

Hearing Transcript

House Homeland Security Committee Hearing on the Visa Waiver Law and Iran

February 10, 2016

MCCAUL:

The Committee on Homeland Security will come to order. The Committee is meeting today to examine the Administration's flawed implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act. I now recognize myself for an opening statement.

We're holding this hearing today because Congress is confronted with a dilemma, which has grave implications for our national security and for our democratic process. In December, the President signed important measures into law to improve counterterrorism screening of foreign travelers coming into the United States.

These enhancements were urgently needed in the wake of the Paris attacks and in light of the high terror threat environment. But now the President has decided that he is going to break this law.

He plans to do so, in part, to accommodate the world's leading state sponsor of terror, Iran. I believe this decision could have serious consequences for our security and, perhaps, more importantly, far-reaching consequences for our democracy.

This legislation at issue is H.R. 158, the Visa Waiver Program Improvement and Terrorist Travel Prevent Act of 2015. It was authorized by this Committee's Vice Chair, Ms. Miller, and it implements several major recommendations from the Committee's bipartisan Task Force on Combating Terrorist and Foreign Fighter Travel.

The bill passed the House overwhelmingly, 407-19, and it was included in the year-end spending bill signed by the President. This was one of the most significant pieces of security legislation Congress considered last year.

It tightens security checks overseas and makes it harder for terrorists to exploit the Visa Waiver Program to get into the United States. And the threat is real. For instance, more than 6,000 Westerners have gone to fight in Syria and Iraq, and many of them are from Visa Waiver Program countries.

This means, they can enter the United States more quickly and easily than other travelers. And nearly 2,000 of these individuals have already come back from the battlefield. Accordingly, the new law sends a clear message to Visa Waiver Program citizens. If you have recently visited Syria, Iraq, Iran, or Sudan, you must go through additional screening before coming to the United States.

The law requires these individuals to get a regular visa, which includes an in-person interview and the submission of their fingerprints. Congress included specific exceptions, including allowing

individuals to still travel visa-free to America, if their reason for being in a terrorist hotspot was for military service or official government business.

But during bipartisan negotiations over the bill, the Administration asked for other exceptions. They wanted to let individuals skip the new security procedures if they had traveled to these countries for journalistic, humanitarian, cultural, or business purposes.

Congress explicitly rejected these exceptions, and they did not appear in the final text of the bill signed into law. It was clear that such broad loopholes would undermine the purpose of the law and make it difficult and costly to implement.

Many of us are also aware that jihadists commonly use excuses like humanitarian assistance to disguise their actual reasons for traveling to a terrorist safe haven. In fact, earlier this week, seven people were arrested in Spain for supplying arms to ISIS, disguised as humanitarian aid workers.

However, Congress did agree to provide a narrow waiver to allow a Visa Waiver Program traveler to avoid the extra step of visiting a U.S. Embassy if it was, quote, "in the law enforcement or national security interests of the United States."

To be clear, this waiver was intended to apply to special circumstances, such as when a foreign traveler is being investigated or monitored. The waiver would ensure that those activities are not disrupted and that a suspect is not tipped off. And I believe that the Administration clearly understood this. But then Iran weighed in.

And, in December, the Iranian regime complained to the Obama Administration that the law would hurt their economy by deterring European business travelers from visiting. Why? Because doing so would mean they had to go through additional security steps the next time they came to America.

Iran even argued that this was a violation of the nuclear deal. And in a rush to appease them, Secretary Kerry wrote a letter declaring that the law could be waived, quote, "So as not to interfere with legitimate business interests of Iran."

Let me be clear. Nowhere does the law include this authority. In fact, Congress explicitly rejected the waivers requested by the White House. I joined other Congressional leaders in writing to Secretary Kerry to remind him what the law actually says.

Yet, last month, the Administration announced it would be able to exempt several categories of individuals from these requirements. In fact, they claimed that Visa Waiver Program citizens who traveled to terrorist hotspots for humanitarian or journalistic purposes, or to Iran for business purposes, could be exempted from the new security process.

Once again, this law does not include such exemptions. They were proposed by the Administration. They were discussed, but they were rejected by Congress. The Administration even agreed to the final text and publicly supported the bill.

I cannot overstate how serious I believe this issue is, as a separate, but equal, branch of the government, the branch of government that makes the law. And the executive should implement that law according to the will and intent of the Congress.

The President's moving forward with an illegal implementation of the law that he signed only weeks ago, breaching the trust between our two branches of government and potentially putting our nation's security at risk.

These requirements were imposed for a reason, to ensure individuals who have recently been in terrorist sanctuaries do not pose a threat to our country. The law does not forbid Visa Waiver Program travelers from coming to America. It simply adds an additional layer of security.

But the Administration's false reading of the law has Congress and the American people wondering, "How much further will we bend backwards for Iran?" We have paid them ransom to release detained Americans. We freed up billions of dollars for their rogue regime. And, now, the President is ignoring our own laws so we don't interfere with Iran's economic growth.

Today you will hear our witnesses say these exceptions will only be used on a case-by-case basis. But you're not allowed to break the law on a case-by-case basis. When you're the President, you're not supposed to break it at all, and certainly not for a state sponsor of terror with American blood on its hands.

The Chair now recognizes the Ranking Member of the Committee, Mr. Thompson.

THOMPSON:

Thank you, Mr. Chairman, for holding today's hearing.

Commissioner Kerlikowske and Ms. Johnson, thank you, also, for appearing today.

This Committee has a longstanding, bipartisan interest in strengthening the Visa Waiver Program. In 2007, with the enactment of legislation I authored the implementation -- implementating (sic) recommendations of the 9/11 Commission Act.

Congress required individualized security checks of travelers participating in a Visa Waiver Program. The program was established to -- is known today as Electronic System for Travel Authorization, or ESTA, program.

Under ESTA, citizens are eligible nationals of Visa Waiver Program countries, must obtain an Electronic Travel Authorization prior to boarding a plane in the United States. I have been pleased to see DHS, over the years, take timely action to adjust aspects of the ESTA program, in response to the demands of the ever-changing threat landscape.

Yet, I came into this Congress, like many of my Republican colleagues, seeing the need for more reform to the Visa Waiver Program to bolster its security. That's why I co-sponsored H.R. 158,

The Visa Waiver Improvement and Terrorist Travel Prevention Act, authored by Representative Candice Miller, the Chairman of our Border Security Subcommittee.

The Fiscal Year 2016 Consolidated Appropriations Act, better known as the Omnibus, included the language from H.R. 158, requiring changes to the Visa Waiver Program. This comprehensive legislation, which was signed into law by the President on December 18, seeks to strengthen passport security requirements, enhance information sharing, and improve fraud detection.

Importantly, it also requires any Visa Waiver country that fails to screen passports against INTERPOL's criminal and terrorism databases, to be terminated from the program. The provision that has garnered the most attention and is the focus of today's hearing, involves the changes in the eligibility for Visa-free for some travelers from Visa Waiver countries.

Under this new law, most individuals who have visited Iraq, Iran, Syria, and Sudan, in the last five years, or who hold dual citizenship with one of these four countries, would be ineligible for Visa-free travel to the U.S.

This provision was central to the bipartisan agreement reached between Congress and the White House. During the negotiations, the restriction on dual citizens of Iran, Iraq, Syria, and Sudan, and travel history provisions that the Republicans were advancing, were sticking points.

I was pleased when we were able to reach common ground on a carveout for certain individuals who traveled to the four countries for diplomatic or military service. Reaching agreement for other categories of travelers, including humanitarian aid workers and journalists proved to be elusive.

I appreciate that all involved came together, in the interest of Homeland Security, to strike a compromise that the White House, House Republic leadership, and House Democratic leadership could accept.

In the end, those of us involved in the negotiations understood that enacted would mean that, in most cases, travelers who triggered the citizenship or travel history limitation would have to go through the standard visa application process at a U.S. embassy or consulate.

I was pleased that the law did allow the DHS Secretary to exercise discretion, with respect to these limitations, when doing so was in the law enforcement or national security interests of the United States.

It is important that the Secretary be allowed to exercise discretion, with respect to certain individuals, on a case-by-case basis. Within days of enactment of this law, questions emerged about the implications of the Visa Waiver Program security reforms on the deal that President Obama was able to reach to prevent Iran from becoming a nuclear state.

At the time, I was taken aback, since it was hard to see how this Homeland Security bill had any bearing on the terms of the Iran deal. The issuance of a joint press release by the Departments of Homeland Security and State, on January 21, the day the Visa Waiver Program changes were to begin, did little to squelch those questions about the linkage.

The press release, it was laid out, the Administration's plan to exercise its Waiver authority, identified five categories of travelers who could receive waivers from eligibility limitations set forth in the new law.

One category specifically identified was individuals who travel to Iran for legitimate business purposes after July 14, 2015, the same date the Iran deal was concluded. It will fall to the witnesses today to explain why we should not think that there is a linkage to the Iran deal, when it announces this category in a press release distributed across the globe.

As someone who supported the granting of waiver authority, the Secretary of Homeland Security, I have questions about the approach and the tack that administration has taken today.

While Secretary Johnson may plan to consider, on a case-by-case basis, whether to allow visa-free travel for national security purposes, the decision to list categories of travelers that can bypass visa screening at our embassies and consulate was a questionable one.

The Administration needs to be prepared to answer questions about its decision to create categories for waivers, including the degree to which intelligence informs the parameters. Additionally, the Administration needs to explain why it decided to publish the categories, thereby creating an expectation for people who fall into these categories that they will -- that will be able to continue to travel, visa-free, to the United States.

We need to understand, particularly, at a time when we know that there are some crafty, would-be terrorists eager to find new ways to work around security enhancements in the Visa Waiver Program, why the Administration has chosen to be so public about how the DHS Secretary may exercise this discretion.

In reviewing the categories, I have some questions about how the DHS Secretary will go about determining the legitimacy of the business-related purposes for travel to Iran. I look forward to hearing testimony from the witnesses about how many travelers might be eligible for the waivers identified in the joint press release and what kind of resources CDP will need to put processes in place to fully adjudicate the anticipated flurry of waiver requests from travelers in these categories.

I think, Mr. Chairman, you see a lot of us have questions.

MCCAUL:

I appreciate that.

THOMPSON:

We look forward to the witnesses to provide some of the answers. And, with that, I yield back.

MCCAUL:

And I thank the Ranking Member for his leadership on this issue, as well.

Other members are reminded that opening statements may be submitted for the record. We're pleased to have a distinguished panel of witnesses before us today on this important topic. First, Gil Kerlikowske, was sworn in as Commissioner of U.S. Customs and Border Protection in early 2014, taking the helm of the largest federal law enforcement agency in the United States government.

