WASHINGTON
LEGISLATIVE OFFICE

May 25, 2016

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

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Re: **ACLU Opposes "Visa Integrity and Security Act of 2016" (H.R. 5203)**

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the American Civil Liberties Union ("ACLU"), we submit this letter to the House of Representatives Judiciary Committee to express our opposition to H.R. 5203, the "Visa Integrity and Security Act of 2016" ("VISA Act"). The VISA Act would dramatically change the current immigrant and non-immigrant visa application process by expanding government-mandated DNA testing and collection for all individuals seeking immigrant visas based on a family relationship, and imposing discriminatory measures against nationals and dual nationals of predominantly Muslim states. We urge the Committee to oppose the VISA Act.

I. H.R. 5203 would dramatically expand the scope of federally-mandated DNA testing and collection, without providing for the safeguarding or removal of this highly private medical information.

H.R. 5203 would require all individuals seeking immigrant visas based on a family relationship to undergo DNA testing, at their expense, to prove up the biological relationship. This measure would involve DNA testing and collection for both U.S. citizens and their family members. U.S. citizens would have to submit to a DNA test in order to confirm that their genetic information matches that of their family member. H.R. 5203 offers no exceptions to mandatory DNA testing; therefore, even a nursing mother would be required to undergo DNA testing to prove the biological relationship with her infant.

Troublingly, H.R. 5203 would effectively ratify the use of DNA in routine bureaucratic adjudications. Under current immigrant visa procedures, the Department of State ("DOS") recommends that "due to the expense, complexity, and logistical delays inherent in parentage testing, *genetic testing should be used only if no other credible proof (documentation, photos, etc.) of the relationship exists* (emphasis added).[1] H.R. 5203, however, ignores this long-established practice

[1] U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, DNA RELATIONSHIP TESTING PROCEDURES, https://travel.state.gov/content/visas/en/immigrate/family/dna-test-procedures.html (last visited May 20, 2016).

and instead imposes a rash expansion of mandatory DNA testing and collection in all immigrant visa cases involving a family member, even when there is ample credible proof of the family relationship and no indication of fraud regarding parentage. H.R. 5203, no doubt, would result in serious delays in immigrant visa processing across the world, and would force U.S. citizens to be separated from their family members for no good reason.

Furthermore, collecting and retaining DNA from individuals for the sole purpose of investigating biological relationships would amount to population surveillance that subverts our notions of a free and autonomous citizenry. DNA testing involves a bodily intrusion for an individual's genetic blueprint and reveals highly sensitive, private information that discloses information about disease predisposition and other health attributes. Therefore, any measure that requires DNA collection must include comprehensive, carefully crafted rules addressing the retention, access, sharing, security, and deletion of this information. H.R. 5203, however, contains no such safeguards and would therefore require the indefinite retention of DNA involving thousands of U.S. citizens, immigrants, and family members. Robust protections must be put into place to prevent abuse of highly private DNA information that could harm individuals in a multitude of contexts including employment, health insurance, and other legal matters.

II. H.R. 5203 would arbitrarily force nationals and dual nationals of predominantly Muslim countries, who are applying for visas, to undergo heightened security checks based on their nationality alone, thereby discriminating against nationals and dual nationals of these countries and stigmatizing American Muslim communities.

H.R. 5203 would require DOS to complete a Security Advisory Opinion ("SAO") for all immigrant and non-immigrant visa applicants who are nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen, before issuing a visa. An SAO is a mechanism through which DOS, in coordination with other government agencies, conducts an in-depth review of visa applicants identified as cases of security or foreign policy interest.[2] As such, SAOs are available for the federal government to use in individual visa applications requiring more intensive security checks.

Requiring SAOs for nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen would add unnecessary costs and time delays. The federal government already receives a high volume of SAO requests. In FY 2011, consular officers submitted over 366,000 SAO requests.[3] Processing SAOs is also costly: The former director of the National Counterterrorism Center, in discussing the benefits of a separate visa security program launched in 2013, testified that the new program was "reducing unwarranted counterterrorism security advisory opinions (SAOs) by 80 percent and saving State Department millions of dollars annually in SAO processing costs."[4] Additionally, some visa applicants under an SAO review must wait for months or even years for a decision on their visa applications.[5] These delays negatively impact foreign students, business travelers, skilled employees, and others who need visas issued in a timely fashion.[6]

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[2] U.S. DEP'T OF HOMELAND SECURITY, PRIVACY IMPACT ASSESSMENT FOR THE VISA SECURITY PROGRAM TRACKING SYSTEM (2009), *available at* https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_vsptsnet.pdf .

[3] *Promoting Tourism to the U.S.: Hearing Before the Subcomm. on Immigration Policy and Enforcement of the H. Comm. on the Judiciary*, 112th Cong. (2012) (testimony of Edward Alden, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations).

