Research Paper

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# The US Visa Waiver Program Facilitating Travel and Enhancing Security


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## Summary


- The US Visa Waiver Program (VWP) has changed substantially over the past 30 years. It originated in 1986 as a pilot public diplomacy initiative to facilitate tourism and reciprocity of travel among countries friendly with the US. Since 9/11 the US has leveraged participation in the VWP to gain intelligence to fight terrorism.
- VWP admissions make up a significant portion of the tourists and business visitors who come to the US each year. The number of VWP entrants increased by 71 per cent over 20 years, from 12.4 million in FY1996 to 21.2 million in FY2015.
- The travel industry's research on the effects of visa facilitation – and of the VWP in particular – shows it yields positive results. The head of the US Travel Association stated in 2015 that the 20.3 million visitors who came to the US in 2014 through the VWP generated $190 billion in economic output and supported nearly 1 million jobs in the US.
- Weighing the benefits of the VWP to travellers and to the US travel industry against the risks of individuals who pose a threat to national security arriving in the country is no small matter. Critics make the case that the VWP is a major national security vulnerability regardless of the modest economic boost that VWP travellers provide. Supporters of the VWP warn that efforts to scale it back or tighten up the requirements would jeopardize international cooperation in the fight against terrorism with US allies, notably those in Europe.
- The VWP is not an especially partisan issue; it has supporters and detractors on both sides of the aisle. Its economic and public diplomacy value has long been recognized. When it was perceived as a national security vulnerability after the 9/11 attacks, policymakers used the VWP's popularity to require biometric passports and to leverage greater sharing of intelligence from participating countries.
- Arguably, the value of a national security screening process is dependent on the depth and breadth of the intelligence data. Thus, the relationship between the two dimensions of the VWP has become symbiotic.

## Introduction

The US Visa Waiver Program (VWP) has changed substantially over the past 30 years. It originated in 1986 as a pilot public diplomacy initiative to facilitate tourism and reciprocity of travel among countries friendly with the US. Since the events of 11 September 2001, the US has leveraged participation in the VWP to gain intelligence to fight terrorism. This has included an increased emphasis on document integrity, an expansion of intelligence sharing, and the establishment of the Electronic System for Travel Authorization (ESTA) for all VWP travellers. Currently, 38 countries participate in the VWP.[1]

### VWP participating countries

- Andorra
- Australia
- Austria
- Belgium
- Brunei
- Chile
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Monaco
- Netherlands
- New Zealand
- Norway
- Portugal
- San Marino
- Singapore
- Slovakia
- Slovenia
- South Korea
- Spain
- Sweden
- Switzerland
- Taiwan
- UK

The European Union (EU) is concerned that the US does not include all EU member states in the VWP: Bulgaria, Croatia, Cyprus, Poland and Romania have not yet been admitted. In contrast, US citizens are permitted to travel to all the EU member states for short-term business or tourism without a visa.

## Criteria for participating in the VWP

The long-standing criteria for participating in the VWP are that a country must: offer reciprocal privileges to US citizens; have had a non-immigrant visa refusal rate of less than 3 per cent for the previous year; issue its nationals with machine-readable passports that incorporate biometric identifiers; certify that it is working towards issuing tamper-resistant, machine-readable visa documents that incorporate biometric identifiers that are verifiable at the country's port of entry; and not compromise the law enforcement or security interests of the US by its inclusion in the VWP.

More recent criteria are that a participating country must use the INTERPOL Stolen and Lost Travel Document database to screen travellers crossing a VWP country's borders, and agree to share certain intelligence information, issue e-passports to all VWP travellers coming to the US, and expand the use of US federal air marshals on international flights from participating countries to the US.[2]

[1] Argentina joined in 1996, but was suspended in December 2001 because of the economic collapse in the country. Uruguay participated from 1999 until 2003.
[2] Department of Homeland Security (2015), 'Statement by Secretary Jeh C. Johnson on Intention to Implement Security Enhancements to the Visa Waiver Program', 6 August 2015.

In response to the terrorist attacks in Paris in November 2015, the administration of President Barack Obama sought to increase the security of the VWP. Changes included modifying ESTA to try to capture information regarding the prospective traveller's past travel to countries 'constituting a terrorist safe haven'. The Departments of Homeland Security and of Justice were required to report to the president on, among other things, information sharing with VWP countries, identification of VWP countries that are 'deficient in key areas of cooperation', and possible pilot schemes to collect and use biometric data on VWP travellers.[3]

> We must continue our proactive approach to security, while not negatively impacting the free flow of legitimate travelers to this country. The proposed security enhancements to the Visa Waiver Program … represent reasonable security measures that will help combat the threat of terror and, if thoughtfully employed, will help us reach our mutual goals of being effective and efficient with our travel security programs.
>
> Michael Chertoff (Secretary of Homeland Security, 2005–09), *USA Today,* 25 August 2015

In December 2015 the US Congress enacted statutory changes to prohibit people who had been present in certain countries since 1 March 2011 from travelling under the VWP. The specified countries include any designated by the US government as having repeatedly provided support for acts of international terrorism under any provision of law, or any other country or area of concern deemed appropriate by the Secretary of Homeland Security. The designated countries are Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen. In addition, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 made anyone who is a dual national of a participating country and one of these specified countries ineligible to travel under the VWP.[4]

