



March 15, 2016

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20510

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20510

KARIN JOHANSON
DIRECTOR

Re: **Senate Committee on Homeland Security and Governmental Affairs
Hearing on “The Security of U.S. Visa Programs”**

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

Dear Chairman Johnson and Ranking Member Carper:

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

On behalf of the American Civil Liberties Union (ACLU), we submit this letter to the U.S. Senate’s Committee on Homeland Security and Governmental Affairs Hearing on “The Security of U.S. Visa Programs.” Congress must fix recent changes to the Visa Waiver Program (“VWP”) that enshrine discrimination based on national origin, ancestry, and parentage, and fan the flames of discriminatory exclusion, both here and abroad. The ACLU urges Congress to repeal the discriminatory travel restriction by swiftly passing S. 2449, the “Equal Protection in Travel Act of 2016.”

I. **The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 arbitrarily discriminates against dual nationals of Iran, Iraq, Sudan, or Syria who are citizens of visa waiver program (“VWP”) countries – based on their national, origin, ancestry, and parentage.**

On December 18, 2015, Congress passed the fiscal year 2016 Consolidated Appropriations Act, which included H.R. 158, the “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015,” a bill that never received a hearing or markup by the Senate Homeland Security and Governmental Affairs Committee (“Committee”).

Hastily negotiated and cobbled together on December 3, 2015, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act was intended to be Congress’s response to the November 2015 terrorist attacks in Paris. What emerged, however, from the negotiations was a bill that singled out dual nationals

of Iran, Iraq, Sudan, or Syria to the exclusion of all other citizens of VWP countries. There was no justification to strip visa-free travel privileges from these dual nationals, and the ACLU criticized and continues to oppose this provision as discriminatory and un-American.

Significantly, 4 senators wrote to congressional leadership urging them, to no avail, not to include the discriminatory provision targeting dual nationals in the fiscal year 2016 Consolidated Appropriations Act.¹

Now the law of the land and in operation, the 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act has categorically terminated visa-free travel privileges for all citizens of VWP countries who are dual nationals² of Iran, Iraq, Sudan, or Syria. This revocation of VWP privileges applies to all dual nationals of Iran, Iraq, Sudan, or Syria, even if they have never resided in or traveled to these four countries.³ By singling out these four nationalities to the exclusion of other dual nationals in VWP countries, this law amounts to blanket discrimination based on nationality, ancestry, and parentage.

Not only is this law discriminatory, it is arbitrary. Unlike the U.S. which grants citizenship to all children born on U.S. soil, birth within Syria,⁴ Iran,⁵ or Sudan⁶ does not automatically confer citizenship. Rather citizenship is conferred by naturalization, marriage, or descent. With respect to descent, a child born to an Iranian father is an Iranian citizen, regardless of the child's country of birth. The same citizenship by descent law applies to a child born to a Syrian father, regardless of the child's country of birth. A similar citizenship by descent law applies to a child born to native-born Sudanese father, regardless of the child's country of birth. The 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act has now folded such gender-based distinctions into U.S. law.

The 2015 Visa Waiver law has caused immediate and direct harm to otherwise qualified visitors seeking to travel to the U.S. In January 2016 alone the following individuals were denied boarding on U.S.-bound flights, solely on the basis of their dual nationality:

¹ Letter from Senators Jeff Flake, Dick Durbin, Dean Heller, and Patrick Leahy to Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan (Dec. 13, 2015), available at http://www.flake.senate.gov/public/_cache/files/abc3d0f8-a50e-4d8b-984c-9235a8bc5a2a/12.13.15-senate-vwp-dual-nationality-omni-letter.pdf.

² For a list of countries that support or reject dual nationality as of 2001, see U.S. OFF. OF PERSONNEL MGMT. (“OPM”), CITIZENSHIP LAWS OF THE WORLD (2001), available at <http://www.multiplecitizenship.com/documents/IS-01.pdf>. See also Transatlantic Council on Migration (MPI), “Dual Citizenship in an Age of Mobility” (2008), www.migrationpolicy.org/transatlantic/docs/Faist-FINAL.pdf.

