

Strengthening the Visa Waiver Program

A Memo to President-elect Obama

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The 21st century will be a dangerous place if America fails to protect itself and its allies.



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We should work to include countries like Poland that are members of both the EU and NATO into the Visa Waiver Program. Today's visa regime reflects neither the current strategic relationship nor the close historic bonds between our peoples, and is out of date.

—Barack Obama, statement on visit of Polish President Lech Kaczynski, July 16, 2007¹

PRESIDENT-ELECT OBAMA, your comments on the Senate floor regarding the Visa Waiver Program (VWP) demonstrate that you recognize the program's substantial public diplomacy benefits. The VWP has undergone tremendous changes since its inception and remains a vital tool for improving America's image around the globe. Countries such as Bulgaria, for example, have commented that membership is considered a clear sign of America's trust.²

The VWP was created with bipartisan support, and this support has led to the program's success. As a member of the House, your incoming White House Chief of Staff, Rahm Emanuel (D-IL), helped to sponsor the legislation with the aid of Republican Congressman John Shimkus of Illinois. During the visit of the Polish President to the United States, Representative Emanuel emphasized the importance of "modernizing the Visa Waiver Program to provide our closest international partners the opportunity to travel to the United States while simultaneously strengthening our security."³ On the Senate side, the legislation received support from Senators George Voinovich (R-OH) and Barbara Mikulski (D-MD).



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The VWP is not only a major public diplomacy asset; it also adds to our security and enhances law enforcement and crime-fighting efforts through data-sharing agreements between member countries. The program helps to bring tourism dollars to the United States and ensures that we know more about the people entering America prior to their arrival on U.S. soil.

Legislation, including the 9/11 Implementation Bill of 2007, has made fundamental security-related changes in the Visa Waiver Program. Several of these changes have been implemented, including the deployment of the Electronic System for Travel Authorization (ESTA), but a few remain as challenges to the new Administration. As you rightly note, your Administration will still have work to do to ensure that the benefits of the VWP and the security of Americans are maintained.

Ensuring the continuation of the Visa Waiver Program will require a serious commitment from the new Administration. Specific changes that would strengthen the program include the following:

- **Make ESTA more user-friendly.** As of January 2009, the Electronic System for Travel Authorization—the online system that travelers will be required to go through in order to travel under the Visa Waiver Program from a member country—will be mandatory for all travelers. This is in accordance with the 9/11 Implementation Bill, which required that ESTA be fully operational before countries were allowed into the VWP. While the Department of Homeland Security (DHS) has met this goal, it is vital that the new Administration continue to look for ways to make ESTA more user-friendly. ESTA travel is an added security benefit for the United States because we know more about the travelers

coming into the U.S. before they even depart their home country. And ESTA could prevent someone seeking to do harm to the U.S. from ever reaching our soil.

One way ESTA could be made more user-friendly would be to offer it in multiple languages. Your Administration will also need to ensure that we are using good datasets and that we have an appeals process for people who may be wrongfully denied in order to determine the reason behind their denial.

- **Continue an open dialogue with “roadmap” countries.** Congress was very critical of the Bush Administration because of the perceived notion that the Administration was negotiating with countries before they had met Visa Waiver Program requirements. There is nothing wrong with speaking to countries that seem close to meeting VWP requirements and heading them down the path toward membership. Designating countries as “roadmap” countries provides a clear metric for membership in the VWP, and working with them throughout the process gives them a sense of transparency and a clear set of goals. This is especially helpful to our allies, who may see delay in membership as a sign of distrust.

DHS has identified several of our allies—including Bulgaria, Cyprus, Greece, Malta, Croatia, Taiwan, Poland, and Romania—as “roadmap” countries that have indicated an interest in the VWP and that are on course to meet program requirements within the short term. Your Administration should continue the dialogue with these countries as they move closer to meeting program requirements. It is also important to begin thinking now about identifying additional partner countries that could be set on-course for VWP membership, including Chile, Panama, and other partners.

- **Reconsider the current exit requirement.** The United States Visitor and Immigration Status Indicator Technology (US-VISIT) program is intended to record foreign visitors and workers leaving the country. But US-VISIT has yet to be fully implemented. This implementation, by law, is a requirement of the Visa Waiver Program, and there is currently a June

1. Press release, “Obama Statement on Visit of Polish President Lech Kaczynski,” July 16, 2007, at http://obama.senate.gov/press/070716-obama_statement_73/.

2. Press release, “Remarks by Homeland Security Secretary Michael Chertoff and Republic of Bulgaria Prime Minister Sergei Stanishev at Visa Waiver Program Interim Declaration Signing,” U.S. Department of Homeland Security, June 17, 2008, at http://www.dhs.gov/xnews/releases/pr_1213734732755.shtm.

3. Press release, “Emanuel Welcomes the President of Poland to the United States,” July 16, 2007, at http://www.house.gov/apps/list/speech/il05_emanuel/polishpresident.html.

2009 deadline for DHS to institute this system using biometric data; otherwise, DHS will lose its authority to grant waivers for countries to join the VWP, even if they fulfill all of the required bilateral security guarantees.

DHS is not likely to meet this goal because it has found it particularly expensive and difficult to determine how to put the system in place at U.S. land borders with points of exit scattered over thousands of miles where hundreds of millions enter each year. Despite these challenges and costs, having an exit system is worthwhile, but changes may be needed in order to implement a workable solution. One option may be for DHS to establish voluntary checkout stations or processes for certain visa categories.

Conclusion

Opponents in Congress claim that the Visa Waiver Program is a security and immigration loophole, but the evidence simply does not support this view. For example, much is said about the visa overstay rates of member countries. But analysis by DHS indicates that the overstay rates of these countries are significantly *lower* than expected, do not represent a threat to our security, and do not add to the nation's illegal immigration problem.

You and your Administration should continue to work with Congress on this very important issue, continue to emphasize the tangible benefits of the Visa Waiver Program, and—most important—work to dispel the myths associated with the VWP.

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This paper is also available online at:
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