

United States Senate

WASHINGTON, DC 20510

February 11, 2016

The Honorable Jeh C. Johnson
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

We commend you for providing guidance on the issuance of waivers on a case-by-case basis for certain categories of individuals from Visa Waiver Program (VWP) countries who have recently traveled to Iran, Iraq, Sudan, or Syria. We respectfully request that you provide similar guidance for individuals who are dual nationals of a VWP country and Iran, Iraq, Sudan, or Syria.

As you know, under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, individuals from VWP countries who are nationals of or have traveled to Iran, Iraq, Sudan, or Syria on or after March 1, 2011 are no longer permitted to travel to the United States under the VWP. The legislation grants you authority to waive these prohibitions if you determine it is in the law enforcement or national security interests of the United States.

Notably, the prohibition on dual nationals applies to individuals who were born in VWP countries and have never traveled to Iran, Iraq, Sudan, or Syria, but who are nationals of one of these countries solely because of their ancestry. We support reforming the VWP, but singling people out based on their national origin does not make us safer, is inconsistent with American values, and invites discrimination against American citizens who are dual nationals.

Senators Flake, Durbin, and Booker have introduced S.2449, the Equal Protection in Travel Act. This bipartisan legislation would repeal the prohibition on dual nationals participating in the VWP. We support the Equal Protection in Travel Act, but while this legislation is pending we urge you to clarify the circumstances in which you will consider waivers for VWP travelers who are dual nationals of Iran, Iraq, Sudan, or Syria.

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act does not define “law enforcement or national security interests” and there is no legislative history regarding the waiver, so it is solely in your discretion to determine when such interests justify a waiver. There are ample law-enforcement and national-security justifications for granting waivers for dual nationals. For example, singling out people based on their national origin risks alienating these communities from law enforcement. It is also an unwise use of scarce law-enforcement resources to provide greater scrutiny to people based on their national origin. Your focus should be on people with possible links to terrorism, regardless of their nationality.

Accordingly, we urge you to establish a process for dual nationals to apply for case-by-case waivers via the Electronic System for Travel Authorization and to designate categories of dual nationals who could be eligible for such waivers, for example:

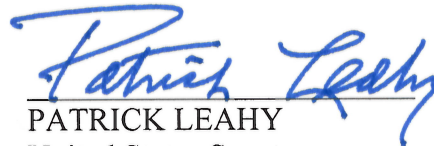
- “Passive” dual nationals who are nationals of Iran, Iraq, Sudan, or Syria under one of the country’s laws but who have never acted as such (e.g. the individual has not obtained a passport from the country);
- Individuals with no significant ties to Iran, Iraq, Sudan, or Syria;
- Individuals who have continuously resided in a VWP country for more than five years; and
- Individuals who have not travelled to Iran, Iraq, Sudan, or Syria in the last ten years.

Thank you for your time and consideration. We look forward to a prompt response.

Sincerely,



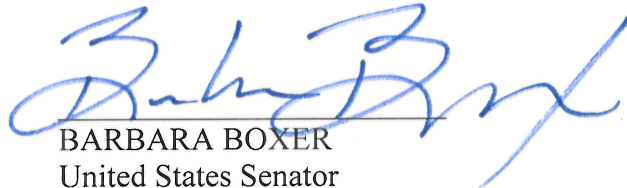
RICHARD J. DURBIN
United States Senator



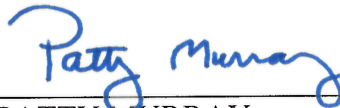
PATRICK LEAHY
United States Senator



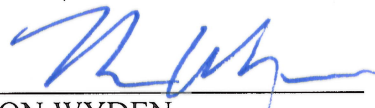
BENJAMIN L. CARDIN
United States Senator



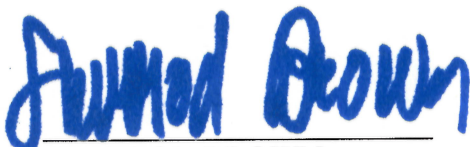
BARBARA BOXER
United States Senator



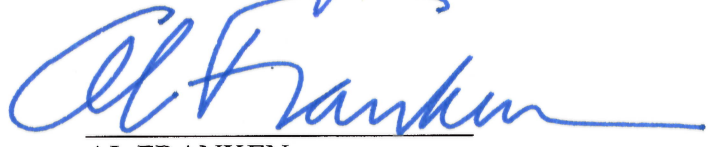
PATTY MURRAY
United States Senator



RON WYDEN
United States Senator



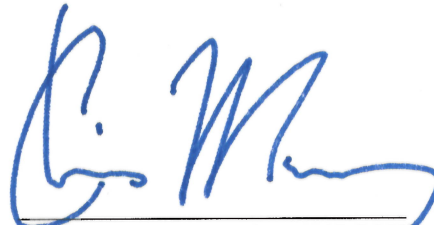
SHERROD BROWN
United States Senator




AL FRANKEN
United States Senator

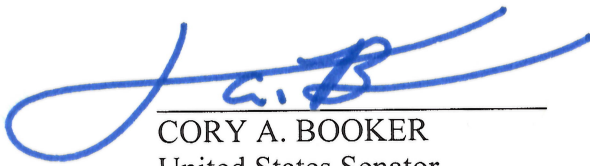
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BRIAN SCHATZ
United States Senator


CHRISTOPHER S. MURPHY
United States Senator


MARTIN HEINRICH
United States Senator


EDWARD J. MARKEY
United States Senator


CORY A. BOOKER
United States Senator

cc: The Honorable John Kerry, Secretary of State