He brings four decades of law enforcement and drug policy experience to the position. Formerly served nine years as Chief of Police for Seattle, Washington. Before, he served as head of CBP -- before serving as head of CBP, he led the Office of National Drug Control Policy.

Thank you for being here today.

Next, we have Ms. Hillary Johnson, Deputy Coordinator for Homeland Security, Screening, and Designations in the Bureau of Counterterrorism. Ms. Johnson oversees the designation of foreign terrorist organizations and individuals under the authorities of the Secretary of State, and terrorism screening and interdiction programs.

I want to thank both of you for being here today. I think, given the gravity of the circumstances that we find ourselves here today, I will be administering an oath. If you would both now, please stand and raise your right hand.

Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God? Let the record reflect that both witnesses answered in the affirmative. The witnesses' full written statements will appear in the record.

The Chair now recognizes Commissioner Kerlikowske to testify.

KERLIKOWSKE:

Chairman McCaul, Ranking Member Thompson, distinguished Members of the Committee, I returned on Sunday morning from California, where CBP had an integral role in safeguarding the Super Bowl. I witnessed the numerous aspects of CBP's broad and complex mission all in one place, providing security and surveillance on the ground and from the air, screening cargo and deliveries for weapons and other dangerous items.

CBP has a critical role in securing international travel against the threat of terrorists and their supporters, while facilitating lawful travel and tourism. And every day, we process one million travelers.

As you know, before boarding a U.S.-bound flight, most foreign nationals must obtain a non-immigrant visa, issued by a United States embassy or consulate, or the traveler must apply for travel authorization through CBP's ESTA program.

Through ESTA, CBP conducts enhanced vetting of these applicants, in order to assess whether they are eligible to travel and whether they pose a potential risk to the American people. Over the last 15 months, we have worked with the DHS, under Secretary Johnson's leadership, to strengthen the security of the program, through enhancements to ESTA, in order to identify those who may pose a threat to the United States.

We have introduced additional data fields that have increased the ability of CBP and the National Counterterrorism Center to identify applicants with potential connections to terrorism. In addition to these enhancements, this past August, DHS further announcement security measures for Visa Waiver Program countries, including increased traveler data collection, analysis, and reporting, the requirement that INTERPOL's lost and stolen travel document database be used, and the required use of electronic passports, which contain additional security features.

And, on December 18, the President signed into law the Consolidated Appropriations Act of 2016, which includes the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, with some exceptions for official military and government law.

The law prohibits VWP travel for individuals who have been present, at any time, on or after March 1, 2011, in Iraq, Syria, or countries designated as state sponsors of terrorism, which currently includes Iran and Sudan. It also prohibits VWP travel for the individuals who are dual nationals, as of one of these countries or a -- and a VWP country.

Well, we began implementing some of the changes required by the new law very quickly. We have already revoked or canceled 17,000 ESTA travel authorizations. We've established, in conjunction with our interagency partners, a terrorist travel prevention cell at our national targeting center.

The cell will enhance the department's efforts to identify and prevent foreign terrorist fighter travel. And a subset of that cell's mission will be to scrutinize individual waiver requests on a case-by-case basis that is permitted under the new law.

Additionally, CBP will add new fields to the ESTA application by the end of the month, and we will ask additional questions to further improve our ability to vet individual travelers and make decisions about their eligibility, in accordance with the recent changes.

Well, as terrorists change their methods and tactics, and DHS is going to continue to work with our federal and international partners to counter foreign fighter threats to the homeland.

We'll continue to strengthen our travel security programs and systems, enhance our capabilities to secure international air travel against terrorists and others who threaten the safety of the traveling public and the security of our nation.

Chairman McCaul, Ranking Member Thompson, and Members of the Committee, thank you for the opportunity to testify today. I look forward to answering your questions.

MCCAUL:

Thank you, Commissioner. We appreciate your service.

The Chair recognizes Ms. Johnson for her testimony.

JOHNSON:

Good morning Chairman McCaul, Ranking Member Thompson, and distinguished Members of the Committee.

MCCAUL:

Bless you.

JOHNSON:

Thank you for this opportunity to testify today on implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. It's a pleasure to be here today with Commissioner Kerlikowske.

My written statement, which I request be put into the record, describes how the Department of State has worked closely with the Department of Homeland Security to implement this new law, while ensuring our top priority remains the protection of the U.S. homeland.

As Deputy Coordinator for Homeland Security and State's Counterterrorism Bureau, security of the homeland and the safety of our citizens is my -- citizens is my constant focus. I welcome this legislation to strengthen the Visa Waiver Program.

The VWP is a key counterterrorism tool that helps protect our homeland every single day. Our VWP partners must uphold strict security standards, such as sharing information on known and suspected terrorists and criminals, and reporting lost and stolen passports to INTERPOL.

We use VWP benefits to encourage greater information sharing and more systemic screening by our allies. VWP requirements give our partners the impetus to tighten security in ways that can be politically challenging for them.

The U.S. government assesses each VWP country's compliance at least once every two years, inspecting airports, seaports, land borders, and passport production and issuance facilities. No other program enables the U.S. government to conduct such broad and consequential assessments of foreign partners' security operations.

I'd also like to underscore that the VWP is not a free pass to travel to the United States. All travelers coming to the United States undergo checks for ties to terrorism and are subject to multiple layers of security, regardless of whether they have a visa, or they come in under the VWP.

As the Commissioner has noted, citizens of VWP countries apply to enter the United States via the ESTA. CBP checks ESTA forms against U.S. terrorist and criminal databases before travelers are allowed to use the VWP.

This information that our partners provide, under the information sharing, as part of the VWP, is a vital component of our terrorist and criminal databases. The layer of security continues beyond this step. All travelers are screened by CBP's National Targeting Center before they board an airplane and after they're admitted into the U.S.

And ESTAs are continuously reviewed and revoked immediately if new intelligence comes to light. Watch listing, screening, and information intelligence gathering are some of the best tools for countering the threat of foreign terrorist travel.

And these tools are most effective when we're working in collaboration with our VWP partners. And that's why the VWP is such an important counterterrorism partnership. The 38 countries that are part of the VWP include many of our closest allies, and they're proud of their status. VWP membership is so prized that many countries not in the VWP complete program requirements in the hope of joining.

I'd like to speak to the national security waivers authorized under the law. Under the new law, the Secretary of Homeland Security has the authority to waive restrictions, if he determines that such a waiver is in the national or -- national security or law enforcement interest of the United States.

We understand that Congress did not want to create blanket exemptions to the law, and that is why these waivers will be implemented on a case-by-case basis. After consulting with the Secretary of State, the Secretary of Homeland Security has determined that is the general matter, it is in the national security interests of the United States to administer waivers on a case-by-case basis and for certain types of ESTA applicants.

I want to stress that these are not blanket waivers. Again, the waivers would be administered on a case-by-case basis and are narrowly tailored to specific national security interests. We publicly outlined categories in which a waiver might apply to provide guidance to citizens of VWP countries.

There's lot of confusion about this law among some of our closest allies, and we needed to let them know which of their citizens might receive a waiver and how the process would work. We noted in our guidance that each ESTA applicant would be considered on a case-by- case basis and reviewed carefully.

In no incidence is travel under the VWP guaranteed for a person in one of the identified categories. I'd like to share some examples of why we think these narrowly-tailored waivers are international security interest.

For instance, we rely on employees of the International Atomic Energy Agency for the technical expertise to fight the spread of nuclear weapons around the world. Yet, without a waiver, IAEA

employees, who went to Iran to pursue our national security objective of preventing Iran from obtaining a nuclear weapon, would be considered security risks.

Without waivers, UNHCR and World Food Program staff, who do critical work helping refugees in Iraq or feeding starving children in Darfur, Sudan, would be unable to travel to the United States under the VWP.

The EU is an essential partner to us around the world. Without a waiver, representatives of EU institutions, including EU parliamentarians, would be ineligible to travel to the U.S. under the VWP.

Additionally, we work closely with officials of the EU Counterterrorism Coordinator's office, who travel frequently to Iraq. Without waivers, they would be denied ESTAs. These waivers will allow us to maintain and build our relationships, in cooperation with these institutions, toward shared counterterrorism goals.

Business representatives or NGO employees, who have traveled to Iraq to help with schools, roads and hospitals, also would be denied travel under VWP, even though they're doing work we have encouraged to help stabilize and rebuild that country's economy.

In Syria, the world relies on journalists facing grave danger to report on human rights violations, allegations of chemical weapon use and the brutality of that ongoing conflict that we might otherwise never know about. Yet, without waivers, they, too, could be denied VWP travel.

I recognize that participating in the VWP is a privilege and not a right, but denying VWP participation to citizens of member countries, who are doing work we promote and support, is counter to our national security interests.

I want to stress, again, that every VWP travel considered for a waiver will be closely examined to see if they meet the stringent requirements to travel under the VWP. A case-by-case application of waivers in these narrow instances, allows us to advance our national security interests and directs our resources to higher-risk threats.

As I've discussed, we believe there are significant national security interests for the United States to utilize this waiver, and we do so without compromising the safety of our fellow citizens at home and overseas and the security of the traveling public.

Mr. Chairman, Mr. Ranking Member Thompson, and distinguished Members of the Committee, thank you so very much for having me here today. I look forward to your questions.

MCCAUL:

Thank you, Ms. Johnson.

I now recognize myself for questioning. You know, after the Paris attacks and the tragedy, the bill that Candice Miller introduced that was marked up out of this Committee, I met with our

Counterterrorism Task Force at the leadership level. And we decided that we needed to respond, in an urgent manner, to the attacks. And we moved this bill forward to go to the floor of the House.

And -- and let me just say, Ms. Johnson, I recognize you're a career diplomat. We asked for somebody at the political level to answer the political questions that I'm getting ready to ask you. So I just want to say that I understand the position you've been put in by the Administration.

But, having said that, as we were deliberating the introduction of the bill on the floor, that had been marked up by this Committee, we had discussions at the leadership level, in both House and Senate, and also with the White House, State Department, and Department of Homeland Security.

And we had -- there was an e-mail exchange. I think it's very enlightening, in terms of looking at the express intent of this law. We came to, both State, Department of Homeland, and the White House. And we got this response. Would you please consider an exception for humanitarian purposes, for business purposes, for journalistic purposes?

And I remember, I was in the meeting with the Majority Leader of the House and the other three National Security Committee chairman. And we discussed your proposal, the proposal that came from the department. And that proposal was rejected on all counts, expressly rejected by the framers and the authors of this legislation in the Congress.