## Trends in usage of the VWP[5]

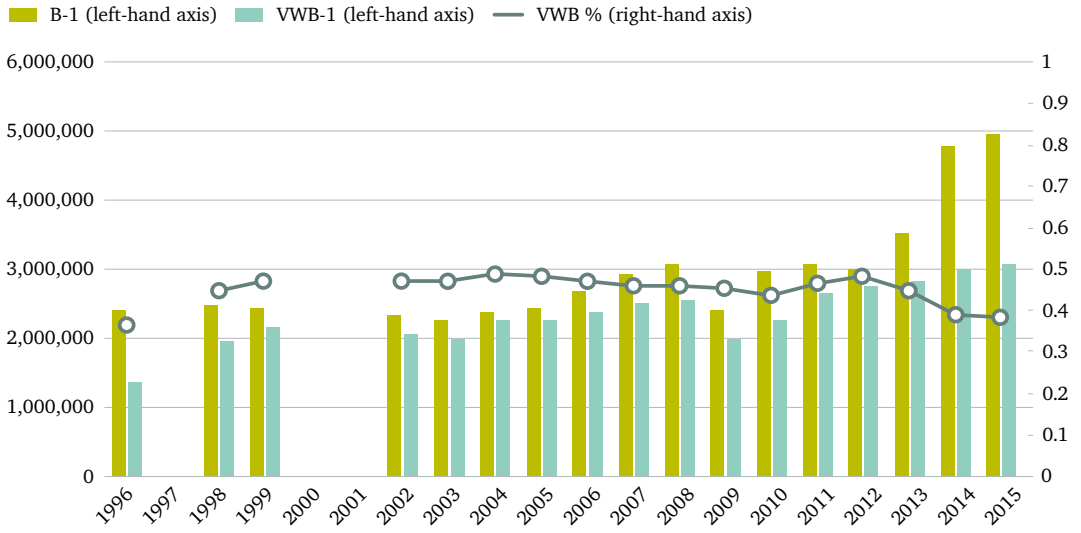
VWP admissions make up a significant portion of the tourists and business visitors who come to the US each year. The number of VWP entrants increased by 71 per cent over 20 years, from 12.4 million in FY1996 to 21.2 million in FY2015. Despite this growth, VWP entrants' share of the number of tourist and business visitors has not kept pace. VWP arrivals made up 54 per cent of the 22.9 million I-94 tourist and business visitors to the US in FY1996, but only 31 per cent of the 69.0 million I-94 admissions in FY2015.[6] It is important to note that the Department of Homeland Security's Customs and Border Protection (CBP) agency made changes to its data systems in April 2013 that resulted in large increases in the number of I-94 admissions recorded compared

[3] Department of Homeland Security (2015), 'Statement By Secretary Jeh C. Johnson on Steps to Further Secure the Homeland', 30 November 2015; and Siskin, A. (2016), *Visa Waiver Program*, Washington, DC: Congressional Research Service.
[4] The legislation was enacted as part of the FY2016 Consolidated Appropriations Act.
[5] This section is drawn from the author's analysis of data from the Department of Homeland Security's Office of Immigration Statistics, much of which has been published in its *Yearbook of Immigration Statistics*.
[6] I-94 refers to the immigration form that foreign nationals complete when they are arriving in the US.

with previous years. Separating business visitors and tourists provides a more refined analysis, showing that the two groups exhibit distinct trends.[7]

The number of VWP business visitors, commonly labelled as VWB-1, has grown substantially over the 20-year period – by 124 per cent between FY1996 and FY2015. Arrivals of business visitors from non-VWP countries issued B-1 visas have increased at a comparable rate, and the percentage of total business visitors entering through the VWP was roughly the same in FY2015 (38 per cent) as it was in FY1996 (36 per cent). Figure 1 presents these data.

### Figure 1: B-1 and VWP business visitors, FY1996–FY2015



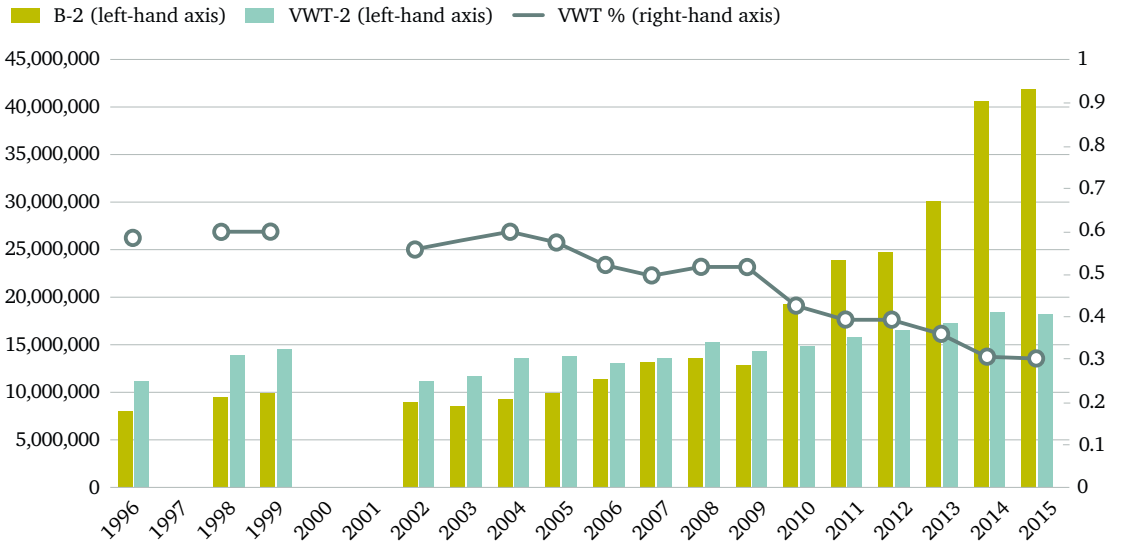

Source: Department of Homeland Security, *Yearbook of Immigration Statistics*, multiple years.
Note: Includes only persons entering with I-94 petitions. Data are not available for FY1997, FY2000 and FY2001.

