

Executive Memorandum

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Road Maps for Visa Waiver Program Lead Nowhere

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In February 2005, President George W. Bush announced his intention to establish “road maps” for countries interested in participating in the United States Visa Waiver Program (VWP). Nine European countries that do not currently participate in the VWP are working with the United States to develop road maps. The road maps are a good first step, but they are not sufficient to meet U.S. economic and security concerns. Congress needs to give the Administration authority to negotiate more aggressive plans for VWP expansion.

A Security Tool for the 21st Century. Established in 1986 to promote better relations with U.S. allies, the VWP permits nationals from selected countries to enter the United States for tourism or business without a visa for up to 90 days. Today, 27 countries participate in the VWP. By law, the Department of Homeland Security (DHS) and Department of State jointly review each participating country’s status every two years. Countries can be and have been removed from the program if they fail to comply with its requirements.

The VWP creates security partnerships. By agreeing to common standards and policies, participating countries help to limit illegal entry and unlawful presence in their countries and hinder travel by terrorists and transnational criminals. Expanding the number of countries would increase

the number of states meeting common security standards and would allow the United States to shift consular resources used to issue visas to other missions.

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- The proposed “road maps” do not address all of the legal criteria for VWP admission, some of which are highly subjective.
 - An expanded VWP could be a key tool in building the stronger partnerships needed to fight the long war against terrorism.
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Flawed Road Maps. Nine European countries are developing road maps: the Czech Republic, Greece, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, and Slovakia. While the road maps are positive steps and demonstrate that the United States is serious about building strong international

partnerships where nations share common security concerns, economic interests, and values, they are not sufficient by themselves. They do not address all of the legal criteria for VWP admission, and some of the goals and requirements are highly subjective.

In addition, there are no firm milestones or timetables to encourage the United States and partner countries to work aggressively to implement the road maps. Some of the statistical data used to determine eligibility (such as the number of indi-

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viduals that overstay in the United States beyond their visa expiration dates) are flawed. Thus, determining whether progress is actually being made will be extremely difficult.

Finally, the road maps do not address the 3 percent refusal rate—the most contentious issue of all. To qualify for the VWP, a country must have a visa refusal rate of less than 3 percent, meaning that less than 3 percent of non-immigrant U.S. visa applications by its nationals are denied. Since consular officers have a wide degree of latitude in refusing visas, and rightly so, it is inherently difficult for a country to reduce the rejection rate for its nationals.

In addition, using the 3 percent rejection rate as a criterion for VWP participation is suspect. It is based on the assumption that if no visa was required, a significant number of a country's passport holders (3 percent or more) would remain unlawfully in the United States beyond the 90 days allowed under the VWP, probably to get jobs or benefits. However, the European countries that are developing road maps for VWP admission have some of the fastest growing economies in Western Europe, and their workers are not fleeing to other countries in large numbers. Waiving the 3 percent requirement for these countries and adding them to the VWP is unlikely to result in significantly more immigration violations. Yet such an expansion of the VWP would improve relations and allow more efficient and effective use of scarce consular resources.

A Better Way. The Heritage Foundation has proposed that Congress amend the VWP law to allow the DHS and the State Department to authorize a 10-year waiver of the 3 percent criterion if a country meets certain conditions.

As part of the conditions, the Heritage proposal suggested that the DHS and State Department should have the authority to negotiate additional security provisions to combat terrorist travel and transnational criminal activity and to enhance

immigration law enforcement. These might include obtaining:

- Assurances of strong compliance on measures for reporting lost and stolen passports,
- Robust agreements on the sharing of information on travelers and no restrictions on the use of shared information for legitimate anti-terrorism purposes,
- Commitments to full cooperation in investigations and return of immigration law violators, and
- Acceptance of U.S. Safe Harbor privacy principles as the basis for sharing counterterrorism-related information with law enforcement and intelligence agencies.

Currently, most VWP compliance measures focus only on enforcement of immigration laws rather than on enhancing security to combat terrorist travel and other transnational criminal activities. Adding these components to the VWP would enhance the program, making it a stronger tool for facilitating international travel and commerce, enforcing immigration law, and fighting terrorists.

Time to Act. Congress should act now by authorizing the Department of Homeland Security and the State Department to grant temporary waivers to countries that agree to work with the United States to combat terrorist travel and enforce immigration laws. It is important to act sooner rather than later. An expanded VWP could be a key tool in building the stronger diplomatic, economic, cultural, and law enforcement partnerships needed to fight and win the long war to eliminate the danger of transnational terrorist organizations.

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