The response that we got, when we came back with, you know what? We're going to reject your business, journalistic, humanitarian, cultural, education exceptions. The response we got was actually pretty clear cut. The response was, "The Administration supports this legislation," period. "Thanks to all," period.

My -- my point is, there's no ambiguity in the intent and express language of the statutes. And, it seemed to me, at the time, that the Administration was fully on board with the rejection of these exceptions.

And then, finally, we got an e-mail from the White House, after saying does State have any additional edits. And the response from the White House was I've spoken to State. They don't request any additional edits. Don't request any changes at this time. And as I said this morning, we're good with the text as drafted. In fact, reopening the bill would require us to look at it again.

In other words, let's move forward with the bill. You know, the very day this bill was signed into law, Secretary Kerry was meeting with Iranian officials. And, apparently, Iran didn't like the language that Congress had passed, that was going to the President's desk.

And the very next day, the very next day while the ink was still drying on this President's signature, the Secretary of State sends a letter to the Iranian Foreign Affairs Minister, saying thanks for the constructive meeting yesterday. I want to get back to you in response to your inquiry about our amendments to our Visa Waiver Program.

And, basically, he says in his letter, the administration has the authority to waive, and this will not prevent us in any way from meeting our commitments under the deal, the Iranian deal. And we will implement them so as not to interfere with legitimate business interests of Iran.

I guess my question to you is, isn't it clear, given the exchange that we have between the Administration and the Congress and the clear language of the law, isn't it clear that these exceptions that are not in the law that were expressly rejected by the Congress?

JOHNSON:

Thank you, sir. On that question, in particular, the text of the law is very clear. The Secretary of Homeland Security may -- may waive the travel and dual national restrictions, if he determines that such a waiver is in the law enforcement and national security interests of the United States.

After consulting with the Secretary of Homeland -- Secretary of State, the Secretary of Homeland Security has determined that, as a general matter, it is in the national security interests of the United States to administer waivers for certain types of ESTA applicants. And whether those ESTA applicants will receive a waiver will be determined on a case-by-case basis.

And we heard your concerns about not wanting blanket exemptions or waivers.

MCCAUL:

But my -- wasn't -- these -- these exceptions, the humanitarian, journalistic -- you know, I understand the arguments on the merits, but we debated that in the Congress, and we rejected those exceptions, business, humanitarian, journalist, cultural. Those are not in the law, are they?

JOHNSON:

No. And these are not blanket exceptions, and they're not blanket waivers.

MCCAUL:

And it seems to me that the Secretary of State is creating exceptions that were not -- that are not in the law itself. In fact, he's redefining -- in fact, he's rewriting the law that we wrote out of this Committee.

JOHNSON:

The text of the law says that if it's in the law enforcement or national security interests of the United States, they can be waived, the dual national and the travel restrictions could be waived.

MCCAUL:

Yeah, it seems to me, though, the time to object is prior to signing the bill into law, not after. And I think that, in my view, the Administration didn't like the response they were getting from the

Congress, so they just said go ahead and pass it. We'll sign the law and then we'll just interpret it the way we want to, defying the will and express intent of this Congress.

JOHNSON:

This is not intended to be blanket, again, exemptions or waivers. The intent was to look at these in a very narrowly focused way, on a case-by-case basis. These waivers will be reviewed very closely, as we mentioned in the terrorist travel prevention cell at the National Targeting Center.

And just because somebody might fall into one of those identified categories, there's no expectation that they automatically are receiving an ESTA.

MCCAUL:

Well, I appreciate your opinion, but I don't think you can break the law on a case-by-case basis.

And the fact is -- and Mr. Commissioner, I just -- were you consulted about this at all? Did they come to you and say, you know what we're going to, even though Congress explicitly rejected these exceptions, you know, we're going to put them -- that's going to be our interpretation. Were you consulted?

KERLIKOWSKE:

I was not consulted concerning the letter that went out shortly after by the Secretary, by Secretary Kerry. And I can tell you that there has been a huge amount of consultation and work, in a team effort, every moment since.

MCCAUL:

I mean, it seems to me that, you know, in our effort to put Iran first and the Iranian negotiation first and appease Iran, the State Department made a call overriding, basically, breaking the law that we passed, and then went to you and said, you know what? This is our interpretation. It's your job to implement it, and they put it on your lap. Is that a fair assessment?

KERLIKOWSKE:

I would say the assessment is more of this, is that Secretary of Homeland Security, Secretary Johnson, made it explicitly clear to me two days ago, until there is a process in place in the cell, that absolutely no waiver would be granted.

Further, I think that the fact that we will work together and even though, has Hillary mentioned, these -- this framework provides information, it doesn't mean that someone that applies as a journalist, or as some type of request in that way, will actually even be granted that. And, of course...

MCCAUL:

Well, this Committee will be providing that oversight. And we've requested documents from both of your departments, and I hope you'll comply with that request. This Committee does have subpoena power. And we will be looking at the case-by-case analysis and make our judgment as to whether that's a national security issue.

But you've been in law enforcement, sir, for many, many years. Do you really believe that doing business in Iran rises to level of a national security interest?

KERLIKOWSKA:

I think there are two issues that are really important in this, and one is that many of the organizations, people that are from visa waiver partners, Germany, Sweden, France, et cetera, either as dual nationals, who, by the way, have already been canceled, but many of those individuals in those countries want to do or are going to do work.

We share vital security information every day with those Visa Waiver Program countries. Keeping good communication, good relationships, the ability to sign those international agreements with them is critical.

So I certainly see the nexus with the national security interest in some parts. But, again, I'd go back and say it doesn't mean that if an application is received in one of those framework areas that it would necessarily be granted. We'd look at it very carefully, and Secretary Johnson would look at it very carefully.

MCCAUL:

And the Congress will be looking at this very carefully, as well. I -- I gotta tell you, I -- I'm -- this really defies the will and express intent of the law that we passed in the Congress. I'm very -- I'm deeply disturbed by this, and this Committee will be exercising its oversight authority very strongly on this.

We're not saying they can't come into the country. We're just saying they have to go through the extra, additional layer of security and apply for a visa. In my opinion, once again, the President has put the best interests of Iran over the security interests of the American People. With that, I recognize the Ranking Member.

THOMPSON:

Thank you very much, Mr. Chairman. I think it's clear that Congress spoke in as clear a fashion as it could when this language was put into the omnibus. There is concern that since that language has been included, there's been a different interpretation.

Now, Ms. Johnson, can you tell the Committee the exact date the State Department made the decision to offer exemptions in the broad category?

JOHNSON:

Just to be clear, these are not exemptions. They are waivers, again, as under the law. This -- there's an ongoing process and discussion with our counterparts at the Department of Homeland Security, and we announced that decision on January 21st, with the Department of Homeland Security.

THOMPSON:

So you don't see a waiver and an exemption as the same thing?

JOHNSON:

No. The waivers are -- again, we're not talking about blanket waivers. These are done on a case-by-case basis. Each individual is reviewed very carefully. And, again, as mentioned here, both by the Commissioner and myself, just because somebody might fall into one of those categories does not mean they won't be granted a waiver.

THOMPSON:

Were you involved in this process to...

JOHNSON:

Yes, sir.

THOMPSON:

At what level?

JOHNSON:

I'm a Deputy Coordinator. So I was working with my counterparts, but it's been from the working level all the way up through my level, and all the way up. This is a very important issue.

THOMPSON:

The decision to write the press release and the other things, were you involved in that?

JOHNSON:

Yes, sir.

THOMPSON:

Mr. Commissioner, your testimony is that no waivers have been granted at this point.

KERLIKOWSKE:

Correct.

THOMPSON:

Can you tell me the financial burden to review these waivers on a case-by-case basis. What does that pose for you as an agency?

KERLIKOWSKE:

So, I can't tell you the number of people or what the number of applicants would be, or what the number actually would be expected. I can tell you that the National Targeting Center, and particularly by standing up this cell with our partners at the Department of State is helpful, but that National Targeting Center is incredibly flexible and agile.

And if you go back to the Ebola crisis with well over 30,000 people then with travel from one of those Ebola-affected countries, our Customs and Border Protection people, an organization of over 60,000 personnel, could move very quickly to address these types of things.

And whether it was in the air cargo attempted bombing, or others -- but I don't know the numbers.

THOMPSON:

So you don't know?

KERLIKOWSKE:

I don't know what we would expect, and then how long it would take to carefully and thoroughly vet or screen anyone who made that request.

THOMPSON:

So you don't anticipate coming back to Congress asking for additional monies to support this effort?

KERLIKOWSKE:

In the President's budget request that has gone up, there's a request for 40 additional personnel for the National Targeting Center. Now, I would tell you that that's not based upon, particularly, this, which came about very quickly.

But the fact that that National Targeting Center has proved invaluable, whether it's for Ebola or whether it's screening foreign fighters. It's -- as many members of Congress have visited it, it is a -- it is a very important and necessary organization that needs to be adequately staffed.

THOMPSON:

So -- so we included a new provision in the law with that announcement. Ms. Johnson, what -- what went into producing that press release that you participated in, and what were the financial implications of this new provision?

JOHNSON:

Do you mean financial implications to the State Department, or?

THOMPSON:

Yes.

JOHNSON:

That I would have to take back. I don't know the answer to that question. The working level, the mid-level and higher levels, all of us, as we normally do with press releases, worked very closely together with our Department of Homeland Security colleagues.

THOMPSON:

So at the -- you are a witness before us today, indicating that you participated in the drafting of a document, but nowhere in the drafting did anybody talk about what this new effort would cost?

JOHNSON:

No on cost, at least in any discussions I was involved in. The threat cell of the State Department already participates in the National Targeting Center over at CBP, and we also work very closely with DHS on a regular basis with the screening capabilities.

THOMPSON:

Well, Mr. Commissioner, did you participate in the drafting of -- of the press release?

KERLIKOWSKE:

I did not.

THOMPSON:

So one agency drafted the release, and the responsibility was put on you?

KERLIKOWSKE:

Well, I think there's a very -- I would tell you that many people within Customs and Border Protection -- I have broad authority over -- over a very large number of issues. Our people, as -- as she stated, our people participated very closely and worked on all of the aspects that have been mentioned. I did not, myself.

THOMPSON:

You were aware of it?

KERLIKOWSKE:

I've been aware of the -- certainly, of the -- of the law as it was being debated, yes.

THOMPSON:

Mr. Commissioner, I know you were aware of the law. But you understand where I'm getting at. In terms of the drafting of the release and the cost associated with this new process, Ms. Johnson just said she wasn't involved at that level.