The trends for tourist visas are markedly different, largely because the number of tourists issued B-2 visas from non-VWP countries has increased dramatically in recent years, as shown in Figure 2. While the number of VWP tourists, commonly labelled as VWT-2, rose from 11.0 million in FY1996 to 18.1 million in FY2015 (a 64 per cent increase), B-2 arrivals increased from 7.9 million in FY1996 to 41.7 million in FY2015 (a 428 per cent increase). As a result, the percentage of visits for pleasure through the VWP dropped from 58 per cent in FY1996 to 30 per cent in FY2015. The spike in B-2 arrivals is in part a consequence of the recording changes that CBP made in 2013.[8]

[7] I-94 admissions refer only to admissions documented with paper or electronic Form I-94/I-94Ws. In FY2015, for example, about 104.4 million visitors, mainly business travellers and tourists from Canada and Mexico, were exempted from filling out I-94/I-94W forms. Teke, J. and Navarro, W. (2016), *Nonimmigrant Admissions to the United States: 2015*, Washington, DC: Department of Homeland Security, Office of Immigration Statistics.

[8] 'Beginning in April 2013, CBP automated the I-94 process for nonimmigrants admitted at air and sea ports. This transition from paper to electronic I-94 records at air and sea ports also means that CBP automatically generates I-94 records for Canadian business and tourist travellers admitted at air and sea ports even though they generally are not required to fill out I-94 forms. In 2014 CBP made additional changes to its electronic data systems, which have resulted in large increases in the number of I-94 admissions recorded compared to previous years.' Ibid.

**Figure 2: B-2 and VWT tourists, FY1996–FY2015**




Source: Department of Homeland Security, *Yearbook of Immigration Statistics*, multiple years.
Note: Includes only persons entering with I-94 petitions. Data are not available for FY1997, FY2000 and FY2001.

## Economic impact of visa-free travel

The travel industry's research on the effects of visa facilitation – and of the VWP in particular – shows it yields positive results. For example, the head of the US Travel Association stated that the 20.3 million visitors who came to the US in 2014 through the VWP generated $190 billion in economic output and supported nearly 1 million jobs in the US; this in a broader context in which direct travel spending in the US in 2014 was $927 billion, generating an estimated $2.1 trillion in economic output and $141 million in tax revenues.[9]

According to the US Travel Association's economic impact analysis of the expansion of the VWP to South Korea in November 2008, visits from that country increased by almost two-thirds between 2008 and 2012.[10] Spending by South Korean visitors to the US increased from $2.7 billion to $4.2 billion over this period. The report also found that the travel spending of South Koreans supported 36,200 jobs in the US by 2012. According to the World Travel and Tourism Council, the visa facilitation policies of the G20 countries affect tourism and economic growth positively.[11]

Economic analysis of US Department of Commerce data on travel and tourism from 1980 to 2013 showed that the VWP had a 'meaningful impact' on both the number of tourists coming to the US, and the amount of money that international tourists spent in the country.[12] Perhaps

[9] House of Representatives, Committee on Homeland Security Subcommittee on Border and Maritime Security (2015), 'Combating Terrorist Travel: Does the Visa Waiver Program Keep Our Nation Safe?', testimony of Roger J. Dow, president and CEO of the US Travel Association, 17 March 2015.
[10] US Travel Association (2014), *Visa Waiver Works: Expanding the U.S. Visa Waiver Program Brightens the American Economy and Safeguards Security, Republic of Korea Case Study*, Washington, DC: US Travel Association.
[11] World Travel and Tourism Council (2012), *The Impact of Visa Facilitation on Job Creation in the G20 Economies*, London: World Travel and Tourism Council.
[12] Bronars, S. (2014), *Passport to Future Economic Growth: How Expanding the Visa Waiver Program Will Strengthen the U.S. Economy and Create American Tourism Jobs*, New York, NY: Partnership for a New American Economy.

the most sophisticated analysis thus far indicates that the VWP may have increased bilateral trade among the participating countries by 10–20 per cent.[13] After analysing country-level data covering the period 1950–2003, economists concluded that the VWP encouraged business travel and commerce, especially US exports to the participating countries.

## 'Road map' countries and visa refusal rates[14]

Recognizing the economic value and public diplomacy merits of the VWP, in 2005 President George W. Bush initiated 'road maps' to facilitate joining by interested countries. As noted above, a country's non-immigrant visa refusal rate must be less than 3 per cent for the previous year if the country is to be considered. Proponents of the road maps argued that this rate should not be a barrier to expanding the VWP. The Bush administration initially identified nine European countries (the Czech Republic, Estonia, Greece, Latvia, Lithuania, Hungary, Malta, Poland and Slovakia) for inclusion in the 'road map' process.[15]

