



# How European Union Refugee Policies and the Visa Waiver Program Endanger the United States

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## Introduction

The migrant crisis currently afflicting Europe may seem far away and of little consequence to the U.S. But despite its geographical remoteness, this situation is still fraught with danger for the United States – due to growing concern that terrorist groups have infiltrated the stream of asylum seekers pouring across European borders.<sup>1</sup> Once in Europe, terrorists can more easily steal European Union passports from citizens or government offices. These passports are then used to facilitate entry into the United States pursuant to the Visa Waiver Program (VWP).

The 2015 terror attacks in France, and reports that some of the perpetrators were French or Belgian citizens, have also helped draw attention to the potential security risks presented by the VWP. FAIR believes that the VWP represents a critical gap in America's immigration security framework and should be eliminated. It is a dangerous relic of a pre-9/11 security climate that relies on Cold War presumptions regarding the risks presented by international tourism. Continuation of the program presents a grave and ongoing risk to the national security and public safety of the United States.

## The Threat Presented by the Visa Waiver Program

Under the VWP, the nationals of 38 countries can travel to the United States, without a visa, for tourism or for business, for up to 90 days.<sup>2</sup> The program is reciprocal; in order to participate, foreign nations must extend the same courtesy to U.S. citizens.<sup>3</sup> In FY 2013, there were 20 million VWP visitors to the United States, representing 37% of all overseas visitors.<sup>4</sup> Many view the VWP as a valuable tool for supporting the tourism

industry and the U.S. economy generally.<sup>5</sup> It has also been touted as a boon to national security, in light of the fact that member countries are supposed to share intelligence, traveler information and data on lost and stolen passports.<sup>6</sup> Nevertheless, claims that the VWP improves national security are overblown, if not outright irresponsible.

Theoretically, all VWP participants are subject to removal without a hearing if they overstay or otherwise violate the terms of their admission to the U.S.<sup>7</sup> However, ICE has a poor record of removing VWP overstays and the program does allow those claiming credible fear of persecution to be referred to an immigration judge.<sup>8</sup> Although political persecution is virtually non-existent in Western Europe and Scandinavia, many VWP entrants, particularly those of Middle Eastern background have requested asylum solely as a means to remain in the United States.

Additionally, participants in the VWP are subject only to minimal vetting.<sup>9</sup> The majority are admitted to the U.S. without extensive questioning or background checks.<sup>10</sup> Therefore, there is a significant danger that individuals who have made their way to Europe, and are affiliated with terrorist groups, will be able to exploit the VWP in order to access the United States without their background being discovered.<sup>11</sup>

### **Fraud and Exploitation of the Visa Waiver Program**

Most of the European nations covered by the VWP currently have large immigrant populations from countries where terrorist organizations are known to operate.<sup>12</sup> In addition, all have accepted large numbers of refugees from Syria and the surrounding region.<sup>13</sup> A number of naturalized citizens of VWP nations have already been convicted of participating in terrorist plots: France and Denmark have stripped citizenship from naturalized aliens with terrorism convictions.<sup>14</sup> And the problem has become common enough that Germany and the U.K. have passed measures allowing authorities to strip convicted terrorists of citizenship.<sup>15</sup>

Access to the VWP is a significant advantage for persons who seek to enter the United States in order to engage in terror-oriented activity. In addition to facilitating terrorist entry into the United States, the failure to monitor VWP entrants and remove overstays makes it easier for those with nefarious intentions to disappear into the interior, with little likelihood of being found and removed prior to committing a crime. Accordingly, terrorists who have gained admission to European VWP countries may be motivated to acquire citizenship in order to facilitate travel to the United States. Terrorist groups may also be tempted to recruit individuals of Middle Eastern ancestry, who are European citizens by birth, in order to send them to the United States via the VWP. (The U.K., France, Germany, the Netherlands, Belgium, Sweden, and Denmark – all VWP countries – have large second and third generation immigrant populations from North Africa, South Asia, and the Middle East that have experienced varying degrees of

assimilation difficulties.<sup>16</sup> Some members of these populations have been attracted to Islamic extremism and recruited into terrorist organizations.<sup>17</sup>)

In response to concerns over terrorists who were born in Europe, or have become naturalized Europeans, Congress enacted the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. This act prohibits nationals of VWP countries who have traveled to, or been present in, Iran, Iraq, Syria, Sudan and Yemen, on or after March 1, 2011, from participating in the VWP. But this measure is nothing more than a paper tiger. Even in cases where suspected terrorists attempt to use the VWP under their own identities, they may still be able to conceal travel to, or presence in, the listed countries.