So, obviously, you're the only other witness we have. And is your testimony, you were not involved in that either?

KERLIKOWSKE:

I was not involved in the drafting of the press release, but I certainly have been involved in how CBP would work to enforce the new law passed by Congress and signed by the President.

THOMPSON:

After the fact.

KERLIKOWSKE:

After the fact.

THOMPSON:

Not the law, now, but the drafting of this new waiver or exemption provision.

KERLIKOWSKE:

I -- I was not involved in the drafting of the categories or the framework.

THOMPSON:

Thank you.

I yield back.

MCCAUL:

Chair now recognizes the author of the Visa Waiver Program Bill, Ms. Miller.

MILLER:

Thank you, Mr. Chairman. I certainly appreciate you holding this hearing today. This is an important issue, and I appreciate the witnesses being here. Ms. Johnson, as the Chairman mentioned, you're a career diplomat, not really a political type. And -- and I think we would have preferred someone -- because it seems to me to be a political determination made by this Administration.

And you mentioned, in your testimony, there, you were mentioning various people, people or groups, that would be inconvenienced by this bill. But, again, as the Chairman mentioned, these issues were not either raised, or they were negotiated away during the negotiations. And he did put up some of these slides. I won't ask the staff to do that again.

But I'll just mention these, because I think it does bare note, here, because we were negotiating, we, being the Congress, were negotiating in very good faith with the White House and the various agencies included.

Here's a -- and this particular issue, by the way, somebody mentioned and it sort of went quickly because it went in the omni, but the reality is, really, we had introduced this legislation a couple of years ago and then, again, reintroduced it during this Congress.

It went through -- we had a number of hearings. Mr. Commissioner, you've been -- you had the opportunity to testify before our Subcommittee, as well as the full Committee, as well, on numerous occasions.

So this is an issue that went through regular order, through our Subcommittee, through our full Committee. And we were -- there were many, on both sides of the aisle, who were very desirous of having floor action on this. And we were, you know, really -- then came Paris. And, so, we had this bill ready to go, and that's really how it ended up in the omni, there, at the end.

But at one time we were -- these e-mails showing -- I was just going to briefly say, proposed exemptions for journalists, relief workers, business and humanitarian travel, they accept only exemptions for government officials and military personal. OK. And everybody agreed to that, when we were negotiating this just three months ago.

Here's another e-mail. Negotiations continue, bipartisan House Committee, leadership staff -- bipartisan. The White House, the Department of Homeland Security, State Department, the exemption for humanitarian travel are, once again, rejected by everybody. Rejected. And here's the e-mail that was up on the screen. The Administration supports this legislation, thanks to all.

Then here's another one. I'm not going to say who sent all these, but here, "I've spoken to State. They do not request any additional edits. The Administration does not request any changes at this time."

So I just point those out, because it's certainly clear, I believe, abundantly clear, that the White House negotiated in very bad faith. And, again, it's not a partisan issue. It's a very bipartisan issue, and I don't know how Congress can come to an agreement with the White House, with an Administration that simply turns around and then breaks the agreement, certainly violates the law, in my estimation, as well.

And, so, I guess, my question, Mrs. Johnson, you know, to be very clear of the changes of the law, they don't bar people who have traveled to either Iran, Iraq, Syria, or Sudan from entering the country. They just simply have to go through the same processes that countries in 100 -- people from 150 other countries have to use, when they come into the country.

And I would say, Mrs. Johnson, do you think, from the Department of State, do you think that the visa interview is an unreasonable bar for an individual who actually has visited a country that is a state sponsor of terrorism?

JOHNSON:

Thank you for the question. I mean, the visa -- sorry, again, under the Visa Waiver Program, it's important to note that all of those travelers go through the same rigorous screening as visa applicants do.

And, so, I think if visa applicants, obviously, have an interview and biometrics are collected. That's really only the difference that takes place between the Visa Waiver program and a visa interview.

I think the important question is, is I know for some people, for particularly our Visa Waiver Program partners, a visa interview and a visa process, the whole point of the Visa Waiver Program for them is, they are going through and meeting these stringent security standards.

They're participating in this counter terrorism partnership with us that actually enhances our national security quite beneficially, because, again, the information that we receive from them on known and suspected terrorists and criminals goes into our databases, and we screen against that.

So having a number of individuals, affected individuals, who have traveled to these countries under these -- traveled to these countries, be treated as a heightened security risk, because we may have been doing legitimate business in Iran or might be a humanitarian worker in Darfur, I think it's been a real big effect for our foreign partners under the VWP.

In fact, I met yesterday with one country who was very concerned about this. They fully respected the VWP's stringent security requirements, and they certainly want to respect and focus on the security of the U.S. homeland. But they were very concerned about the fact that their citizens are treated as heightened security risks, when they're conducting national security-related activities.

MILLER:

Thank you.

Mr. Chairman, I know my time is out. If I had more time, I would ask a question about are there any limits to their interpretation to these individuals, and maybe someone could ask -- could we have an example of what is the limit of their interpretation of who could have a waiver?

MCCAUL:

I would just add, if the ESTA program is better than the VISA process, why did we even pass the bill in the first place? The Chair recognizes Mr. Payne.

PAYNE:

Thank you, Mr. Chairman and Ranking Member.

Commissioner, while the recent VWP legislation prohibits individuals with recent travel to citizenship in Iraq, Iran, Sudan, or Syria from traveling to the U.S. under the program, it authorizes the Secretary of Homeland Security to issue the waiver, if in doing so in the law enforcement or national security interests of the United States.

What circumstances would warrant a waiver? And what process will be used to determine whether a traveler would be issued a waiver? And what role will CBP play in that process?

KERLIKOWSKE:

So the process that would be outlined for us, standing up this cell at our National Targeting Center, would be this. The request would come in. And, for example, if it is a non- governmental organization doing humanitarian work, that Electronic System for Travel Authorization, ESTA, has a new series of questions.

And those questions will be ready and be online by February 23. And the questions involve not only, of course, have we identified that person, but what organization do you work for. Is the organization noticed by the United Nations for humanitarian work?

Who would be the person that would say that you are an employee and that the work that you were doing in that country is part of that nongovernmental or humanitarian organization? What -- you were there, in fact, on their behalf and doing their work.

Any derogatory information would -- would result in a default position, where they would be denied travel and then told to go to a United States embassy or a consulate. So that's an example of the kinds of questions we would ask.

PAYNE:

And to the both of you, if Congress were to temporarily suspend the VWP, what would be the ramifications for State and DHS? What impact would there be on embassies and consulates in VWP countries? And what impact would there be on CBP operations? Also, what impact would there be on U.S. business interests and U.S. travelers to VWP countries?

KERLIKOWSKE:

From the Customs and Border Protection standpoint, the information that we get from ESTA, which has been around many decades and 90 million people have traveled, many more people -- many people, of course have been denied entry, as a result of that information.

All of that combines together. These countries that have been talked about that are members of VWP are great partners. We secure information and share information with them. We depend on them. We're only going to be a safer country when, in fact, we engage in those kinds of things.

I would think the suspension of ESTA, the suspension of VWP, would have some significant effects on those relationships and that ability that we have now to share information. At our National Targeting Center, we have members from -- who have been fully vetted from other organizations in other countries.

So working together is critical, and I think the VWP program is a security and safety program, as much as in the past, when it was designed to facilitate tourism and the ease of travel. It is a security program now.

PAYNE:

Ms. Johnson?

JOHNSON:

I would absolutely echo everything the Commissioner just said. I mean, again, and as I mentioned in my opening remarks, this is a -- a hugely beneficial counterterrorism tool, particularly for the United States, because of the information we receive from these foreign partners, but, also, for those foreign partners, again, which are key allies and trading partners, for their security.

They take our information and they screen against it. So it's a hugely collaborative counterterrorism partnership. I know that it would be a very big impact against -- on that relationships that we have with those countries, both on the counterterrorism side, but for foreign policy reasons, as well, certainly, from sitting at the State Department.

I sit in the Counterterrorism Bureau. I see how that partnership is extremely important, and I think we can leverage that partnership to a variety of degrees. The VWP security requirements, I just want to note, have become kind of universal standards, as well, for importance for counterterrorism tools, broadly.

A number of these security requirements are now, again, best practices that we've highlighted in U.N. Security Council resolutions, particularly, UNCSCR 2178, to combat terrorist fighters. So other countries, beyond the VWP, are benefiting from those kind of lessons learned.

So, I think, we would have a huge -- a huge negative impact. I can't answer on the economic side, but I know it's a very large contribution to our economy, because it is a reciprocal program, and, certainly, for our foreign partners, as well.

PAYNE:

My time is up. And I just think, Mr. Chairman, those are some things that we should keep in the back of our minds, as we move forward on this discussion.

And I yield back. Thank you, sir.

MCCAUL:

The Chair recognizes Mr. Duncan.

DUNCAN:

Thank you, Mr. Chairman.

Mr. Commissioner, could you define, as in the law, what law enforcement and national security interests of the United States are?

KERLIKOWSKE:

I think the law enforcement interest is a narrower interest and would be involving where someone is coming back into the United States, and, as the Chair mentioned, would be under surveillance, or we would want to have, because that person is being targeted. Perhaps, that person is also being part of extradition.

The national security interest, as has been explained, in keeping Visa Waiver Program countries in partnership, in collaboration with us on information sharing, on using these finite resources to take a look at that.

DUNCAN:

Thank you.

KERLIKOWSKE:

And, remember, these are just frameworks.

DUNCAN:

Thank you. I appreciate that.

KERLIKOWSKA:

Sure. OK.

DUNCAN:

I want to go back to what Ms. Miller was talking about. During the negotiations, there were proposed exemptions for journalists, relief workers, business and humanitarian travel, and they were rejected. It goes on to say, later, that the DHS, State Department, leadership staff, the White House, the exemptions for humanitarian travel were, once again, rejected, due to members' concerns.

Ms. Johnson, are you aware of a State Department memo VWP Waiver Recommendation Paper?

JOHNSON:

I believe so, yes.

DUNCAN:

Internal memo?

JOHNSON:

Yes.

DUNCAN:

OK.

Mr. Chairman, I'd like to, without objection, I'd like to submit this for the record and ask all the Committee Members to actually read this at some point.

MCCAUL:

Without objection, so ordered.

DUNCAN:

Thank you.

Within that -- that paper, it talks about law enforcement and national security interests. It also references a legal paper. So I'm assuming that's a white paper within this white paper. Are you familiar with that legal paper?

