

110TH CONGRESS  
1ST SESSION

# H. R. 2006

To improve the Nation's homeland security by strengthening the security of the visa waiver program under section 217 of the Immigration and Nationality Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2007

Mr. THOMPSON of Mississippi introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To improve the Nation's homeland security by strengthening the security of the visa waiver program under section 217 of the Immigration and Nationality Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. STRENGTHENING SECURITY OF THE VISA**  
4 **WAIVER PROGRAM.**

5 (a) SHORT TITLE.—This section may be cited as—

6 (1) the “Secure Visa Waiver and Preventing  
7 Terrorist Travel Partnership Act”; or

1 (2) the “Secure Visa Waiver Travel Act”.

2 (b) SENSE OF CONGRESS.—It is the sense of the  
3 Congress that—

4 (1) the United States should improve the Na-  
5 tion’s homeland security by strengthening the secu-  
6 rity of the visa waiver program by—

7 (A) enhancing program security require-  
8 ments; and

9 (B) extending visa-free travel privileges to  
10 nationals of foreign countries—

11 (i) that are actively cooperating with  
12 the United States to prevent terrorist trav-  
13 el, including sharing counterterrorism and  
14 law enforcement information; and

15 (ii) whose nationals have dem-  
16 onstrated their compliance with the provi-  
17 sions of the Immigration and Nationality  
18 Act regarding the purpose and duration of  
19 their admission to the United States; and

20 (2) the improvements described in paragraph  
21 (1) will—

22 (A) enhance bilateral cooperation on crit-  
23 ical counterterrorism and information sharing  
24 initiatives;

1           (B) support and expand tourism and busi-  
2           ness opportunities to enhance long-term eco-  
3           nomic competitiveness; and

4           (C) strengthen bilateral relationships.

5           (c) DISCRETIONARY VISA WAIVER PROGRAM EXPAN-  
6           SION.—Section 217(c) of the Immigration and Nationality  
7           Act (8 U.S.C. 1187(c)) is amended by adding at the end  
8           the following:

9           “(8) NONIMMIGRANT VISA REFUSAL RATE  
10          FLEXIBILITY.—

11           “(A) CERTIFICATION.—On the date on  
12           which a biometric air exit border security sys-  
13           tem is in place that can verify the departure of  
14           not less than 97 percent of foreign nationals  
15           that exit through airports of the United States,  
16           the Secretary of Homeland Security shall cer-  
17           tify to the Congress that such air exit system  
18           is in place.

19           “(B) WAIVER.—After certification by the  
20           Secretary under subparagraph (A), the Sec-  
21           retary of Homeland Security, in consultation  
22           with the Secretary of State, may waive the ap-  
23           plication of paragraph (2)(A) for a country—

24           “(i) if—

1           “(I) the country meets all exist-  
2           ing security requirements and en-  
3           hanced security requirements de-  
4           scribed in the Secure Visa Waiver  
5           Travel Act;

6           “(II) the Secretary of Homeland  
7           Security, in consultation with the Sec-  
8           retary of State and the Attorney Gen-  
9           eral, determines that the totality of  
10          the country’s security risk mitigation  
11          measures provides assurance that the  
12          country’s participation in the program  
13          would not compromise the homeland  
14          security, law enforcement, or enforce-  
15          ment of the immigration laws, of the  
16          United States;

17          “(III) there has been a sustained  
18          reduction in visa refusal rates for  
19          aliens from the country and conditions  
20          exist to continue such reduction; and

21          “(IV) the country actively cooper-  
22          ated with the Government of the  
23          United States to prevent terrorist  
24          travel and enhance our border secu-  
25          rity,           including           sharing

1 counterterrorism and law enforcement  
2 information, before the date of its des-  
3 ignation as a program country, and  
4 the Secretary of Homeland Security  
5 and the Secretary of State expect  
6 such cooperation will continue; and

7 “(ii) if—

8 “(I) the average number of refus-  
9 als of nonimmigrant visitor visas  
10 under section 101(a)(15)(B) for na-  
11 tionals of that country during the pre-  
12 vious full fiscal year was less than 6  
13 percent; or

14 “(II) the total number of nation-  
15 als of that country who were denied  
16 admission or who withdrew their ap-  
17 plication for admission to the United  
18 States, combined with the total num-  
19 ber of nationals of that country who  
20 were admitted as nonimmigrant visi-  
21 tors but who violated the terms of  
22 such admission, thereby presenting a  
23 potential security risk, was less than 2  
24 percent of the total number of nation-  
25 als of that country who applied for

1 admission to the United States as  
2 nonimmigrant visitors during the pre-  
3 vious full fiscal year.