³ 8 U.S.C. 1187(a)(12)(A)(ii), which Title II, Sec. 203 of H.R. 2029 amends, specifically names the countries of Iraq and Syria (Subsection I) and covers Iran and Sudan by incorporating reference to existing government lists that name Iran and Sudan (Subsection II).

⁴ See OPM, *supra* note 2 at 192; and U.K. HOME OFF., SYRIAN ARAB REPUBLIC – COUNTRY OF ORIGIN INFORMATION (COI) REPORT (2013), 164-165, available at http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312738/Syrian_Arab_Republic_report_2013.pdf.

⁵ Iranian Civil Code states that “[t]hose whose fathers are Iranians, regardless of whether they have been born in Iran or outside of Iran” are “considered to be Iranian subjects” (The Civil Code of the Islamic Republic of Iran, Book 2, Article 976 (2006), available at <https://www.princeton.edu/irandataportal/laws/institutionsgovernance/nationality-law/>).

⁶ See OPM, *supra* note 2 at 186, which states that, for a person born after January 1, 1957, “birth in the territory of Sudan does not automatically confer citizenship.”

- **Rana Rahimpour**, a British-Iranian *BBC* journalist, and her young British citizen child were denied boarding on a flight from London Heathrow airport to Newark airport. They had planned to attend a surprise party for a relative in the U.S.⁷
- **Marjan Vahdat**, a European citizen and Iranian dual national, was scheduled to perform on January 30, 2016, in San Jose, California. A world-renowned vocalist trained in classical Persian music, Ms. Vahdat was denied boarding on her Frankfurt to U.S. flight. Central Stage and Hamyar Art Foundation made multiple calls to the U.S. embassy, Department of Homeland Security, and airlines with no success. The concert organizers ended up posting a notice on their website to all ticket purchasers explaining the circumstances surrounding Ms. Vahdat's absence.⁸
- **Newsha Tavakolian**, a European citizen and Iranian dual national, is a photographer whose work has been published in *Time Magazine*, *The New York Times*, and *National Geographic*. She can no longer travel to the U.S. on the VWP because of the new discriminatory travel restriction targeting dual nationals.⁹

II. By singling out dual nationals of Iran, Iraq, Sudan, or Syria, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 creates a wedge of distrust between those minority American communities and U.S. law enforcement.

There is no sufficient security reason to justify the differential treatment of VWP citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. By singling out these dual nationals, the new visa waiver law stigmatizes them as inherently suspect and sends a message of prejudice and intolerance against Iranian, Iraqi, Sudanese, or Syrian communities in the U.S. The discriminatory treatment of dual nationals creates a wedge of distrust between those minority American communities and domestic U.S. law enforcement.

Already, many prominent Americans have spoken out against the discriminatory dual nationality provision, expressing how it stigmatizes them and makes them feel like second-class American citizens:

- **Kouros Kolahi**, an Iranian-American orthopedic surgeon in California: "Because of the little-noticed visa reform language included in the federal omnibus spending bill, I am now treated differently than my wife, daughter and other fellow Americans. I was born in this country and have spent my entire life here. ... Yet, based on our ancestry, this law discriminates against me and other Americans."¹⁰

⁷ Saeed Kamali Dehghan, *BBC journalist stopped from flying to US over UK-Iranian nationality*, THE GUARDIAN (Jan. 19, 2016), <http://www.theguardian.com/uk-news/2016/jan/19/bbc-journalist-stopped-from-flying-to-us-over-uk-iranian-nationality>.

⁸ See, Email from Central Stage and Hamyar Art Foundation to customers, who had purchased tickets to Mahsa & Marjan Vahdat concert (Jan. 29, 2016), available at <http://www.niacaction.org/wp-content/uploads/2016/01/Screen-Shot-2016-01-30-at-8.38.14-AM.png>; and Events, *Marjan (Absent) and Mahsa Vahdat Concert in San Jose*, KODOOM (Jan. 30, 2016), <http://events.kodoom.com/en/san-jose-ca/marjan-and-mahsa-vahdat-in-concert/76950/e/> (stating that "UPDATE, Jan. 29, 2016: Marjan Vahdat not [a]ble to [a]ttend due to visa issues.").