JOHNSON:

Yes, sir. I am.

DUNCAN:

Has that been provided to this Committee?

JOHNSON:

I would have to go back and check. I don't know.

DUNCAN:

Has any -- Mr. Chairman, do you know if that...

MCCAUL:

Thus far, we've had no document production. I believe the deadline is this Friday.

DUNCAN:

OK. I would request that that legal paper be provided, because I think it's important.

This -- this white paper, Visa VWP Waiver Recommendation Paper, says that there are no findings of fact or other determinations required to be made before exercise of the waiver authority.

Let's talk about this. Why does it state that? Why does it state that there are no findings of fact or other determining -- determinations required to be made before the exercise of waive authority? Why does it say that in the State Department's white paper?

JOHNSON:

I'm -- I'm not a lawyer, but I know that the text of the law is clear that the Secretary of Homeland Security can utilize the waiver to waive the dual national and travel restrictions, if it is in the law enforcement and national security interest of the United States.

DUNCAN:

It was shown very clearly by Ms. Miller, and during the negotiations, that the intent of Congress, as the Chairman pointed out, was to not offer visa waivers to these classifications of people.

But, yet, the State Department will come out, after the law was signed, with an internal document that references another legal paper to say we are gonna allow business-related travel. We are gonna allow people from international and regional organizations, some national governments. We are gonna allow humanitarian, nongovernmental organizations.

We are gonna allow accredited journalists. We are gonna allow dual nationals who immigrated to -- from Iran, after the revolution. We are gonna allow dual Iranian nationals who were born outside of Iran. We are gonna allow dual Iranian nationals traveling to the United States for business purposes.

We are gonna allow business-related travel to Iraq from these -- these waiver countries. Congress, in the negotiations, said no, we're not going to give those exemptions. But the State Department now is saying, here's justification. Here's our rationale that we are gonna allow that to happen.

How -- how does this kind of lawlessness happen in defiance of Congress? Explain that to me.

JOHNSON:

So those are internal deliberations. That document is a series of discussions on how we can utilize the waiver that is allowed for, under the law. Again, working internally within the department, we broadly discussed the options, the potential of utilizing this waiver, all throughout the department, both with the legal advisers' office and the regional bureaus, which we do on a policy basis for any other topic.

And those are internal deliberations. And they were looking at what kind of potential, you know, categories we might look at, under the national security waiver, as, again, called for under the law.

But that is, in no way, shape, or form, the final position. Again, we consulted with Congress. We understood you did not want blanket waivers or blanket exemptions. And that was not the intent, to have any, as we've mentioned here clearly today, to do a blanket waiver or blanket exemptions. We were looking at narrow...

DUNCAN:

If you read this, it, absolutely, looks like that is the intent of the State Department.

JOHNSON:

So, again, it's a deliberative document. But then we...

DUNCAN:

I think it looks like a way to -- to rationale getting around the intent of Congress. That's what it looks to me. And I believe if I share that with the American people, and it's on the record now, and ask the American people to look at it, they would come to the same conclusion. They would come to the same conclusion.

I mean, one of the questions that you're asking a business traveler from -- that had gone to Iraq, after March 20 -- March 1, 2011, is this. Was your travel to Iraq after March 1, 2011? If the answer is yes, was the travel exclusively for business purposes? That's a pretty benign and open-ended question. And if they answer, yeah, it was exclusively for business, we're gonna probably grant you a visa waiver. Really?

I think the American people expect us to do a better job, before we allow folks, based on the intent of the law passed by Congress, before we allow folks to get a visa, to not have to get a visa and be waived from that to travel this country.

I think you're using this white paper to rational -- rationale that. And I disagree with that.

Mr. Chairman, I'd encourage everyone to really delve into this a little further, because I believe the Administration is acting lawlessly, in this regard, because Congress said a certain thing. We negotiated with the White House along certain lines, and this seems to be violating that intent. And, with that, I yield back.

MCCAUL:

And I was in those negotiations. It was pretty clear, the understanding between all the parties to the -- in the negotiation.

With that, the Chair recognizes Ms. Jackson Lee.

JACKSON LEE:

Let me thank the Chairman and the Ranking Member. This is an important hearing. But let me also thank the witnesses. And I come with a, sort of, a dual approach in my questions, respecting both of you.

Commissioner, thank you for your service.

And thank you, Ms. Johnson.

I'm going to join the Chairman and wish that we had a person in the level of Secretary, Assistant Secretary. When I say that, no disregard to your expertise, and to thank you for your presence here today.

As I said, when I say dual purpose, I'm going to be a little bit askance. Let me as the Commissioner, Mr. Commissioner, are you -- do you have an intent to break the law?

KERLIKOWSKE:

No, ma'am.

JACKSON LEE:

Ms. Johnson, do you have an intent to break the law?

JOHNSON:

No, ma'am.

JACKSON LEE:

So I would just take issue with our hearing topic. I think we have public servants who are here who have no intent on breaking the law. And I feel a little bit uncomfortable to suggest that they are here in the context of breaking the law.

But I do believe that we want to give you counsel, and I hope both of you will take back the definitive concern of this Committee. Our name came about after 9/11. And if the American people know anything, they understand Homeland Security.

And it would fall at the feet of the Department, less so State, who collaborates on these Visa Waiver Programs, when the American people think, why have I not been protected. They will look to the Homeland Security Department, Commissioner. They will look to this Committee, just by the very name.

And, so, I -- I can appreciate my colleagues, who were in negotiations and made the very best effort. I hope you can appreciate them as Members of Congress, trying to do their job. But I want to say that I don't think any of you are attempting, or have, broken the law.

But let me raise this and try to probe from you. Section 203 of the negotiations of H.R. 158, which never passed the House or Senate -- it passed its committee -- did, however, get into the Consolidated Appropriations Act.

And the exact language is, as you have noted, is that the Secretary of Homeland Security can waive the prohibition against travel under the VWP waiver -- the Visa Waiver Program, due to recent travel to a specified country or because of citizenship in a specific country, if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States.

Commissioner, have you heard that language? Has that language been brought to your attention?

KERLIKOWSKE:

I have heard it, yes.

JACKSON LEE:

Ms. Johnson, has that language been brought to your attention?

JOHNSON:

Yes, ma'am.

JACKSON LEE:

So can I assume that the Secretary of Homeland Security and the Secretary State thought, in their responsibilities of national security and law enforcement -- am I to assume that they felt compelled to answer the many inquiries that they were getting, panic inquiries, outrage on the diplomatic level, to come up with a resolution?

Ms. Johnson, do you think that is where we are today?

JOHNSON:

I think there's a lot of confusion with the law from our foreign partners, who have repeatedly asked how this law will be administered. I think they're very concerned about dual nationals, in particular, and that it felt very discriminatory. So I think there was a lot of concerns raised.

JACKSON LEE:

And, Mr. Commissioner, is it that you needed to inform your personnel and the Secretary of Homeland Security felt compelled, either by his dialogue with the Secretary -- where do you think this, sort of, machinations and changes, of sorts, came about?

KERLIKOWSKE:

So the agreement and the understanding that I have had from Secretary Johnson is, certainly, and, certainly, not one to be pushed or pulled into any one direction, since the day we met when we were both awaiting confirmation, the protection of the American public is first and foremost with him.

So putting these -- this framework to be helpful, even though no waiver has been granted and no request has been made, putting this framework together with his partner at the Department of State, is one that, I understand, we will continue to push forward and develop processes to make sure that someone is thoroughly, completely, and absolutely vetted before any waiver would ever be granted.

JACKSON LEE:

So with no intent to undermine the -- the -- the protection of the American people?

KERLIKOWSKE:

No, ma'am.

JACKSON LEE:

But complying with Section 3 that, if a case comes up, under national security and -- or law enforcement necessity, that that case could be considered. So let me ask you this. In the broad base of business purpose, could you have, in your framework, what would define as a legitimate business person?

Let's start with Ms. Johnson. What would we define as a legitimate business person -- purpose? Excuse me.

JOHNSON:

Well, I think, we're still in deliberations on, again, how to administer these waivers. Certainly, in the case of Iran or Iraq, it would be making sure that they're not sanctionable activities and, certainly, in an Iran case, or illegal against U.S. laws.

But I think, you know, our first and foremost -- and, again, I will -- straight from the Department of State, as well, is the security of the U.S. homeland and the American public. I work in the Counterterrorism Bureau. It's, again, what we do all the time.

So that is where we would be starting with. I think what we would be discussing is how we would go about reviewing those waivers and, certainly, could talk about it at a future date in a closed session. I think what we don't want to do is advertise how to work around those, publicly.

JACKSON LEE:

Let me close by saying, first of all, I want it to be very clear that I asked the witnesses, on the record, did they have the intent or have they broken the law. And let me add that point.

Have you broken the law? Commissioner?

KERLIKOWSKE:

No.

JACKSON LEE:

Ms. Johnson?

JOHNSON:

No, ma'am.

JACKSON LEE:

And I think that you have not done so. But I think it is important that you hear the concern of this Committee, that what was represented in negotiations seems to be, if you will, has turned into an amoeba and has begun to crawl in different directions.

For the security of the American people, I think we need negotiations, discussions, again. I think it should be restated that the Commissioner said no waiver has been asked for or granted, at this point in time, on February the 10th, 2016. That's somewhat of a good thing.

But when you think of countries like Iran and Syria, you raise concern in others. But I will close my comments by saying I have empathy for humanitarian purposes. Certainly, military and diplomatic have their own waiver.

And I would, probably, look to narrowing that to those dealing with humanitarian issues, those dealing with legitimate business versus dealing with the Joint Comprehensive Plan of Action, but raise questions about others who would need this waiver, except for the fact that you come back and show us a strict, restricted, point-by-point, in a briefing that is not public, of how you would assess journalists and others, because I'm not here to deny the legitimacy of individuals like that who would have been engaged in travel.

But, Mr. Chairman, I just want to be on record to say that I do not believe this Administration is in the business of breaking the law. I yield back.

MCCAUL:

The Chair recognizes Mr. Loudermilk.

LOUDERMILK:

Thank you, Mr. Chairman.

Ms. Johnson, maybe you can help me clarify something. You said you're not a lawyer. I'm not a lawyer. But something you had said earlier, maybe you can help me clarify. There appears to be two exceptions that we're talking about to this -- this law.

One was in response to Mr. Thompson in his questioning. He brought up waivers, and you said that these are not waivers, they're exceptions -- or exemptions. Is that -- is that correct?