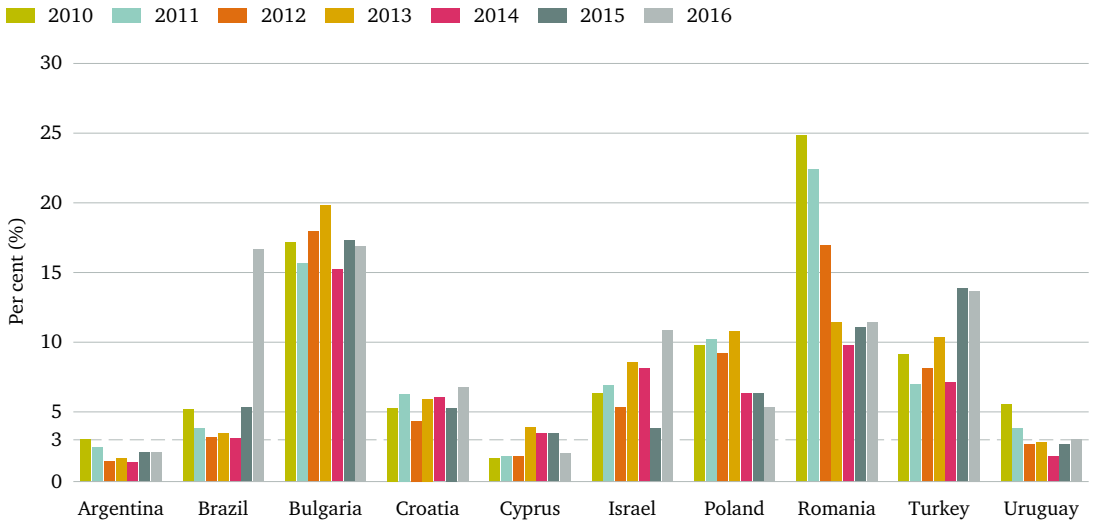
In keeping with the road map approach, a provision of law enacted in 2007 permits the US Secretary of Homeland Security, in consultation with the Secretary of State, to waive the visa refusal rate requirement for admission to the VWP after certifying to Congress that an automated exit system is in place that can verify the departure of not less than 97 per cent of foreign nationals who exit through US airports, and that the electronic travel authorization system is operational. The waiver became available in October 2008, and the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia and South Korea received a waiver of the visa refusal rate in November–December of that year. Croatia, an EU member state since 2013, was not initially part of the 'road map' process.

As detailed in Appendix A, the number of tourists and business visitors from the Czech Republic, Estonia, Hungary, Latvia, Lithuania and Slovakia rose substantially after these countries were added to the VWP. Admissions from Lithuania notably increased by 276 per cent between FY2005 and FY2015, and those from Slovakia increased by 220 per cent. The number of tourists and business visitors from each of the Czech Republic, Estonia and Latvia increased by 180–186 per cent over this same period.

The waiver of the non-immigrant refusal rate was short-lived, however. It was suspended with effect from 1 July 2009 because the exit-by-air system was not compliant with provisions of the law. CBP has been testing pilot exit systems for many years, but is faced with serious infrastructure limitations at ports of entry/departure as well as some daunting technical issues. As a consequence, it has yet to fully deploy an exit system, and this lack of a fully functioning system stymies expansion of the VWP under current law.[16]

[13] Yasar, M., Lisner, D. and Rejesus, R. (2012), 'Bilateral Trade Impacts of Temporary Foreign Visitor Policy', *Review of World Economies*, September.
[14] This section is drawn from the author's analysis of data from the Department of State's Bureau of Consular Affairs, published on its website under 'Calculation of the Adjusted Visa Refusal Rate for Tourist and Business Travelers Under the Guidelines of the Visa Waiver Program', https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/refusalratelanguage.pdf.
[15] *Public Papers of the Presidents of the United States: George W. Bush* (2008, Book II), pp. 1319–21; Griswold, D. (2007), *Expand Visa Waiver Program to Qualified Countries*, Washington DC: Cato Institute, 26 January 2007.
[16] Senate Committee on Homeland Security and Governmental Affairs (2015), *Roundtable – Securing the Border: Biometric Entry and Exit at our Ports of Entry,* 28 April 2015; Bipartisan Policy Center, Immigration Task Force (2014), *Entry-Exit System: Progress, Challenges, and Outlook*, Washington, DC: Bipartisan Policy Center; Verdery, C. S. and Harrera-Flanigan, J. (2013), 'Open for Business? The Future of US Tourism', *Harvard International Review*, 34(3); and Siskin, A. (2016), *Visa Waiver Program*.

**Figure 3: Refusal rates for 'road map' countries, FY2010–FY2016**




Source: Department of State, Bureau of Consular Affairs.
Note: Data for 2016 are preliminary. Croatia was not initially included as a road map country.

Figure 3 shows the current 'road map' countries with their visa refusal rates over the seven-year period FY2010–2016. Former VWP participants Argentina and Uruguay hover around the 3 per cent threshold, as does Cyprus, so far the only EU 'road map' country to do so. Romania's rate has declined, but nonetheless remains too high at 11.4 per cent in FY2016. Brazil's rate had been nearing the threshold before spiking upwards in FY2015 and remaining at the higher level in FY2016. Croatia, which joined the EU in 2013, has since had refusal rates ranging from 5.9 per cent in FY2013 to 6.8 per cent in FY2016.

Poland's rate has been declining, but has not fallen below the 3 per cent threshold. President Obama began prioritizing efforts to get the country into the VWP in 2010, but was unable to do so without Congress agreeing to a waiver of the refusal-rate criterion. In 2015 the Senate Appropriations Committee added a provision to the homeland security appropriations bill that would have allowed Poland to join the VWP, but the provision was not enacted.[17]

> Under current law, only Congress has the authority to waive or revise the criteria for participation in the VWP.

