Congress of the United States
Washington, DC 20515

January 28, 2016

President Barack Obama
1600 Pennsylvania Ave
Washington, DC

Dear Mr. President:

We write regarding your Administration's flawed and deeply troubling implementation of the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015." As you know, this legislation passed the House of Representatives by a vote of 407-19 and became law as part of the year-end spending bill you signed on December 18, 2015. In part, the Act provided that nationals of Visa Waiver Program (VWP) countries who have traveled to certain nations of terrorism-related concern – including Syria, Iraq, Iran, and Sudan –after March 1, 2011, would not be eligible for VWP entrance to the United States and would instead have to apply through the regular visa process.

On Thursday, January 21, 2016, Secretary Jeh Johnson and Secretary John Kerry announced their first steps towards implementation of this important Act. Specifically, the Department of Homeland Security (DHS), at the insistence of the Department of State (DoS), will now consider waivers for individuals who have traveled to nations of terrorism-related concern if the individual's travel fits into certain broad categories. These categories include humanitarian work, journalism, and even travel to Iran or Iraq for "legitimate business-related purposes." <u>These exemptions from the travel restrictions were not provided for in the law, are contrary to congressional intent, and are in breach of the agreement we reached with members of your Administration.</u>

These exemptions are contrary to the plain language of the statute. The national security and law enforcement exceptions were principally designed to allow for the continued surveillance and investigation of individuals of concern. However, we are deeply troubled because the exemptions announced by the Administration were discussed, at length, during negotiations and were explicitly rejected by Members of Congress. Administration officials from the DoS, DHS, the Executive Office of the President, as well as Congressional staff from both parties, were intricately involved in the negotiation of this legislation.

As a result, revisions were made to the bill, and you and your Administration publicly supported the final product. Such participation and support indicated you would implement the law as enacted, consistent with our agreement. The January 21 implementation announcement clearly indicates that you have chosen not to do so. In fact, your Administration has chosen to read the narrow national security and law enforcement exceptions in such a broad way that it renders both the terms "national security" and "law enforcement" virtually meaningless.

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These actions are inappropriate and violate not only the agreement we reached but the law itself. We are requesting certain information regarding the use of the non-statutory exemptions your Administration has created. Specifically, Section 1187(a)(12)(E) of title 8, United States Code, requires a report from the Secretary of Homeland Security regarding certain waivers to the application of the Act, including the waiver authority DHS and DoS claim to be exercising in the creation of these new exemption categories.

To adequately fulfill the responsibilities of this reporting requirement, we expect DHS to provide on a monthly basis, a detailed description of each and every waiver granted under 1187(a)(12)(E). To be clear, a simple reporting of the number of waivers granted during a calendar or fiscal year is not acceptable and contrary to Congressional intent. We expect, at a minimum, the name and nationality of the foreign traveler, the explicit, detailed national security or law enforcement justification for granting the waiver, the number of individuals seeking ESTA authorizations who fall into each of the categories created by Secretary Johnson and Secretary Kerry, the number of individuals in each category for whom the waiver was used, and the number of individuals in each category for whom the waiver authority was not used.

Also, please provide us no later than February 12, 2016, any and all documentation, including memoranda and emails, regarding the legal basis of authority for use of such exemption categories under the guise of "national security."

We are disappointed in your Administration's failure to implement the "Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015" as enacted into law. Had your Administration complied in good faith with the bipartisan agreement we reached, we would not be writing you today. Moreover, we are reviewing our options to ensure this law is implemented as it was enacted by Congress. The bill was a joint effort designed to strengthen our national security. We remain troubled that assurances of an agreement reached between Congress and your Administration do not seem to ensure implementation as intended pursuant to such agreement.

Sincerely,

KEVIN McCARTHY MICHAEL T. McCAUL BOB GOODLATTE

EDWARD R. ROYCE CANDICE S. MILLER

cc: Secretary of State John Kerry
cc: Secretary of Homeland Security Jeh C. Johnson