JOHNSON:

No. I know that, under the law, there are exemptions for categories for government, official government business, as well as military. In this case, in the waivers, we'd be looking at this as an individual basis, so, again, case-by-case, whereas exemptions, I think, are broad categories of people.

So if -- and I don't know, in the sense of how CBP would look at those. But if someone presented military documentation of official government business, that's my understanding for...

LOUDERMILK:

OK. So waiver and exemption...

JOHNSON:

None of them -- it's not a blanket waiver, I think, is the main thing to...

LOUDERMILK:

OK. But they're both exceptions, categorically, I guess? Different -- to different degrees. I guess, that'll explain, too -- I was a little confused with -- when you responded to Mr. Duncan that -- that the law gives the Secretary the ability to grant waivers, a type of exception.

So, with that, Mr. Conyers, the Ranking Member of the Judiciary Committee, actually voted against this bill when it came to the floor. And the reason he voted against the bill is because it didn't provide the waivers for certain categories.

And let me -- let me read his quote. "It contains no exceptions for journalists, researchers, human rights investigators, or other professionals." Again, "It contains no exceptions for journalists, researchers, human rights investigators, or other professionals."

To me, that's pretty clear that he said it -- it -- it contains no exceptions, whether waiver or exemptions. This bill contains no exceptions. So do you see that that's clear that, based on the testimony of the Ranking Member, who was opposed to the bill, because it didn't do exactly what the Department is claiming that it does now -- do you -- does the Department know more about the intent of the law than the actual Members of Congress?

JOHNSON:

No, sir. I think, again, the text of the new law is clear that the Secretary of Homeland Security has the ability to waive the dual national and the travel restrictions, if it's found in the law enforcement or national security interests of the United States.

I think when we were looking at the waivers, again, we were looking at categories of travelers under the national security provisions. And I think that we were trying to look at, again, a limited scope and reviewing those on a case-by-case basis.

And I don't know if -- if they were looking at for broader exemptions, but the intent is, again, to look at it in a very limited and narrow focus and on a case-by-case basis.

LOUDERMILK:

Well, there's nothing in Mr. Conyers' statement that says case-by-case. He says it contains no exceptions. When we were talking about a moment ago, there's waivers and exemptions. Both are types of exceptions.

He says it contains no exceptions. Not case-by-case. Not individual. It contains no exceptions. I don't know how you derive anything different. And this is, again, I think, the Ranking Member of the Judiciary Committee, would be pretty knowledgeable about what the intent of the law is.

Given that, there's clear legislative history here that this bill, including the floor statements and other statements, did not intend to do what the Department is doing. Under oath -- you're under oath here today, are you willing to say that this law provides for these broad categorical exemptions?

JOHNSON:

These are, again, the text of the law is clear. The Secretary of Homeland Security has the ability to waive those dual national and travel restrictions, if it's in the national security interests of the United States.

We're not asking for blanket, categorical waivers. We are looking at a limited and narrow focus, and, again, reviewing them on a case-by-case basis. I think this approach is consistent with other waivers, such as under the Immigration and Nationality Act, where there are broad categories, but we look at them in an individual basis.

LOUDERMILK:

Oh. One last question. How many meetings did the Secretary Kerry and Secretary Johnson have regarding these exemptions, prior to the announcement? Do you know?

JOHNSON:

I don't. I know they talked frequently. I know there was one meeting that I, personally, sat in on.

LOUDERMILK:

There was one meeting before the decision, the announcement was made?

JOHNSON:

Yes. Yes.

LOUDERMILK:

How many meetings since then?

JOHNSON:

I don't know if they've talked on a regular basis or not. But there was one meeting that I sat in, before the announcement. Yes, sir.

LOUDERMILK:

All right.

Mr. Chairman, I yield back.

MCCAUL:

The Chair recognizes Mr. Richmond.

RICHMOND:

Mr. Chairman.

I guess I'll pick up where my colleague just left off, in trying to determine the exemptions which, my understanding, would be outright exemptions of categories of people, and then waivers, as you all define as on a case-by-case basis and the Secretary has the authority to do that.

And my colleague quoted John Conyers, who I certainly respect and made him an authority, but John Conyers is also asking for us to vote on voting rights. And I don't hear anyone quoting him or moving to do that.

What it sounds like to me is that you all were asking for the blanket exemption for those categories, and, when you didn't get it, some lawyer in your office said, well, it's not a big deal, because you can do it by waivers on a case-by-case basis.

Is -- is that probably fair, that someone came to you and said that you could do exactly what you want to do by waiver, as opposed to, I guess, continuing to negotiate an exemption?

JOHNSON:

The -- the law actually says that the Secretary of Homeland Security has the ability to utilize a waiver to -- to waive the dual national and travel restrictions, if it's in the law enforcement and national security interests of the United States.

RICHMOND:

Did we have any conversations about taking that waiver provision out of -- of law, or striking that, so that the Secretary would not have the authority to waive on a case-by-case basis? Did anyone raise a concern about that?

JOHNSON:

I -- I was not part of any of those discussions, so I don't know.

RICHMOND:

Let me -- let me just ask you, in terms of cost, how much -- how much more time and energy and resources are you all gonna use to look at a waiver on a case-by-case basis, or if the person had to actually go through the visa process?

JOHNSON:

I have Consular Affairs here that might be able to speak to the -- the Consular side of the house. I think, through this terrorism threat prevention cell, which, again, is part of the National Targeting Center, State Department already has bodies there that work this.

Yes, it will be a few more resources. I think, again, what we are looking at is, through the Visa Waiver Program, the ability to get the information we receive from -- from these foreign partners, under the requirements of this program, actually help with those resource issues. They provide more information on known and suspected terrorists and criminals that we can screen against to protect our homeland.

And, so, without that information, it's certainly difficult to do that kind of screening, even in the visa context.

RICHMOND:

Well, and let's move on to, I guess, what your ultimate goal is when you say the national security interests, which is why you now have implemented waivers, or planning to, because of our partners.

What have our partners done, in terms of how they treat travel to Syria or any of the other conflict zones that support terrorism?

JOHNSON:

You mean, our visa waiver partners, in particular?

RICHMOND:

Yes.

JOHNSON:

I can take that question back, if you're looking for more specifics down per country. I think they're very concerned about travelers from these countries, certainly. But, again, I think the important focus here, when we're looking at these waivers, we're not looking to have random people who go

to Syria and come back. We're looking at very limited scoped waivers for individuals, again, on a case-by-case basis, who might be working -- that are working on these national security objectives.

So, again, it's not just somebody who goes to -- to Sudan or Syria and comes back. But I believe these countries are, you know, just as concerned. But, again, this partnership, under the VWP program, means they also receive information from us on known and suspected terrorists. They receive our -- a good chunk of our database and our terrorism screening watch list, which helps them -- aid in their screening, as well, to protect their borders.

RICHMOND:

So it is -- I mean, it's mutually beneficial, and I would say beneficial. But it's absolutely mandatory that all of the partners cooperate, in order to make not only them safer, but us safer, also.

Was this becoming a problem, in terms of the relationship with our partners?

JOHNSON:

You mean the law, or...

RICHMOND:

The law, yes.

JOHNSON:

I think they were very concerned that their citizens were being -- you know, the affected travelers, under this law, were considered heightened security risks. And, so, they had registered a number of concerns about that.

I had, again, conversations yesterday. They were very -- they want to protect the U.S. homeland, but are very concerned about the perception that individuals that go to, again, work for humanitarian organization in Darfur are suddenly being considered a heightened security risk. That was a very big concern of theirs, yes.

RICHMOND:

Well, I would just tell you that I do have a concern, when it comes to protecting the homeland. And I think that we are on a very slippery slope, in terms of how far we go. But, to the extent that the experts believe that it creates a better relationship with our partners and the fact that it will keep us more secure, I think that language is clearly within the law, that says that you have the right to waive it, if it's in the national security interest.

And, if our negotiators had a problem with that, they should read that line, take it out, and then I think that all the e-mails and everything else we went back and forth and talked about today, they

would have every right to be upset about, because you asked for an exemption and you didn't get it. But if they were -- wanted to outlaw the waivers, then that language just shouldn't be in there.

But if it's in there, we can't come back and get mad that you're using language that's already there. And I think that you have to make sure that you're confined to the spirit of what those waivers are and not go too far with defining national security interests and -- because, at the end of the day, we just don't want the American people less safe. And we don't want to be negligent in our responsibility to make them safe.

With that, I'll yield back.

MCCAUL:

I thank the gentleman.

Now, the Chair recognizes Mr. Ratcliffe.

RATCLIFFE:

Thank you, Mr. Chairman.

Ms. Johnson, I -- based on your testimony earlier, I know that you played a role, with respect to the negotiation of text, for H.R. 158. And, because of that, I know that you were aware that these special categories of exemptions, travel for humanitarian purposes, for business purposes, and for journalistic purposes, were requested by the State Department and were rejected by Congressional negotiators, as reflected in the e-mails that Chairman McCaul put on the screen earlier. Correct?

JOHNSON:

I was not involved in the -- the discussions, the negotiations of the law, but I'm very aware of those discussions. Yes, sir.

RATCLIFFE:

OK. And you were aware, because those special categories were rejected and left out of the text, that groups like the ACLU opposed this bill becoming a law?

JOHNSON:

I was not aware of that.

RATCLIFFE:

OK. That organizations were opposed to it for that reason?

JOHNSON:

Not aware of that, no.

RATCLIFFE:

OK. Well, were you aware that Members of Congress, like Ranking Member Conyers, actually voted against the law, because those specific exemptions were not included?

JOHNSON:

Yes, we discussed that earlier. I understand he, also, came out with a statement in support of the waiver categories.

RATCLIFFE:

And, so, despite the opposition of members like Mr. Conyers, you know, of course, that the bill passed into law with an overwhelming vote of 407-19, and the President signed it into law on December 18.

Now, I ask you all that, because, you know, your written testimony and your verbal testimony today really seems to talk about a need and a justification for some of these special categories. And, to me, I have to tell you, that really just seems like a re-litigation of an issue that's already been lost by the State Department.

Congress acted here. I don't think there's any ambiguity, with regard to Congressional intent. These exceptions were rejected, and the President signed them into law. And -- and, because of that, I -- I hope that you can appreciate why so many of the folks that have been in here today see it as the height of arrogance by the Administration and Secretary Kerry to send a letter to the Iranian Minister of Foreign Affairs less than 24 hours after the President signed this into law, stating an intent to disregard the law.

And, in so doing, to place the interests of the Iranian economy in front of the national security interests of Americans. Can you see why folks are upset by that?