The use of the refusal-rate criterion has long been problematic. Critics point out that it is an arbitrary standard, and that it lacks objectivity because it is based on decisions made by consular officers. When the VWP was developed as a pilot in 1986, policymakers thought that statistics on non-immigrants who overstay the terms of their admission would be a better criterion for participation. Despite recent endeavours by the Department of Homeland Security to estimate non-immigrant overstay rates by country, however, there is still no consensus on whether it has

[17] The White House, Office of the Press Secretary (2010), 'Remarks by President Obama and President Komorowski of Poland after Bilateral Meeting', 8 December 2010; Vaughan, J. (2015), 'Senators Vote to Allow Visa Waivers for Poland', Washington, DC: Center for Immigration Studies, 22 June 2015.

the analytic capacity to produce the data that would enable replacing the State Department's refusal rate with the overstay rate.[18]

The most common reason for which consular officers deny a non-immigrant visa is the 'failure to establish entitlement to non-immigrant status'. Specifically, section 214(b) of the Immigration and Nationality Act generally presumes that all foreign nationals seeking admission to the US are coming to live permanently; as a result, most foreign nationals seeking a non-immigrant visa must demonstrate that they are not coming to reside permanently. The burden of proof is on the applicant to demonstrate firm roots in his or her home country. In other words, risks to public safety or national security are not the dominant cause of visas being refused or denied.[19]

## VWP security practices

Some consider the VWP a national security vulnerability because under its provisions travellers undergo only a biographic rather than a biometric security screening and are not interviewed by a government official prior to receiving authorization to travel to the US. Others point to the enhanced security features of the VWP as critical to improving national security, however. For example, VWP travellers must have a passport with a data chip containing biometric information, which establishes the traveller's identity and is harder to alter than other types of passport. A comparative analysis of the two avenues for tourists and business travellers presented in Figure 4 offers a more in-depth perspective on these differences.

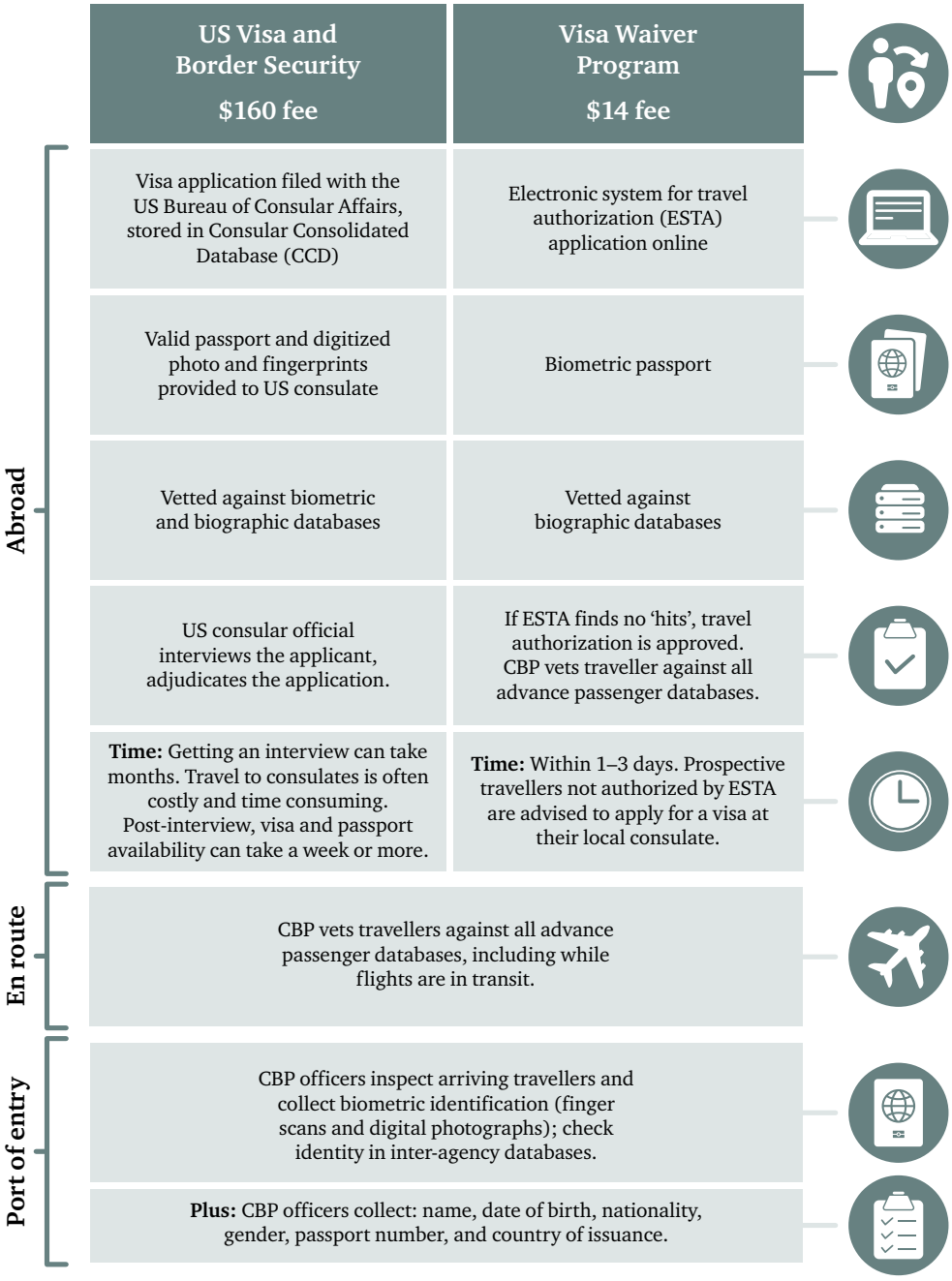
### The CCD

Consular officers use the Consular Consolidated Database (CCD), a biometric and biographic database, to screen visa applicants. The applicant for a non-immigrant visa uses an online form; and is required to submit their photograph and fingerprints, along with full name (and any other name used or by which they have been known), age, gender, and date and place of birth. The CCD stores photographs and 10-finger scans of all applicants in electronic format. Consular officers are required to check the background of all foreign nationals in biometric and biographic databases such as the Department of Homeland Security's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System. Consular officers also use facial recognition technology to screen applicants against a 'watch list' of photographs of known and suspected terrorists obtained from the Terrorist Screening Center. Since 2013 consular officials have partnered with the National Counterterrorism Center (NCTC) to utilize the Terrorist Identities Datamart Environment on known and suspected terrorists and terrorist groups. For further discussion of the visa security process, see Appendix B.