⁹ Hadas Gold and Nahal Toosi, *New York Times Iran reporter on new visa requirements: 'America, it was fun while it lasted.'* POLITICO (Jan. 26, 2016), <http://www.politico.com/blogs/on-media/2016/01/new-york-times-iran-reporter-visas-218240>.

¹⁰ Kouros Kolahi, *Visa waiver law deprives me, an Iranian American, of my rights*, S.F. CHRON. (Jan. 4, 2016), <http://www.sfchronicle.com/opinion/openforum/article/Visa-waiver-law-deprives-me-an-Iranian-American-6736417.php>.

- **Marjan Ehsassi**, an Iranian-American woman who previously worked at the National Democratic Institute in Washington, D.C.: “What this proposed language would do is create two tiers of citizens....I don’t know this country. I feel like I don’t belong.”¹¹
- **Roozbeh Shirazi**, an Iranian-American assistant professor at the University of Minnesota: “Our sense of belonging as Americans, a topic that I have devoted much of my research toward, is at stake. Three generations of my family’s lives, memories and relationships are inextricably tied to this land. For many Iraqi- and Syrian-Americans, this history is much longer....How are we expected to feel a connection to a country that formalizes a lower tier of citizenship for us? How are my wife and I supposed to raise our 2-year-old son to exercise his rights as a citizen of this country when those rights are marked with an asterisk?”¹²
- **Farshad Farahat**, an Iranian-American actor: “Unfortunately, instead of combating the roots of terrorism, this bill scapegoats Iranian Americans, millions of US professionals who have helped build America. Professionals that strive in education and economy in the US and in the Mid-East, the real weapons that can end terrorism.”¹³
- **Maziar Nourian**, an Iranian-American student at the University of Utah: “The more important thing here is it’s not really talking about travel privileges, you’re creating two classes of citizens, one being every other American, including yourself, and me, who was born and raised in Salt Lake City but who happens to be of dual national citizenship.”¹⁴
- **Mitra Jouhari**, an Iranian-American comedian in Brooklyn, New York: “Iranian-Americans are being targeted in a way that is alarming....It’s all knee jerk, it’s reactive, and it’s racist.”¹⁵

III. The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 could result in the loss of visa-free travel privileges for U.S. citizens who are dual nationals of Iran, Iraq, Sudan, Syria.

Under the VWP, Americans of all nationalities have long been accustomed to traveling to many parts of Europe and Asia without visitor visas. This allows for speedy, flexible, and convenient international travel, which in turn promotes tourism, trade, study abroad, and business, both in the U.S. and abroad.

However, because the VWP operates on the basis of reciprocity, the new visa waiver travel restrictions could result in the 38 VWP countries applying the same travel restrictions to U.S. citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. If any of the VWP countries

¹¹ Dana Milbank, *Middle Eastern by birth, American by choice and terrified of Trump*, WASH. POST (Dec. 14, 2015), https://www.washingtonpost.com/opinions/middle-eastern-by-birth-american-by-choice-and-terrified-of-trump/2015/12/14/6cc565ca-a2aa-11e5-b53d-972e2751f433_story.html.

¹² Roozbeh Shirazi, *Moving toward second-class citizenship with Congress’ visa-waiver legislation*, MINN. POST (Dec. 16, 2015), <https://www.minnpost.com/community-voices/2015/12/moving-toward-second-class-citizenship-congress-visa-waiver-legislation>.

¹³ Farshad Farahat, *Iranian Americans Are Not Second Class Citizens*, HUFF. POST (Dec. 14, 2015), http://www.huffingtonpost.com/farshad-farahat/iranian-americans-are-not_b_8799192.html.

¹⁴ Jeremy Harris, *Dual-citizen Utahns call new visa-requirement ‘discriminatory,’* CBS KUTV (Feb. 5, 2016), <http://kutv.com/news/local/dual-citizen-utahns-call-new-visa-requirement-discriminatory> (quoting Maziar Nourian, student, University of Utah).