4 “(9) DISCRETIONARY SECURITY-RELATED CON-  
5 siderations.—

6 “(A) IN GENERAL.—In determining wheth-  
7 er to waive the application of paragraph (2)(A)  
8 for a country under paragraph (8), the Sec-  
9 retary of Homeland Security, in consultation  
10 with the Secretary of State, shall take into con-  
11 sideration other factors affecting the homeland  
12 security of the United States, including—

13 “(i) airport security standards in the  
14 country;

15 “(ii) whether the country assists in  
16 the operation of an effective air marshal  
17 program;

18 “(iii) the standards of passports and  
19 travel documents issued by the country;  
20 and

21 “(iv) other security-related factors.

22 “(B) OVERSTAY RATES.—In determining  
23 whether to designate a country as a program  
24 country, the Secretary of Homeland Security  
25 shall consider whether the estimated rate at

1           which nationals of the country overstay their  
2           authorized period of stay in the United States  
3           exceeds 2 percent.”.

4           (d) SECURITY ENHANCEMENTS TO THE VISA WAIV-  
5 ER PROGRAM.—

6           (1) IN GENERAL.—Section 217 of the Immigra-  
7 tion and Nationality Act (8 U.S.C. 1187) is amend-  
8 ed—

9                   (A) in subsection (a)—

10                           (i) by striking “Operators of aircraft”  
11                           and inserting the following:

12                                   “(10) ELECTRONIC TRANSMISSION OF IDENTI-  
13 FICATION INFORMATION.—Operators of aircraft”;  
14 and

15                           (ii) by adding at the end the fol-  
16 lowing:

17                                   “(11) ELIGIBILITY DETERMINATION UNDER  
18 THE ELECTRONIC TRAVEL AUTHORIZATION SYS-  
19 TEM.—Beginning on the date on which the elec-  
20 tronic travel authorization system developed under  
21 subsection (h)(3) is fully operational, each alien  
22 traveling under the program shall, before applying  
23 for admission, electronically provide to the system  
24 biographical information and such other information  
25 as the Secretary of Homeland Security shall deem

1 necessary to determine the eligibility of, and whether  
2 there exists a law enforcement or security risk in  
3 permitting, the alien to travel to the United States.  
4 Upon review of such information, the Secretary of  
5 Homeland Security shall determine whether the  
6 alien is eligible to travel to the United States under  
7 the program.”;

8 (B) in subsection (c), as amended by sub-  
9 section (c) of this section—

10 (i) in paragraph (2)—

11 (I) by amending subparagraph

12 (D) to read as follows:

13 “(D) REPORTING LOST AND STOLEN PASS-  
14 PORTS.—The government of the country enters  
15 into an agreement with the United States to re-  
16 port, or make available through Interpol, to the  
17 United States Government information about  
18 the theft or loss of passports within a strict  
19 time limit, not to exceed one week, and in a  
20 manner specified in the agreement.”; and

21 (II) by adding at the end the fol-

22 lowing:

23 “(E) REPATRIATION OF ALIENS.—The  
24 government of a country accepts for repatri-  
25 ation any citizen, former citizen, or national

1           against whom a final executable order of re-  
2           removal is issued not later than 3 weeks after the  
3           issuance of the final order of removal. Nothing  
4           in this subparagraph creates any duty for the  
5           United States or any right for any alien with  
6           respect to removal or release. Nothing in this  
7           subparagraph gives rise to any cause of action  
8           or claim under this paragraph or any other law  
9           against any official of the United States or of  
10          any State to compel the release, removal, or  
11          consideration for release or removal of any  
12          alien.

13           “(F) PASSENGER INFORMATION EX-  
14          CHANGE.—The government of the country en-  
15          ters into an agreement with the United States  
16          to share information regarding whether nation-  
17          als of that country traveling to the United  
18          States represent a threat to the security or wel-  
19          fare of the United States or its citizens.”;

20                   (ii) in paragraph (5)—

21                           (I) by striking “Attorney Gen-  
22                           eral” each place such term appears  
23                           and inserting “Secretary of Homeland  
24                           Security”; and

25                           (II) in subparagraph (A)(i)—

1 (aa) in subclause (II), by  
2 striking “and” at the end;

3 (bb) in subclause (III)—

4 (AA) by striking the pe-  
5 riod at the end and inserting  
6 “; and”; and

7 (BB) by striking “Com-  
8 mittee on International Re-  
9 lations” and inserting  
10 “Committee on Foreign Af-  
11 fairs”; and

12 (cc) by adding at the end  
13 the following:

14 “(IV) shall submit to the Con-  
15 gress a report regarding the participa-  
16 tion of new countries in the program  
17 through a waiver under paragraph  
18 (8).”; and

19 (iii) by adding at the end the fol-  
20 lowing:

21 “(10) TECHNICAL ASSISTANCE.—The Secretary  
22 of Homeland Security, in consultation with the Sec-  
23 retary of State, shall provide technical assistance to  
24 program countries to assist those countries in meet-  
25 ing the requirements under this section. The Sec-