JOHNSON:

I -- I would note that, for the letter that Secretary Kerry wrote to Foreign Minister Zarif was in response to the Iranians publicly claiming that this law violated the commitments of the JCPOA. And, in fact, in that letter, he was actually defending the law and stressing that it was not a violation of the commitments against the JCPOA.

He writes many of these letters...

RATCLIFFE:

Well, let me ask you about that. Do you have a copy of the letter?

JOHNSON:

We have one here, yes.

RATCLIFFE:

OK. Well, great, because -- and let me read this. I want to make sure I get it right. This is a letter from Secretary Kerry to the Foreign -- to the Minister of Foreign Affairs in Iran.

And, in the second paragraph, he says, "I'm also confident that the recent changes in visa requirements passed in Congress, which the Administration has the authority to waive, will not in any way prevent us from meeting our JCPOA commitments, and that we will implement them so as not to interfere with the legitimate business interests of Iran."

Did I read that accurately? Did I read that accurately?

JOHNSON:

Yes, sir.

RATCLIFFE:

OK. So this letter doesn't say that the Administration has the authority to waive for law enforcement purposes or national security purposes. Does it?

JOHNSON:

No, sir.

RATCLIFFE:

OK. It doesn't say the administration has the authority to waive on a case-by-case basis, as you've said today. Does it?

JOHNSON:

No, sir.

RATCLIFFE:

All right. It just tells the Iranian government that it -- that the Administration has the authority to waive so as not to interfere with the legitimate business interests of Iran.

Now, it, also -- I want to make sure I read that correctly -- doesn't say that we may implement them. Doesn't the language say we will implement them so as not to interfere with the legitimate business interests of Iran?

JOHNSON:

Yes, sir.

RATCLIFFE:

OK. It doesn't say we may implement these. It doesn't say we might do it. It doesn't say we might do it on a case- by-case basis, as you've said today. It says we will implement them so as not to interfere with the legitimate business interests of Iran.

Now, we can have a debate about whether there even is such a thing as a legitimate business interest in Iran, but we really can't debate whether or not an Iranian business interest has anything to do with law enforcement in this country, can we?

JOHNSON:

The law does say that they can waive for national security and law enforcement purposes. And this letter was defending the law, in response to a public assertion by the Iranians that it was violating the commitments of the JCPOA.

RATCLIFFE:

Well, you know, it's funny, because when you talk about what's in the national security interests of our country, for the last several decades, our national security interest has been to sanction Iran. It has been to cripple the business interests in Iran. It has been to cripple their economy. And those sanctions, frankly, were working pretty well, until this Administration did away with them.

You know, Ms. Johnson, I don't want to shoot the messenger. Maybe we need to bring Secretary Kerry here. Maybe we need to remind Secretary Kerry that he's no longer Senator Kerry, that he doesn't get to make laws anymore.

I'd like to know, frankly, from Senator Kerry whether he ever intended to honor Congressional intent, or whether this negotiation with Congress was ever in good faith, or whether the Administration had already planned to force these special categories into the National Security Waiver.

Either way, it's type of gotcha attitude, it's this defiance of the rule of law, which make the American people not trust this Administration. And I don't blame them.

And, with that, I yield back.

MCCAUL:

Chair recognizes Mr. Walker.

(UNKNOWN)

(OFF-MIKE)

MCCAUL:

Well, OK. On my list -- I'm sorry. Mr. Carter.

CARTER:

Thank you, Mr. Chairman. Mr. Chairman, let me preface my remarks, my questions, Mr. Chairman, by just saying that, while I'm very respectful of the Commissioner and Ms. Johnson being here and appreciate them being here, very much, they -- they are, Mr. Chairman, in my opinion, they're just overseers and implementers of this.

And -- and we need the people here, testifying before us, who have actually had the responsibility of doing this. That is the White House, the Secretary of State, the Secretary of Homeland Security.

So, Mr. Chairman, I hope that -- that we can work toward getting them here to answer these questions, again, respectfully, to the witnesses who are here today.

Having said that, Mr. Chairman, Ms. Johnson, respectfully, I remind you, you're under oath. Whose decision was it? Whose decision was it to ignore the intent and the plain language of the law? Whose decision was that? And to create these five categories of exemptions, whose decision was it?

JOHNSON:

Sir, the -- the text of the law provides for a waiver to -- against those...

CARTER:

Whose decision was it?

JOHNSON:

So, just like all policy that we do, both at the State Department -- it was an entire deliberation around the department. And we worked very closely, again, taking into consideration Congress's concerns with blanket waivers. And we worked with our Department of Homeland Security colleagues, in tandem, to look at what might be possible under this waiver exemption, under the law.

CARTER:

So -- so you're saying that it was the State Department? It was everybody in the State Department was involved in this decision?

JOHNSON:

We have regional bureaus, certainly, that are very concerned about...

CARTER:

Did you consult with anyone at the White House? Was anyone at the White House, anyone in the Administration...

JOHNSON:

Yes, we talked...

CARTER:

Were they involved in that?

JOHNSON:

... to the White House. It was a White -- this is a collaborative effort. This was State Department, Department of Homeland Security, and the White House, yes.

CARTER:

So -- so it was people who were, also, involved in the agreement, the agreement that Congress had with the Administration? They were involved in this decision?

JOHNSON:

Yes.

CARTER:

You know -- you know, we used to have a governor in the State of Georgia, who also served as a United States Senator. It was Al Miller. He used to -- one of his favorite sayings was -- was always that, you know, if you're walking in the woods and you see a turtle on a fence post, you can bet that somebody put that turtle on that fence post. It didn't get there by itself.

Somebody did this. Somebody had the intent of doing this. And -- and -- and that's what bothers us so much. You know, Ms. Johnson, you don't know my daddy. My daddy's the smartest man I've ever met, not the most educated, by the smartest. And he always told me, he used to say, "Son, whenever you think you're the only one who's right and everybody else is wrong, you have to stop

for just one minute. And you have to think, you know, it might not be everybody else. It might just be you."

And -- and I always remember that. Here we had 407 Members of Congress, of the United States House of Representatives -- now I've been here almost 14 months now. I can tell you, when you get 407 Members to agree on something, that's strong.

Here we had 407 Members agree on this and vote in favor of this, under the auspices of this Administration, or -- or this agreement with this Administration. Yet, the administration goes and voids this agreement altogether.

Don't you find that to be somewhat -- somewhat disrespectful of the American public, in general? I mean, if we're elected by the people, that's gotta be disrespectful, in my book. What do you think?

JOHNSON:

The text of the law offers up a waiver.

CARTER:

What about the intent? And don't -- don't tell me that intent doesn't matter, because it does, in this case, because the Administration knew the intent. They agreed, and they knew the intent.

JOHNSON:

And, again, we understood the intent, very clearly, in the text of the law, very clearly...

CARTER:

Then why did -- why did you go against the intent?

JOHNSON:

I'm saying that these are not blanket waivers and, again, we are very clear that these would be used on a very limited, case-by-case basis in a narrowly and tailored focus.

CARTER:

Well, let me ask you this. And, you know, it's something else that concerns me greatly is that, if we were talking about tax policy, if we were talking about the economic issues, it'd be one thing. But we're talking about Americans' safety. And that's what's so concerning to me.

Let -- let me ask you, the Administration didn't decide on their own to provide an exemption for the journalists, the researchers, the human rights investigators and the other professionals. If they weren't getting this exemption, could they still get here?

JOHNSON:

They can go get a visa, as well, yes.

CARTER:

Well why -- why not do it that way, then? Why not just leave it to the visa process?

JOHNSON:

Well, as we discussed, and I mentioned in my opening remarks, I mean, the partnership with these VWP partners is a counterterrorism tool. And very -- they're very concerned about the fact that a number of their citizens, affected by this law, are treated as heightened security risks...

CARTER:

You know...

JOHNSON:

and are participating...

CARTER:

I'm sorry. I have to disagree with you on that. I think that if they had wanted them in here, the visa process would have been the way to go.

Mr. Chairman, again, respectfully, thank both of these witnesses for being here. I know, I've worked with the Commissioner before. I know him to be an honorable man. But we -- we ain't got the right people here. We need the Secretary of State. We need the Secretary of Homeland Security. We need someone from the White House.

Mr. Chairman, I yield back.

MCCAUL:

And, in response, the Secretary will be here fairly soon, in a budget hearing, and I'm sure this issue will come up at that time. And we did request a higher level political appointee.

And, in response, not to diminish your testimony, Ms. Johnson, but I think you were, sort of, thrown under the bus, to be honest with you, on this.

The Chair now recognizes Mr. Walker.

WALKER:

Thank you, Mr. Chairman.

Ms. Johnson, I want to go back to something you said a little earlier. And I think you were touching on it just a few minutes ago, in responding to my colleague from Georgia, Mr. Carter, about this Iranians -- if you used the word are offended by the travel bans, or it's a problem there. I -- I don't understand why that's an overwhelming concern of ours, that -- that -- that's offensive to them. Can you expound on that make and make sure I heard that correctly, or is that...

JOHNSON:

No, sir. It was that they were publicly complaining that the law violated the JCPOA. And the Secretary's response was to defend the law. And so that -- that's what my point was there.

WALKER:

Yeah, and that's confusing to me, because, you know, in the 13, 14 months that I've been here in Congress, it's very rare that you have both sides of the aisle coming together. Sixty-three percent of the House voted against the Iranian deal, even to begin with. So it's already something that, in the flavor of the American people, there are great concerns.

So -- so being overly worried about the -- the tenor of what this is doing in the mood of the country, I don't know that that's our -- our primary concern. Just yesterday, CNN article was quoting Lieutenant General Vincent Stewart. He said, "ISIS will probably attempt to conduct additional attacks in Europe and attempt to a direct attacks on the United States homeland in 2016."

James Clapper, as you know, the Director of National Intelligence, also said, "Taking advantage of the torrent migrants to insert operatives into that flow." Now, these are people who study this daily. He also added that they were pretty skilled at phony passports, so they can travel ostensibly as legitimate travelers.

And, then, finally, he also added, speaking of the nuclear deal, the aforementioned that we were just talking about, he said, "We, in the intelligence community, are very much in the distrust and verify mode." May I remind you again, that this is the world's leading sponsor of state terrorism?

So why we're erring on the side of being more concerned with -- with what somebody might think about it, when we know that there's an intent, obviously, historically, to do us harm. Here's a specific question I do have for you, though.

Is it your understanding that these waivers are being applied in a manner to -- to appease Iran, speaking of the context of what we're talking about, and protect President Obama and Secretary Kerry this -- this whole agreement is -- do you feel like that's part of it? There's an appeasement here of trying to keep this deal structured the way that it is?