Additionally, terrorists who are citizens of VWP countries are not the only problem. Passport fraud is a booming business throughout Europe and has been for at least the last two decades.<sup>18</sup> During the last ten years, thousands of the “blanks” used to produce passports and other official documents have been stolen throughout Western Europe.<sup>19</sup> A classified Dutch government report, leaked to the press, estimates that as many as 350,000 blank passports, identity cards, visa stickers and drivers’ licenses have been stolen from European government facilities since 2000.<sup>20</sup> This means that terrorists who obtain these blanks can easily forge the documents required to travel to the United States under the VWP.<sup>21</sup> In addition, genuine European Union passports that have been properly issued by national passport authorities are regularly stolen throughout Europe.<sup>22</sup> Terrorists replace the genuine passport holder’s photo with their own, make minor alterations to the passport data, and then use the passport to travel under the original owner’s identity or a variation thereon.<sup>23</sup> The theft of genuine passports and passport blanks are ongoing concerns.<sup>24</sup>

Fraudulent documents produced on legitimate blanks are notoriously difficult to detect. Similarly, photo-substituted and modified genuine passports are hard to spot when alterations have been made by a skilled forger. Absent some type of flaw in the forgery – *e.g.* using the wrong printing method for personalization, failing to correctly replicate security features, *etc.* – such documents appear to be legitimate and often go unnoticed. Detection typically requires significant scrutiny by a trained document examiner with appropriate equipment and careful verification against the issuing country’s passport database.

Defenders of the VWP regularly point out that those desiring to enter the U.S. via the VWP must apply for pre-authorization via the Electronic System for Travel Authorization (ESTA).<sup>25</sup> However, as U.S. Customs and Border Protection (CBP) itself points out, “The ESTA application collects biographic information and answers to VWP eligibility questions.”<sup>26</sup> In other words, ESTA merely aggregates information provided

by travelers themselves. When a terrorist has a passport, and other identity documents specifically designed to match the information submitted through ESTA, CBP won't detect the forgery through an ESTA check.

And even when VWP applicants arrive at an airport (or seaport, or land port-of-entry) the information contained in their passports is not verified in the way most people would think. When France or Belgium issues a passport to one of its citizens, the biographical data contained in that passport is not entered into any universally accessible international database. No such repository exists.

Instead, the relevant information is coded onto the passport in a machine-readable script and/or embedded in a radio frequency identification (RFID) chip. These security features are intended to inhibit fraud by ensuring that accurate information about the passport holder is embedded in the document in a format that can't be easily altered. Theoretically, in cases of forgery, immigration officials will be able to detect discrepancies between the embedded machine-readable and/or RFID data and the standard, printed data.

However, these security features suffer from two fatal flaws. First, there is no way to bind coded or embedded data to a particular passport or chip. Therefore, they do not defend against passport cloning.<sup>27</sup> Secondly, in order to facilitate broad use of high-tech passports, the International Civil Aviation Organization (ICAO) has published the code used to label machine readable passports and the algorithms used to encode RFID chips on the open internet.<sup>28</sup>

Any terrorist with an internet connection and a fundamental understanding of machine readable coding can forge a code string that will display correctly when run through a reader. Similarly, RFID chips are relatively easy to fake. A forger with a personal computer – and about \$100 worth of equipment that one can legally purchase online – can produce a convincing RFID tag with relative ease.<sup>29</sup> There is virtually no doubt that terrorists who wish to enter the United States unnoticed have already begun making and purchasing nearly undetectable, forged travel documents produced using stolen European passports or passport blanks.<sup>30</sup>

When VWP applicants seek admission to the United States, CBP runs their passport through the appropriate reader (or manually enters the relevant data) and performs an integrated search that bounces the passport information off of U.S. systems such as the TECS law enforcement database (formerly known as the “Treasury Enforcement Communications System”) and the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system. It will also be run against the FBI's National Crime Information Computer (NCIC) and a few foreign systems to which the U.S. has

been granted access by international agreement, such as Canadian Police Information Centre (CPIC). A search against International Police Organization's (INTERPOL) Stolen and Lost Travel Documents Database (SLTD) is part of the basic preliminary search.<sup>31</sup> However, this query is of limited utility because too few nations are providing data and even fewer are using the SLTD as part of their own immigration vetting processes.<sup>32</sup>

However, this process is aimed at finding information that is already in U.S. systems and those few foreign databases to which the U.S. has regular access. Unless there is obvious evidence of fraud, or the applicant has had a prior negative interaction with law enforcement in the U.S., Canada, or an INTERPOL country, while using the same identity, potential terrorists traveling on VWP passports are unlikely to be detected.