[4] *Threats to U.S.: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 113th Cong. (2013) (testimony of Matthew G. Olsen, Director, National Counterterrorism Center, Office of the Director of National Intelligence).

[5] *Supra* note 3.

[6] *Supra* note 3.

Moreover, H.R. 5203 would transform the SAO process into a tool for perpetuating discrimination. By mandating SAOs for nationals of seven predominantly Muslim countries, H.R. 5203 would subject these individuals to additional heightened screening requirement based on nationality alone and not the specific facts in an individual's case.

This newly proposed SAO requirement appears to apply also to dual nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen. Each country has its own nationality laws based on its own policies, and persons may be dual nationals by automatic operation of different laws rather than by the person's choice.[7] For example, a daughter born and bred in London to an Iranian father is both a British national and an Iranian national, by automatic operation of the laws. This is true even if the daughter has never traveled to Iran. Under H.R. 5203, this British citizen woman would now be subject to an SAO, for no reason other than her father's nationality. This is blatant discrimination based on ancestry, parentage, and nationality.

H.R. 5203 would impose yet another layer of discrimination against dual nationals of Iran, Iraq, Sudan, or Syria who can now no longer travel to the U.S. on the visa waiver program due to a 2015 law.[8] If H.R. 5203 were to become law, a British citizen woman born to an Iranian father would be required to obtain a visitor visa and be forced to go through the heightened SAO security check – just to come to the U.S. to visit family, attend a business conference, or take a vacation.

SAOs are intended to provide heightened security checks for those visa applicants identified as cases of security or foreign policy interest, based on the individual facts presented in each case. SAOs are not intended to be blanket security checks applied in a sweeping fashion to all nationals and dual nationals of particular countries – in this case, seven predominant-Muslim countries. H.R. 5203 amounts to unjustified blanket discrimination and should be rejected. By singling out nationals of predominantly Muslim countries, H.R. 5203 also stigmatizes American Muslim communities as inherently suspect and sends a message of prejudice and intolerance against these communities.

III. Conclusion

We urge the Committee to refrain from approving a bill that will separate U.S. citizens from their family members, and further fan the flames of discriminatory exclusion both at home and abroad. We urge the Committee to oppose H.R. 5203.

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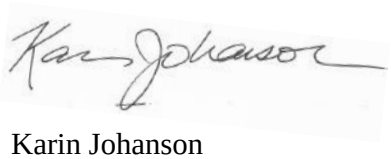
[7] Iranian Civil Code states that "[t]hose whose fathers are Iranians, regardless of whether they have been born in Iran or outside of Iran" are "considered to be Iranian subjects" (The Civil Code of the Islamic Republic of Iran, Book 2, Article 976 (2006), *available at* https://www.princeton.edu/irandataportal/laws/institutionsgovernance/nationality-law/). In Libya, citizenship may be granted to a "child born on or after October 7, 1951, of a Libyan mother, father, grandmother, or grandfather, regardless of the child's country of birth." (U.S. OFF. OF PERSONNEL MGMT. ("OPM"), CITIZENSHIP LAWS OF THE WORLD (2001), *available at* http://www.multiplecitizenship.com/documents/IS-01.pdf, at 120). Somali Citizenship Law states that citizenship is granted to "any person: a) whose father is a Somali citizen" (*Law No. 28 of 22 December 1962 - Somali Citizenship* [], 22 January 1963, *available at*: http://www.refworld.org/docid/3ae6b50630.html [accessed 23 May 2016]). In Sudan, for a person born after January 1, 1957, "birth in the territory of Sudan does not automatically confer citizenship." Instead, for a person born after January 1, 1957, citizenship may be granted to a "child of a native-born Sudanese father, regardless of the child's country of birth" (*See* OPM, at 186). In Syria, "birth within the territory of Syria does not automatically confer citizenship," and citizenship may be granted to a "child born of a Syrian father, regardless of the child's country of birth" (U.K. HOME OFF., SYRIAN ARAB REPUBLIC – COUNTRY OF ORIGIN INFORMATION (COI) REPORT (2013), 164-165, *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312738/Syrian_Arab_Republic_report_2013.pdf). In Yemen, "birth in the territory of Yemen does not automatically confer citizenship," and citizenship may be granted to a "child born of an Yemeni father regardless of the child's country of birth" (*See* OPM, at 216).

[8] H.R. 2029, 114th Cong. (2015) (enacted) (H.R. 158, the "Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015," was incorporated into H.R. 2029 in Division O, Title II.)

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

Sincerely,



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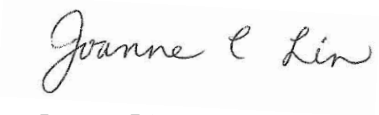

Joanne Lin
Legislative Counsel