JOHNSON:

No, sir. This is not about Iran. This is about protecting the U.S. homeland and American public. And I think what we've said is there is an option for a waiver into this law. And we were looking at that in the national security objectives.

And, again, the partnership under the VWP is a huge counterterrorism tool. And I just stress that, again, that just because someone might fall under this identified category of a waiver does not mean they would get a waiver or be able to travel under the VWP.

And I think one piece of information that the CBP Commissioner I've heard say multiple times in DHS, if there's any concern, they don't -- they don't offer, you know, travel under the VWP. So if there's not enough information, they don't.

Again, the VWP partnership provides us with information that enhances our screening capabilities. And that way, we're able to protect the homeland in a better way than we would otherwise.

WALKER:

Are you under the impression, or the understanding, that holding a tougher line and opposing these VWPs are going to increase the threat to our homeland security? Is that -- is that the point that you're making?

JOHNSON:

No. I'm saying we leverage this Visa Waiver Program, in order to be able to get a lot of information from these foreign partners. Again, I also said, it's a -- it's become an international standard, a lot of these security requirements.

It also helps us with other countries to improve their screening capabilities. But it is -- it's an important program. And we are screening all of these individuals, whether they come through the VWP or through a visa. In the exact same way, we are screening against all of our terrorism databases, our criminal databases, the INTERPOL lost and stolen passport database, again, with information provided by these countries under the VWP.

WALKER:

Thank you.

Commissioner Kerlikowske -- is that close? OK. All right. How can we be sure that business travelers, these humanitarian workers and journalists -- I spent two decades as a minister. I have lots of friends that are connected in the missionary communities. I want to make sure that no one is connected with these terrorist activities.

What's the full -- I mean, what's your advice on how we can make sure of that?

KERLIKOWSKE:

So on February 23, Congressman, there'll be a series of questions on that Electronic System for Travel Authorization. In particular, will be questions for not only the humanitarian organizations, that I outlined earlier, but, for example, on businesses.

If you were doing business in Iran under -- and, of course, they would get you -- you would have to have a visa from that country. You would have a specific business visa. So we ask for that information. I would tell you, we've also reached out to multinational organizations, multinational businesses that we know already have interest or are doing, or would like to do, business in that country, and asking them for information about, well, who is going to be there from your organization and who can we be in contact with or get information from, so that we can verify that that person is, in fact, who he or she says they are, is doing business there on behalf of your company or -- and is an employee of your company.

So there's a whole series of vetting.

WALKER:

Well, thank you for your response.

Thank you. Yield back, Mr. Chairman.

MCCAUL:

Thank you. The Chair recognizes Mr. Katko.

KATKO:

Thank you, Mr. Chairman.

MCCAUL:

You want to sit in the chair?

KATKO:

Mr. Kerlikowske, I seem to remember your name in supervisory circles when I was an OCADEF prosecutor for many, many years. So it's nice to see you in person, after all these years.

Just, for both of you, this doesn't require long answers, but I think you both admit that the issue of the waivers and extent of the waivers that were discussed in the bill were actually pretty well-discussed before it became law. Is that fair to say to both of you?

KERLIKOWSKE:

Yes.

JOHNSON:

That's my understanding.

KATKO:

OK. So they were discussed, and they were -- and the -- the very things that you're talking about now were rejected, as part of the final bill. So, now, we're at this process where I understand from your testimony before me -- the whole time today, that you're going to great lengths to make sure that the people that are part of this -- these exceptions that you're developing are -- are properly vetted. Is that fair to say to both of you?

KERLIKOWSKE:

Yes, it is.

JOHNSON:

Yes, sir.

KATKO:

I've got a simple question for you, then. Why the heck didn't you just go along with what the law said and expedite the visa process for these people, instead of going to -- driving these gigantic exceptions into the law that was clear, and you both acknowledge were fully discussed beforehand?

Why didn't you just go with the -- why didn't you just expedite the visa waiver -- I mean, the visa process for these individuals that were no longer eligible for visa waiver? Why not just take the visa process and say we're going to put this on steroids? We're gonna follow the letter of this law, instead of driving trucks through it with exceptions?

And why not just say, we're gonna make the visa process more streamlined for these individuals, so we -- so they won't be too inconvenienced?

JOHNSON:

So, as I mentioned earlier, I mean, the -- they certainly can apply for visas. I know they can get expedited...

KATKO:

No, no. That's not my question. My question's, quite simply, why didn't you just take these individuals that were -- that are now no longer eligible for a visa -- visa waivers, and simply say, OK, now that you're not -- you're inconvenienced by this, but we're gonna make it as simple as possible, because we don't want to disrupt travel. We don't want to disrupt everything.

Instead of sweeping them all under the umbrella of national security, which is, quite frankly, B.S., and why didn't you just do it the right way and just simply say those of you who now have to have visas, we're gonna make it -- we're gonna expedite this, so you're minimally inconvenienced? Why didn't you do that?

JOHNSON:

The Visa Waiver Program, again, the partners were very concerned, and we're very concerned of the fact that a number of these individuals would be affected by this, would be treated as heightened security risks, when...

KATKO:

But that's basically...

JOHNSON:

... in fact...

KATKO:

... what you're treating them as right now, because you're doing an extra screening on them now. So what's the difference?

JOHNSON:

So, again, there's an option for a waiver under the law. And we were pursuing that under the national security objectives of the United States.

KATKO:

OK. I understand this. You're starting to sound like Marco Rubio did Saturday night, here, OK? What I want to know is, from a -- did you -- first of all, I mean, a simple question. Did you even discuss or examine the possibility of simply expediting the visa process for these individuals, instead of just blowing an exception into this law?

JOHNSON:

We -- we are offering expedited visas to people who are affected under this law now.

KATKO:

OK. And -- and, so, if you're doing it for some people, right? That are affected by this, correct?

JOHNSON:

Yes.

KATKO:

Why didn't you do it for these whole other categories that you guys grafted in here, knowing that you were going to incur the wrath of Congress, knowing that you were ignoring what Congressional intent was?

JOHNSON:

Not trying to sound like Marco Rubio, but there is an option for a waiver under the law.

KATKO:

Well, OK, well, we disagree. Let's -- we disagree on that one. OK? All right. Mr. Kerlikowske?

KERLIKOWSKA:

I -- I think there a couple of things that are helpful. One, I wouldn't know what it would take for the State Department, with resources, personnel, et cetera, and where those locations of consulates and embassies are.

I do know that we dependent very clearly on a close working relationship with these visa waiver countries under all of the different guidelines that are now, or restrictions that are now in place to share information, and that by telling them that a -- a number of people would not be considered, or would be considered at a heightened risk and additional security could have a negative impact on that communication that we value, very clearly, with them.

So I would -- and remember, too, even though we have not had a -- a single application, if there is any information that would be of a derogatory nature or cause us to concern, we will default, at CBP, to denying admissibility and requiring that that person show up at the embassy or the consulate for, in fact, a -- a visa application.

KATKO:

Right. And I -- I understand what you're saying, but -- and I understand, you know, relationships are important. But there is ways to smooth over the relationship without ignoring the law. And it just seems to us, here, and I think bipartisan, mostly, that the law was being ignored and the Congressional intent was being ignored.

And I -- I guess I would urge you to maybe explore the possibility of going back and rethinking this policy, and maybe, maybe, thinking about messaging to your -- your -- our partner countries, we want your business, but we're also concerned about national security. And, so, work with us, here. We'll expedite the visa process for you, and do it the right way.

That's -- I would suggest you contemplate that. Thank you.

I now yield back.

MCCAUL:

OK. Just, in closing, first I want to thank the two of you for being here today. But I -- I just want - - I mean, I -- you know, having Chaired the Committee before the bill was marked up, having been intimately involved in the discussions between the Congress and the White House and State Department and the Department of Homeland Security, you know, in my judgment, you've taken exceptions that were rejected by Congress and just approved them on your own authority under this waiver authority that was in the legislation.

And -- and it's very disturbing to us. We will continue our oversight authority on this on, as you say, a case-by-case basis, but we can -- we also have legislative authority to fix this. And in this legal memo -- now, I know you said case-by-case, but you said additionally, as discussed in the legal paper, the national security waiver can be exercised by category, not just by individuals.

That doesn't sound like case-by-case basis to me. That sounds like a broad category, like what we've seen by executive order in immigration. Can you explain that?

JOHNSON:

Again, this is a deliberative memo. And, so, under the I&A, I know there are categories of waivers, which we also, then again, assess on an individualized basis. But the process of that, again, was looking at the broad options under the waiver, that's under the law, and looking at those, again, as a deliberative process throughout the department, taking into, obviously, Congressional intent and our conversations on regular consultations with the Department of Homeland Security.

MCCAUL:

Well, and -- and, Commissioner, if I can just say, in this memo, and this is your internal deliberations, legally, and I am an attorney, "the law gives the Secretary of Homeland Security authority to waive this ineligibility, if the Secretary determines such a waiver is in the law enforcement or national security interests. As discussed, this is a lesser standard than that imposed by other statutes that require finding that a waiver is vital to, or essential to, the national security interests of the United States."

Perhaps we didn't draft this per the Administration's liking, but I would argue that there may be another option here, and that is to pass another law that had the language vital to or essential to the national security interests of the United States.

I know neither of you are attorneys, but would that close the loophole on these exceptions, if we did that?

KERLIKOWSKE:

Mr. Chairman, I couldn't answer that, but I could tell you that in all of the conversations and the discussion, the many meetings I've had with Secretary Johnson, he is going to be assured of a narrow interpretation of reviewing these -- the process and to make sure that the process is in place.

I know you have made it very clear about the oversight that you and the Committee will provide on this. And, so, I would tell you that even though we've never entered into a process yet, or had a request for a waiver, that the Secretary has no interest or intention of issuing a waiver, if that should come about, without making sure that...

MCCAUL:

And I've -- I've discussed this...

KERLIKOWSKE:

... it's foolproof.

MCCAUL:

I've discussed this with the Secretary, and I -- I -- you know, he's a -- I know the pressure he's under. I think this is a State Department call and Homeland was put in a difficult position. That's my assessment.

And, in my judgment, just in my final closing remarks, I believe that we, in this case, as always in the State Department, with this foreign policy, have put the Iran deal over the national security interests of the American people.

With that, I do want to thank the witnesses for being here. Members of the Committee may have some additional questions that we'll ask you to respond in writing. And pursuant to the rules, it'll be held open for ten days.

And, without objection, the Committee stands adjourned.