[18] Department of Homeland Security (2016), *Entry/Exit Overstay Report Fiscal Year 2015*; Warren, R. (2016), 'US Undocumented Population Drops Below 11 Million in 2014, with Continued Declines in the Mexican Undocumented Population', *Journal on Migration and Human Security*, January; and Passel, J. S. and Cohn, D. (2016), 'Homeland Security Produces First Estimate of Foreign Visitors to U.S. Who Overstay Deadline to Leave', Washington, DC: Pew Research Center, 3 February 2016.

[19] In FY2016, 2.8 million of the 3.7 million non-immigrant visa applications denied were rejected because of section 214(b). The second and third most common reasons were misrepresentation on the application and prior violations of immigration law, which amounted to well under 100,000 denials on non-immigrant visas in FY2016. Data from the Department of State's Bureau of Consular Affairs' annual *Report of the Visa Office,* https://travel.state.gov/content/visas/en/law-and-policy/statistics/annual-reports.html.

**Figure 4: Comparison of the VWP process with standard visa and border security procedures**




## ESTA

As stated above, all prospective VWP travellers must use the ESTA system to provide online biographical information for the Department of Homeland Security to determine whether they are eligible. ESTA requires prospective travellers to submit: biographical information including name, date and city of birth, country of citizenship, other citizenships (i.e. dual

citizenship), previous citizenships, country of residence, telephone number, other names/aliases, parents' names, national identification number (if applicable) and employment information (if applicable); as well as passport information including number, issuing country, issuance date and expiry date; and travel information including departure city, flight number, US contact information and address while in the US.

ESTA vets prospective VWP travellers against the same biographic databases as visa applicants. The Department of Homeland Security, moreover, screens the ESTA database every day. This means that the authorization for an initially approved applicant is continuously screened throughout its validity period against new derogatory information, and is subject to further review and subsequent denial if necessary.[20]

## CBP screenings of flight passengers

When a traveller purchases an airline ticket, commercial airlines are required to make Passenger Name Record data available to CBP up to 72 hours in advance of travel. Everyone (including US citizens) travelling to the US by air is pre-screened by CBP officers. When passengers check in for international flights to the US, carriers are required to transmit passenger and crew manifests to CBP prior to securing aircraft doors before departure. Biographic traveller data is submitted to the Advance Passenger Information System. Passenger data are forwarded to CBP's National Targeting Center (NTC), where they are once again vetted against intelligence and law enforcement databases. The NTC may issue a no-board recommendation to air carriers or flag travellers for a secondary inspection on arrival at a US port of entry.[21]

## CBP inspections at ports of entry

Primary inspection includes a brief interview with a CBP officer, a quick check of the traveller's documents, and a query of the Interagency Border Inspection System. The Department of Homeland Security's Office of Biometric Identity Management requires certain foreign nationals – including all VWP arrivals – to provide fingerprints, photographs or other biometric identifiers on arrival in the US. The former chief architect of the system reported in 2017 that: 'the system has over 240 million identities and is conducting over 300,000 transactions per day, while simultaneously adding in face and iris biometric matching technologies.'[22] If VWP travellers are not already in the CCD database, CBP officers at the border collect the following information from them: name, date of birth, nationality, gender, passport number, country of issuance, a digital photograph and prints for both index fingers.

Typically, primary inspections last no longer than a minute; however, if the CBP officer is suspicious that the traveller may be inadmissible under the Immigration and Nationality Act

[20] House of Representatives, Committee on Oversight and Government Reform Subcommittee on National Security and Subcommittee on Government Operations (2016), 'The President's Waiver of Restrictions on the Visa Waiver Program', testimony of R. Gil Kerlikowske, commissioner of Customs and Border Protection, 10 February 2016.
[21] Seghetti, L. M. (2015), *Border Security: Immigration Inspections at Ports of Entry*, Washington, DC: Congressional Research Service.
[22] *American Security Today* (2017), 'Extreme Vetting in Part Hinges on DHS Biometric ID Mgt Modernization,' 2 March 2017; Siskin, A. (2016), *Visa Waiver Program*.

or in violation of other US laws, the traveller is referred to a secondary inspection, in which specialized CBP officers extensively question the traveller, closely examine their travel documents and conduct further background checks.

## Intelligence sharing and national security

Weighing the benefits of the VWP to travellers and to the US travel industry against the risks of individuals who pose a threat to national security arriving in the country is no small matter. Critics make the case that the VWP is a major national security vulnerability regardless of the modest economic boost that VWP travellers provide (for instance, Senator Dianne Feinstein has called it 'the soft underbelly of our national security policies'). Supporters of the VWP warn that efforts to scale it back or tighten up the requirements would jeopardize international cooperation in the fight against terrorism with US allies, notably those in Europe.[23]

The Department of Homeland Security acknowledges the pressure created when the CBP inspection at the port of entry is the first time the VWP traveller is interviewed and subjected to biometric vetting. Officials nonetheless point to ESTA as a highly effective tool, as it identifies security risks prior to those individuals boarding a US-bound aircraft or vessel. During congressional testimony last year, CBP Commissioner R. Gil Kerlikowske cited the value of ESTA under the VWP and its role in denying travel authorizations to thousands of prospective travellers who may pose a risk to the US. In his words:

> Since ESTA's inception, CBP has approved more than 90 million ESTA applications and has denied more than 5,900 ESTA applications as a result of national security concerns. During that same period, CBP has also denied more than 165,000 ESTA applications for individuals who applied for an ESTA using a passport that had been reported as lost or stolen.
>
> House of Representatives, Committee on Oversight and Government Reform Subcommittee on National Security and Subcommittee on Government Operations (2016), 'The President's Waiver of Restrictions on the Visa Waiver Program', testimony of R. Gil Kerlikowske, commissioner of Customs and Border Protection, 10 February 2016

Proponents of the VWP maintain that, rather than weakening national security, it mandates more stringent security features. They typically emphasize four key requirements that enhance US security:

- Individualized and recurrent screening of travellers against law enforcement and security databases;
- Bilateral and multilateral information and intelligence sharing;

[23] Alden A. (2015), 'In Praise of the US Visa Waiver Program', Politico, 26 November 2015; House of Representatives, Committee on Oversight and Government Reform Subcommittee on National Security and Subcommittee on Government Operations (2016), 'The President's Waiver of Restrictions on the Visa Waiver Program', testimony of Jessica M. Vaughan, director of policy studies, Center for Immigration Studies, 10 February 2016.

- Secure passports to confirm identity; and
- Regular audits of the security standards of participating countries.[24]

Experts in homeland security point out that VWP countries must complete three key components: a Preventing and Combating Serious Crime (PCSC) Agreement to share information on criminals; a Homeland Security Presidential Directive-6 (HSPD-6) arrangement to share information on known and suspected terrorists; and an agreement to share Lost and Stolen Passport data through INTERPOL. These sources of intelligence from a traveller's home government can be critical additions to US capacity to identify potential risks.[25]

In 2016 the Government Accountability Office published a report that found that more than one-third of VWP countries had not shared terrorist identity information through the HSPD-6 agreements, and that more than one-third of countries had not shared criminal history information through the PCSC agreements either.[26] It did not conclude, however, that information sharing was not occurring in many of these instances; rather this was not always done through the prescribed channels. In 2015 Congress changed the criteria to participate in the VWP by requiring that the HSPD-6 arrangements and PCSC Agreements be fully implemented before a country could be designated. All EU member states in the VWP were reportedly fully compliant by the end of the Obama administration (i.e. in January 2017). On leaving office, Secretary of Homeland Security Jeh Johnson acknowledged in his Cabinet Exit Memo the cooperation on intelligence sharing of the VWP countries.[27]

> We have strengthened the Visa Waiver Program, which permits travelers from 38 countries to enter the United States without a visa. We have improved the security around the Electronic System for Travel Authorization, or ESTA. With these enhancements, we have denied visa-free travel to literally thousands of individuals with potential terrorist connections. We have made a concerted and successful effort to prevail upon more foreign governments in the Visa Waiver Program to enter into arrangements to exchange terrorism information, which has added thousands of known or suspected terrorist identities to the Terrorist Screening Database.
>
> Secretary of Homeland Security Jeh Johnson, 'Record of Progress and Vision for the Future', 5 January 2017

[24] House of Representatives, Committee on Oversight and Government Reform Subcommittee on National Security and Subcommittee on Government Operations (2016), 'The President's Waiver of Restrictions on the Visa Waiver Program', testimony of Stephen Heifetz, 10 February 2016; House of Representatives, Committee on Homeland Security Subcommittee on Border and Maritime Security (2015), 'Combating Terrorist Travel: Does the Visa Waiver Program Keep Our Nation Safe?', testimony of Marc Frey, 17 March 2015.
[25] Baker, S., Frey, M. and Heifetz, S. (2014), *How the Visa Waiver Program is Keeping America Safe*, Washington, DC: Steptoe and Johnson LLP.
[26] Government Accountability Office (2016), *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security,* Washington, DC: Government Accountability Office.
[27] Jeh Johnson, 'Record of Progress and Vision for the Future', Department of Homeland Security, 5 January 2017.

## Conclusion

The VWP is not an especially partisan issue; it has supporters and detractors on both sides of the aisle. Its economic and public diplomacy value has long been recognized. When it was perceived as a national security vulnerability after the 9/11 terrorist attacks, policymakers used the VWP's popularity to require biometric passports and to leverage greater sharing of intelligence from participating countries. Arguably, the value of a national security screening process is dependent on the depth and breadth of the intelligence data. Thus, the relationship between the two dimensions of the VWP has become symbiotic.

As there is zero tolerance for risking the admission of a potential terrorist into the US, the calculus of amending the VWP requirements is complex. In recent years, Congress has tightened them up, and in 2015 efforts to add Poland to the VWP fell short in Congress. Donald Trump campaigned for the presidency on 'extreme vetting' of foreign nationals, and since taking office has issued controversial executive orders aimed at improving 'the screening and vetting protocols and procedures associated with the visa-issuance process'.[28] After the initial executive order, rumours spread that President Trump planned to halt the VWP; however, such speculation thus far appears to be unfounded.[29] Nonetheless, managing the balance between national security and the benefits of the VWP will likely remain a tightrope exercise for policymakers for some time.

[28] The White House, Office of the Press Secretary (2017), *Executive Order Protecting the Nation From Foreign Terrorist Entry Into The United States*, 27 January 2017 and 6 March 2017.
[29] Wasem, R. E. (2015), Immigration: Visa Security Policies, Washington, DC: Congressional Research Service.

