP designation is so prized that many countries that are not in the VWP complete program requirements in the hope of one day joining. Consequently, the VWP often provides security benefits to the United States without extending travel facilitation benefits to foreign countries.

Since the introduction of the 9/11 Act, DHS has made further improvements to the security of the VWP to address evolving threats. In August 2008, responding to a provision of the 9/11 Act, DHS introduced the Electronic System for Travel Authorization (ESTA), an online vetting application that DHS requires all VWP travelers to complete 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 and passport information, employment information, travel itinerary, and U.S. point of contact, among others. This information is vetted against DHS, Department of State, 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 may not board a plane for the United States.

More recently, we have taken measures to ensure that individuals of counterterrorism concern, including foreign terrorist fighters who have traveled to Syria, Iraq, and other conflict zones, are not able to travel to the United States via the VWP or any other means. In November 2014, for example, Secretary Johnson introduced enhanced data fields to the ESTA application. The enhanced ESTA data fields have enabled U.S. Customs and Border Protection (CBP) and National Counterterrorism Center to identify a larger number of applicants with potential connections to terrorism whose connections would not otherwise have been known.

In August 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 (HSPD-6) arrangements and Preventing and Combating Serious Crime (PCSC) agreements by sharing of terrorist and criminal information and utilizing such information provided by the United States;
- Collect and analyze travel data (Advance Passenger Information/Passenger Name Records), consistent with UN Security Council Resolution 2178 in order to identify high-risk travelers before they board inbound planes and thereby keep such travelers as far as possible from U.S. shores;
- Use the INTERPOL Lost and Stolen Passport 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.

In addition, the security enhancements require all VWP travelers to use secure, electronic passports with biometric identifiers when traveling to the United States.<sup>2</sup> This measure, which will be implemented in early 2016, will help to prevent passport fraud and better enable CBP officers to verify the identity of VWP travelers. CBP is already notifying ESTA applicants they may not be able to board a plane to the United States without an electronic passport.

The recent, tragic attacks in Paris underscore the need for the United States and its partners to swiftly implement these VWP enhancements. The Department of State reiterated this need to all VWP countries via demarche cable last week. On November 30, the White House announced additional enhancements to the program, to include, but not limited to DHS introducing further improvements to the ESTA application that will grant us 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 (APIS) fines from \$5,000 to \$50,000 for air carriers that fail to verify a traveler's passport data.

DHS and the Department of State will continue to work with VWP countries to rapidly implement all new program requirements, thereby strengthening U.S. security and the security of our partners. These enhancements demonstrate the degree to which DHS continuously assesses and is willing to take measures to strengthen the security of the VWP.

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<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.

## **National-Level Risk Assessments**

After designation in the VWP, countries must maintain high and consistent security standards. DHS, in consultation with the Department of State, is statutorily required to conduct reviews of the effects of each VWP country's continued designation in the program on U.S. national security, law enforcement, and immigration enforcement interests at least once every two years. During six- to nine-month reviews, DHS assesses each VWP country's counterterrorism, law enforcement, immigration enforcement, passport security, and border management capabilities. We collect information from the government of the VWP country under review, the U.S. Diplomatic Missions in that country, the Departments of State and Justice, the U.S. Intelligence Community, and other sources. Many reviews also include rigorous and thorough DHS inspections of airports, seaports, land borders, and passport production and issuance facilities in VWP countries. These reviews are at minimum conducted by personnel from DHS Headquarters – both Policy and Intelligence Analysts – as well as CBP officers, Transportation Security Administration experts, and State Department officials. No other program enables the U.S. Government to conduct such broad and consequential assessments of foreign partners' security standards and operations.

DHS conducts 19 VWP reviews annually. Each VWP review is supplemented by an independent intelligence assessment produced by the DHS Office of Intelligence and Analysis on behalf of the DNI. Following the conclusion of every review, DHS, in consultation with the Department of State, provides a report to Congress regarding the assessment results and designation determination.

In addition to the biennial review process, DHS continuously monitors all VWP countries to ensure that their continued designation in the program will not adversely affect the security of the United States. Continuous monitoring enables DHS to react rapidly to evolving security threats. The Secretary of Homeland Security has statutory authority to terminate or suspend a country's designation in the VWP if there is a credible threat originating from that country which poses an imminent danger to the United States or its citizens, or there is an emergency that could threaten the law enforcement or security interests of the United States.

The biennial review and continuous monitoring processes enable DHS not only to terminate the participation of countries in the VWP, but also to assist those countries in addressing security vulnerabilities. DHS has leveraged the VWP to improve foreign partners' counterterrorism capabilities, traveler screening, information sharing, passport issuance policies, and lost and stolen passport reporting processes. These actions have enhanced the mutual security of the United States and partner nations.

## **Comprehensive Traveler Screening**

In addition to national-level risk assessments, DHS conducts targeted screening of all VWP travelers at multiple points throughout the travel continuum. To be clear, all travelers coming to the United States are vetted – regardless of a visa or an ESTA.

