



The American-Arab Anti-Discrimination Committee

Comments to the

U.S. Department of Homeland Security

U.S. Customs and Border Protection

on Electronic System for Travel Authorization System of Records

Yolanda C. Rondon, Esq., ADC Staff Attorney
American-Arab Anti-Discrimination Committee
1990 M Street NW Suite 610
Washington, DC 20036
Phone: (202) 244-2990
Fax: (202) 333-3980
E-mail: legal@adc.org
Web: www.adc.org

To: Karen L. Neuman
Chief Privacy Officer, Privacy Office
Department of Homeland Security
Washington, DC 20528

I am writing to you on behalf of the American-Arab Anti-Discrimination Committee (ADC), the country's largest Arab-American organization. ADC is committed to protecting civil rights, promoting mutual understanding, and preserving the Arab cultural heritage. ADC has protected the Arab-American community for thirty five years against defamation, discrimination, racism, and stereotyping. ADC has standing commitment to open government, and government transparency and accountability. ADC respectfully takes this opportunity to submit the following comments to the United States Department of Homeland Security (DHS) - Customs and Border Protection (CBP).

Dual-Nationality Provisions

ADC strongly urges DHS to be weary on how they define and make determinations of individuals considered dual-nationals for exclusion purposes under the Electronic System for Travel Authorization ("ESTA") application. Individuals should not be considered dual nationals based solely on: 1) their birth to a Syrian, Iraqi, Iranian, or Sudanese parent; and/or 2) being born in Syria, Iraq, Sudan, or Iran.

Unlike the United States which grants citizenship to all persons born in the United States, birth within Syria, Sudan, Iraq or Iran does not automatically confer citizenship. Rather citizenship is conferred by naturalization, marriage, or descent. With respect to descent, a child born to a Syrian or Sudanese father inherits citizenship, regardless of the child's country of birth or where the child actually lives.

National origin and dual citizenship alone does not predicate a national security threat. It is not black and white, nor simple to suggest that the bill just requires individuals to get a visa. The bill is not just a visa requirement, it is discriminatory. Section 3 imposes a mandatory bar to all persons whom are dual citizens of Syria, Iraq, Sudan, and Iran is blatant profiling on its face. Only nationals of particular countries regardless of whether they have traveled to a terrorist support country or not, and have never step foot in these countries, have to meet additional requirements they would not otherwise have to go through if they were not Arab. There is no separate assessment and/or security review done that determines that specific person on a case by case basis is a security threat, non-related to their identity, place of birth, or country of national origin. There is insufficient reason to justify the blanket differential treatment of VWP citizens who are nationals of Iraq, Syria, Iran, or Sudan. The Secretary of the U.S. Department of Homeland Security is well within his authority to use the law enforcement legal waiver as

promulgated in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (“VWP Act”) to waive the dual nationality provisions.

Historically immigration programs with sweeping powers to exclude people based on nationality, race, ethnic origin or religion have proven to be ineffective. In 2002, the U.S government established the special-registration program under National Security Entry-Exit Registration System (NSEERS) requiring heightened registration and scrutiny of people in the U.S. who came from mostly Arab and Muslim countries. NSEERS was initially portrayed as an anti-terrorism measure which required male visitors to the US from 25 Arab and Muslim countries to be fingerprinted, photographed, and questioned by immigration officers. Many whom complied with registration were arbitrarily detained and deported. NSEERS proved to be an ineffective counter-terrorism tool, and has not resulted in a single known terrorism-related conviction. We also should not forget the detrimental ramifications of blanket immigration exclusion and discrimination against Asians by the Chinese Exclusion Act.

Waivers to Travel Ban Provisions

ADC also strongly urges DHS to implement an appropriate level of broad categories in the ESTA application to actually encompass the intended implementation of the DHS travel ban waivers for humanitarian work, journalists, and legitimate business purposes. The ESTA should not have preconfigured set categories that list particular organizations and/or entities to determine eligibility, but allow the option for applicants to describe the purpose of their work in the country and allow submission of supportive documents and information. ADC also emphasizes that these waivers support actual law enforcement and national security efforts.

We must not forget that journalists, doctors, and humanitarian workers have always been at the forefront and foundation of exposing mass human rights violations, abuses and suffering. These professionals have dedicated their lives, and many have risked their lives defending humanity, and providing the necessary aid and support civilians need. These professionals in many instances have done what our government and our allied nations refuse and/or are unwilling to do, providing basic needs of food, water, and medicine, raising awareness to the atrocities, and looking past political implications and the race, religion, national origin, and/or ethnicity of those suffering. These professionals should not be penalized for their humanity

The ability to exploit the Visa Waiver Program (“VWP”) in comparison to any other visa petition process has been drastically overstated. Actually, the VWP has in place stringent security requirements. First, VWP member countries must maintain the statutory required security standards to even continue to be eligible under the VWP. Extensive reviews of VWP member countries is conducted to ensure compliance with the statute and to ensure that the country’s measures uphold to the evolving nationality security standards of the United States as threat information is continuously assessed and monitored. Second, all travelers through the VWP must undergo a multi-tier vetting process including but not limited to performance of the ESTA

intelligence, terrorist screening, watch-lists, and law enforcement database checks, and biographic information collection. DHS also implemented additional security requirement measures for VWP countries to increase information sharing, transparency, and intelligence communication. These DHS measures are on top of reporting of lost and stolen passports to Interpol, and mandating use of electronic chip passports. Third, DHS-Customs and Border Protection adjudicate every single ESTA application and have used their authority to deny travel authorization to travelers under VWP whom have raised counterterrorism and/or national security concerns. A traveler's ESTA's is continuously subject to systematic monitoring during the validity of the ESTA and each travel for derogatory and threat information.

The passage into law of the VWP Act is a poor reflection of America, and the fundamental rights and principles we are obligated to respect, protect and defend. The ideal aim of strengthening the security of our nation does not equate to shutting down our borders and abandoning our American values. Isolation and discrimination has never been and should never be the solution.