## Appendix A: Tourists and business visitors to the United States from EU 'road map' countries, FY2005–2015*

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2005–15 % increase |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Bulgaria | 15,374 | 17,518 | 19,753 | 23,890 | 22,329 | 21,545 | 23,636 | 23,297 | 24,668 | 27,899 | 28,344 | 84 |
| Croatia* | 13,800 | 14,514 | 16,741 | 19,404 | 18,935 | 18,335 | 18,676 | 18,684 | 19,012 | 21,376 | 23,391 | 70 |
| Cyprus | 6,971 | 6,543 | 7,436 | 8,816 | 7,959 | 8,569 | 8,744 | 8,243 | 7,293 | 9,030 | 8,736 | 25 |
| Czech Republic† | 36,568 | 38,075 | 42,923 | 50,267 | 69,399 | 69,304 | 82,754 | 87,293 | 91,430 | 104,811 | 104,574 | 186 |
| Estonia† | 7,666 | 7,829 | 10,581 | 11,126 | 18,365 | 12,015 | 13,804 | 16,574 | 18,384 | 21,976 | 2,1437 | 180 |
| Greece | 53,405 | 52,597 | 57,640 | 68,707 | 62,287 | 67,155 | 72,540 | 67,386 | 68,746 | 75,619 | 7,3767 | 38 |
| Hungary† | 38,798 | 39,620 | 42,411 | 44,617 | 52,808 | 58,377 | 64,875 | 67,262 | 72,066 | 80,789 | 82,050 | 111 |
| Latvia† | 7,200 | 7,521 | 9,916 | 11,001 | 12,653 | 12,956 | 15,084 | 17,346 | 18,686 | 20,302 | 20,487 | 185 |
| Lithuania† | 7,642 | 8,004 | 10,158 | 12,350 | 17,400 | 13,332 | 4,978 | 4,456 | 24,308 | 27,744 | 28,703 | 276 |
| Malta† | 5,918 | 5,000 | 5,614 | 5,083 | 4,908 | 5,522 | 5,682 | 5,905 | 5,970 | 6,357 | 5,963 | 1 |
| Poland | 141,106 | 144,392 | 14,7831 | 157,966 | 133,591 | 129,101 | 129,834 | 126,230 | 145,075 | 18,0635 | 188,589 | 34 |
| Romania | 39,576 | 42,682 | 47,667 | 54,927 | 48,072 | 51,833 | 56,615 | 58,298 | 63,051 | 71,923 | 73,242 | 85 |
| Slovakia† | 14,806 | 16,793 | 18,288 | 21,292 | 31,010 | 33,839 | 39,761 | 40,736 | 42,430 | 47,058 | 47,347 | 220 |

Source: Department of Homeland Security, *Yearbook of Immigration Statistics*, multiple years.
Note: Includes only persons entering with I-94 petitions.
*Croatia, which joined the EU in 2013, was not initially included as a 'road map' country.
†Denotes countries that were ultimately admitted to the VWP.

## Appendix B: Department of State visa security screening

At the crux of the visa-issuance process is the US Department of State's biometric and biographic Consular Consolidated Database (CCD). Consular officers use it to screen all visa applicants. Over 143 million records of visa applications are now automated in the CCD, with some dating back to the mid-1990s. It stores photographs and 10-finger scans of all visa applicants in electronic form. The CCD is linked with other databases to flag problems that may have an impact on the issuance of the visa. These databases include the Department of Homeland Security's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System results, and supporting documents.[30]

In addition to performing biometric checks of the fingerprints for all visa applicants, the Department of State uses facial recognition technology to screen visa applicants against a 'watch list' of photographs of known and suspected terrorists obtained from the Terrorist Screening Center, as well as the entire gallery of visa applicant photos contained in the CCD. The CCD is also linked to the Department of Homeland Security's Traveller Enforcement Compliance System, a substantial database of law-enforcement and border inspection information that enables Customs and Border Protection (CBP) officers at ports of entry to have access to the CCD.

Consular officers are further required to check the background of all foreign nationals in the 'lookout' databases. The State Department specifically uses the Consular Lookout and Support System (CLASS) database. Consular officers use name-search algorithms to ensure matches between names of visa applicants and any derogatory information contained in CLASS. The State Department has also relied on the Security Advisory Opinion system, which requires a consular officer abroad to refer selected visa cases for greater review by intelligence and law enforcement agencies. There is also the Terrorist Exclusion List, which contains organizations designated as terrorist-supporting and includes the names of individuals associated with these.

The State Department also now uses what is known as the 'Kingfisher Expansion' (KFE) vetting system in partnership with the National Counterterrorism Center (NCTC) to conduct inter-agency counterterrorism screening of all visa applicants. The consular official submits the applicants' electronic visa applications to the NCTC, which uses an automated process to check them against its repository, most notably the Terrorist Identities Datamart Environment on known and suspected terrorists and terrorist groups. A 'hit' in KFE triggers a Washington-based inter-agency review of the visa application. The KFE system also conducts post-issuance reviews of valid visas to check for new information on emerging threats.[31]

[30] Wasem, R. E. (2015), *Immigration: Visa Security Policies*, Washington, DC: Congressional Research Service.
[31] House Committee on Oversight and Government Reform, Subcommittee on National Security (2013), 'Securing the U.S. Border, B1/B2 Visas and Border Crossing Cards', testimony of Edward J. Ramotowski, deputy assistant secretary for visa services, 14 November 2013; Senate Committee on Homeland Security and Governmental Affairs (2013), 'The Homeland Threat Landscape and U.S. Response', hearing, 14 November 2013.

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Cover image: A Customs and Border Protection officer processes an incoming passenger at Newark Liberty International Airport.

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