Even in cases where the forgery is detected by a CBP officer, travelers normally claim fear of persecution if returned to their home country. Because of the lax asylum policies currently in place, those found to have a "credible fear" of persecution (a very low bar to meet) are detained only for a short period. They are then paroled into the United States and released – whereupon they often disappear and fail to show up for any asylum or removal hearings.

This means that anyone with an unaltered passport obtained by fraud, a passport forged on a stolen blank, or a legitimate but skillfully altered passport from a VWP country can, with relative ease, conceal their identity, travel history and background. The problem is compounded by the fact that CBP and ICE rarely find and arrest VWP entrants who have not departed following their 90 day authorized period of admission. Suspect VWP travelers who claim a fear of persecution and then abscond prior to their hearings are even less likely to be tracked, detained and removed. With virtually no threat of being arrested and summarily deported for VWP violations, there is no real deterrent to terrorist exploitation of this program.

## **The U.S. Must Eliminate the Visa Waiver Program**

The VWP is predicated on the presumption that persons who come from a country with a low rate of visa refusals present little risk to the public safety and national security of the United States. In the relatively stable, bi-polar security environment that prevailed during the Cold War, this notion may have made some sense. But the global security climate changed suddenly and permanently on the morning of September 11, 2001 terrorist attacks. And the United States should have immediately eliminated the VWP and subjected the nationals of VWP countries to the same multi-tier screening that all other visitors must undergo.

Unfortunately, the security problems that attached themselves to travel and tourism on 9/11 have only worsened in the intervening 15 years. Islamic extremism has spread throughout the world. Jihadist networks now traverse the globe. And the United States remains the primary target of terrorist groups like ISIS, *Al Qaeda*, *Al Shabab*, and *Boko Haram*.

The major reason the VWP is so attractive to terrorists is because it eliminates a layer of security screening. Less screening means a greater possibility that forged or fraudulent travel documents will not be detected. Direct travel to the United States is often difficult for suspected terrorists because, if traveling from North Africa, South Asia or the Middle East, they are required to apply for a visa and appear for an interview before a Department of State (DOS) Consular Officer. Non-immigrant visas may be denied at the discretion of Department of State Consular Officers whenever they suspect that an applicant wishes to enter the U.S. to engage in crime or terrorist activity.

If screening at U.S. consulates were restored in current VWP countries, the chances of spotting counterfeit documents would be greatly improved. Consular Officers, with local knowledge and foreign language ability, are in a better position to recognize stolen or counterfeit documents. When fraud or forgery are suspected, they are also more easily able to work with overseas law enforcement and security officials than the CBP inspectors who staff ports-of-entry in the U.S. DOS screening at embassies and consulates is our first line of defense, and the VWP removes it.

A new presidential administration is about to take office. It has stated that it intends to close any gaps in our immigration laws that weaken national security. Given the high probability that ISIS and other terrorist groups have infiltrated the refugees streaming into Europe, the VWP ought to be one of the first breaches to be sealed. The VWP cannot be effectively reformed to address the current security environment – particularly the large numbers of refugees streaming into Europe and the emergence of extremist terror networks across the European Union. Accordingly, FAIR recommends that the program be eliminated.

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<sup>2</sup> U.S. Department of State, *Visa Waiver Program*, accessed November 22, 2016, <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>

<sup>3</sup> Immigration and Nationality Act § 217(a)(2)(A) & (B) <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-4391.html>

<sup>4</sup> Alison Siskin, "Visa Waiver Program," *Congressional Research Service*, December 11, 2015, accessed December 16, 2016, <https://fas.org/sgp/crs/homesec/RL32221.pdf>

<sup>5</sup> U.S. Travel Association, *Visa Waiver Program*, accessed December 16, 2016, <https://www.ustravel.org/issues/visa-waiver-program>

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