¹⁵ Julie Bort, *A Brooklyn comedian has launched a Facebook campaign to stop a ‘racist’ bill from passing Congress*, BUSINESS INSIDER (Dec. 15, 2015), <http://www.businessinsider.com/brooklyn-comedian-mitra-jouhari-tries-to-stop-hr-158-2015-12>.

chooses to apply the same discriminatory rule, that reciprocal action will result in the loss of visa-free travel privileges for U.S. citizens who are dual nationals of Iran, Iraq, Sudan, or Syria. According to a letter from 34 executives and entrepreneurs from the high-tech industry, including Mark Cuban and Twitter CEO Jack Dorsey, such reciprocal measures would have the effect of “potentially weakening the power of the U.S. passport for millions of U.S. citizens” and would “also harm U.S. business interests.”¹⁶

- **Ali Partovi**, an Iranian-American entrepreneur and investor: “the idea that some of us would lose this privilege because of our Middle Eastern or African heritage compromises the very essence of America: that ‘all men are created equal.’”¹⁷
- **Samira Damavandi**, an Iranian-American student currently pursuing a master degree at the University of Oxford: “I have temporarily left my home state to attend graduate school abroad. I thought to myself, “While I’m here, I can’t wait to travel throughout Europe to see my cousins during my term breaks” and began planning the trips to Switzerland and Germany to see them. But because my Iranian-born parents automatically passed down their nationality on to me through *jus sanguinis* laws and I am an Iranian-American dual national, now I’m uncertain if freely traveling to see my family will be a possibility due to the recent passage of a discriminatory House bill sponsored by Rep. Candice Miller (R-MI-10).”¹⁸
- **Azita Ranjbar**, an Iranian-American Ph.D. candidate at Pennsylvania State University: “If Visa Waiver countries retaliate, Iranian Americans and other dual nationals will become 'less than' American citizens. We will be forced to go through long, expensive, and invasive security processes to secure visas for international travel ... This differential treatment of Americans solely based on national origin is unacceptable and a grave violation of the basic rights of U.S. citizens.”¹⁹

IV. Congress must swiftly pass the Equal Protection in Travel Act (S. 2449), to remove the discriminatory travel provision and ensure that American citizens are not further harmed by the new visa waiver law.

Introduced shortly after the new year, S. 2449 is bipartisan legislation that would correct the shameful discriminatory travel provision now enshrined into U.S. law. [A companion bill, H.R. 4380, has been introduced in the House with bipartisan support.] S. 2449 would revoke the provision included in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that strips visa-free travel privileges from dual nationals of Iran, Iraq, Sudan, or Syria. Under S. 2449, dual nationals of these four countries would be restored to the VWP and enjoy the travel privileges they had long enjoyed prior to December 18, 2015. To ensure that no U.S. citizens who are dual nationals are harmed by the discriminatory provision, Congress should move swiftly to pass S. 2449.

¹⁶ Biz Carson, *Silicon Valley leaders slam ‘discriminatory’ travel laws in letter to Congress*, BUSINESS INSIDER (Feb. 23, 2016), <http://www.businessinsider.com/silicon-valley-leaders-come-out-against-visa-travel-discrimination-2016-2>.

¹⁷ Ali Partovi, *A Call To Arms Against McCarthy 2.0*, TECHCRUNCH (Dec. 16, 2015), <http://techcrunch.com/2015/12/16/a-call-to-arms-against-mccarthy-2-0/>.

¹⁸ Samira Damavandi, *Am I Not American Enough?*, HUFF. POST (Dec. 14, 2015), http://www.huffingtonpost.com/Samira-Damavandi/visa-waiver-program_b_8790096.html.

¹⁹ Azita Ranjbar, *When Rhetoric Becomes Reality: Changes to Visa Waiver Program Create Second-Class Citizens*, HUFF. POST (Jan. 8, 2016), http://www.huffingtonpost.com/azita-ranjbar/when-rhetoric-becomes-rea_b_8934832.html.

V. **Conclusion**

The ACLU urges Congress to fix the discriminatory dual nationality provision in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that scapegoats four groups based on national origin, ancestry, and parentage. We urge Congress to swiftly pass S. 2449, the Equal Protection in Travel Act, which will remove the provision that enshrines discrimination against dual nationals of Iran, Iraq, Sudan, and Syria.

For more information, please contact ACLU Legislative Counsel Joanne Lin (202-675-2317; jlin@aclu.org).

Sincerely,



Karin Johanson
Director
Washington Legislative Office



Joanne Lin
Legislative Counsel