All prospective VWP travelers must first obtain pre-travel authorization via CBP’s ESTA application prior to boarding a plane or vessel bound for the United States. ESTA applicants are vetted against the same biographic databases as visa travelers. DHS screens all ESTA application information immediately and automatically against DHS TECS<sup>3</sup> records, the FBI’s Terrorist Screening Database (TSDB), and State Department’s Consular Lookout and Support System (CLASS), 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 ensures that travel authorizations are not issued to prospective VWP travelers who pose a threat to U.S. national security. Any would-be traveler whose ESTA application is denied is referred to a U.S. embassy or consulate, where he or she would be interviewed by a consular officer and undergo biometric screening while applying for a visa.

I reiterate that this screening occurs *before* prospective VWP travelers may board a plane or vessel bound for the United States. Furthermore, 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 reviewed throughout its validity period for new derogatory information and is subject to further review and subsequent denial if necessary. This includes recurrent vetting against the Terrorist Screening Database (also known as, the “Terrorist Watchlist”). CBP officers adjudicate every ESTA application that raises counterterrorism or admissibility concerns.

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 counterterrorism databases to identify high-risk individuals before they depart for the United States and when they travel by air within the United States. All VWP travelers are subject to this screening.

VWP travelers are subject to additional layers of screening and inspection upon arrival at U.S. ports of entry. CBP officers collect biometric information from all VWP travelers and screen it against U.S. law enforcement and counterterrorism databases. Moreover, CBP officers screen 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.

Since ESTA’s inception, CBP has denied thousands of ESTA applications for national security reasons as a result of vetting against the Terrorist Screening Database. During

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<sup>3</sup> TECS is an automated enforcement and inspections system that provides a large database of information for law enforcement and border inspection purposes.

the same period of time, CBP denied more than 165,000 ESTA applications submitted by individuals with passports reported as lost or stolen. This diligence continues. Since the beginning of the current fiscal year, October 1, 2015, CBP has denied more than 280 ESTA applications for national security reasons.

DHS also leverages its partnerships with the National Counterterrorism Center and the FBI -including harnessing the capabilities housed in the Terrorist Screening Center - to augment the screening of VWP travelers throughout the travel continuum. In support of this effort, DHS seeks to expand Preclearance operations to ten additional foreign airports, most of which are located in VWP countries. The Preclearance Program enables CBP officers at overseas locations to inspect travelers—including those traveling under the VWP—before they board planes bound for the United States. This ensures that high-risk individuals are identified long before they reach our shores.

### **Mutually-Reinforcing Security Criteria**

VWP traveler screening is reinforced by the statutory requirement that VWP countries regularly share information with the United States pertaining to known and suspected terrorists, serious criminals, and lost and stolen passports. As a result of VWP information sharing arrangements, VWP countries have provided the United States with identity information about thousands of known or suspected terrorists. VWP information sharing augments existing information sharing between the United States and VWP countries' security services. Moreover, VWP countries have provided nearly 70 percent of the records in INTERPOL's Stolen and Lost Travel Document Database, which DHS utilizes in its daily screening of ESTA applications and API/PNR data to prevent the fraudulent use of passports by terrorists and serious criminals.<sup>4</sup> The ongoing exchange of criminal and terrorist information is integral to the traveler screening that we conduct. It is questionable whether the United States would receive such extensive law enforcement and counterterrorism information from foreign partners without the VWP.

### **Conclusion**

In summary, 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. VWP travelers are subject to rigorous screening before they depart for the United States and throughout the travel continuum. DHS continues to strengthen its efforts to ensure that the VWP provides for the security and prosperity of the American people. We look forward to partnering with Congress as we undertake this endeavor.

Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, and distinguished Members of the Subcommittees, thank you for your consideration of this important topic. I look forward to responding to your questions.

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<sup>4</sup> INTERPOL ASF-SLTD Statistics, October 11, 2015



# Kelli Ann Burriesci

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Kelli Ann Burriesci serves as the Deputy Assistant Secretary for the Department of Homeland Security's Screening Coordination Office (SCO). Working in the SCO since 2007, Ms. Burriesci is responsible for coordinating the Department's screening and credentialing policies in way that facilitates legitimate travel and the issuance of immigration benefits; ensures individual privacy and redress opportunities; and deters, detects, and denies access to or withholds benefits from individuals who may pose a threat to the United States. Ms. Burriesci also serves as the DHS senior redress official for the Department.

Before joining DHS, Ms. Burriesci took a break from Federal employment and worked in the private sector focusing on identity management programs that provide a layer of security for Federal transportation programs

and Federal personal identity verification credentials.

Beginning her career in public service in 2002, Ms. Burriesci worked at the U.S. Government Accountability Office (GAO), where she performed program evaluations in a number of areas including budget and performance integration, contracting and acquisitions, and food safety.

Prior to GAO, Ms. Burriesci managed Syracuse University's Fund for Syracuse campaign supporting higher education.

A native of Long Island, Ms. Burriesci earned a Bachelor of Arts from the State University of New York at Binghamton, and a Master of Public Administration from Syracuse University.

Ms. Burriesci joined the Senior Executive Service in February 2012, and completed the DHS Executive Capstone Program in 2015.