1       retary of Homeland Security shall ensure that the  
2       program office within the Department of Homeland  
3       Security is adequately staffed and has resources to  
4       be able to provide such technical assistance, in addi-  
5       tion to its duties to effectively monitor compliance of  
6       the countries participating in the program with all  
7       the requirements of the program, including the new  
8       requirements imposed under the amendments to this  
9       section made by the Secure Visa Waiver Travel  
10      Act.”;

11               (C) in subsection (f)(5), by striking “of  
12               blank” and inserting “or loss of”; and

13               (D) in subsection (h), by adding at the end  
14               the following:

15               “(3) ELECTRONIC TRAVEL AUTHORIZATION  
16               SYSTEM.—

17               “(A) SYSTEM.—The Secretary of Home-  
18               land Security, in consultation with the Sec-  
19               retary of State, is authorized to develop and im-  
20               plement a fully automated electronic travel au-  
21               thorization system (referred to in this para-  
22               graph as the ‘System’) to collect such bio-  
23               graphical and other information as the Sec-  
24               retary of Homeland Security determines to be  
25               necessary to determine, in advance of travel,

1           whether an alien may present a law enforce-  
2           ment or security risk and is eligible to travel to  
3           the United States under the program.

4           “(B) REGULATIONS.—The Secretary of  
5           Homeland Security shall promulgate regulations  
6           describing this System and the information to  
7           be collected before implementation of the Sys-  
8           tem.

9           “(C) FEES.—The Secretary of Homeland  
10          Security may charge a fee for the use of the  
11          System, which shall be—

12                 “(i) set at a level that will ensure re-  
13                 covery of the full costs of providing and  
14                 administering the System; and

15                 “(ii) available to pay the costs in-  
16                 curred to administer the System.

17          “(D) VALIDITY.—

18                 “(i) PERIOD.—The Secretary of  
19                 Homeland Security, in consultation with  
20                 the Secretary of State shall prescribe regu-  
21                 lations that provide for a period, not to ex-  
22                 ceed 3 years, during which a determination  
23                 of eligibility to travel under the program  
24                 will be valid. Notwithstanding any other  
25                 provision under this section, the Secretary

1 of Homeland Security may revoke any  
2 such determination at any time and for  
3 any reason and shall revoke such deter-  
4 mination if the country of the traveler’s  
5 nationality becomes no longer qualified to  
6 continue in the program.

7 “(ii) LIMITATION.—A determination  
8 that an alien is eligible to travel to the  
9 United States under the program is not a  
10 determination that the alien is admissible  
11 to the United States.

12 “(iii) NOT A DETERMINATION OF VISA  
13 ELIGIBILITY.—A determination by the Sec-  
14 retary of Homeland Security that an alien  
15 who applied for authorization to travel to  
16 the United States through the System is  
17 not eligible to travel under the program is  
18 not a determination of ineligibility for a  
19 visa to travel to the United States and  
20 shall not preclude the alien from applying  
21 for a visa.

22 “(iv) JUDICIAL REVIEW.—Notwith-  
23 standing any other provision of law, no  
24 court shall have jurisdiction to review an  
25 eligibility determination under the System.

1           “(E) REPORTS ON THE ELECTRONIC TRAV-  
2           EL AUTHORIZATION SYSTEM.—

3           “(i) INITIAL REPORT.—Not later than  
4           60 days before publishing regulations re-  
5           garding the implementation of the System  
6           in the Federal Register, the Secretary of  
7           Homeland Security shall submit a report  
8           to the Congress regarding the implementa-  
9           tion of the System.

10          “(ii) SECOND REPORT.—The Sec-  
11          retary shall also report to the Congress on  
12          the implementation of the system 18  
13          months after implementation.”.

14          (2) EFFECTIVE DATE.—Section 217(a)(11) of  
15          the Immigration and Nationality Act, as added by  
16          paragraph (1)(A)(ii), shall take effect on the date  
17          which is 60 days after the date on which the Sec-  
18          retary of Homeland Security publishes notice in the  
19          Federal Register of the requirement under such  
20          paragraph.

21          (e) EXIT SYSTEM.—

22          (1) IN GENERAL.—Not later than 1 year after  
23          the date of the enactment of this Act, the Secretary  
24          of Homeland Security shall establish a biometric exit  
25          system that records the departure on a flight leaving

1 the United States of every alien who departs by air  
2 who is participating in the visa waiver program es-  
3 tablished under section 217 of the Immigration and  
4 Nationality Act (8 U.S.C. 1187).

5 (2) SYSTEM REQUIREMENTS.—The system es-  
6 tablished under paragraph (1) shall—

7 (A) match biometric information of the  
8 alien against relevant watch lists and immigra-  
9 tion information; and

10 (B) compare such biometric information  
11 against manifest information collected by air  
12 carriers on passengers departing the United  
13 States to confirm such individuals have de-  
14 parted the United States.

15 (3) REPORT ON EXIT SYSTEM.—Not later than  
16 180 days after the date of the enactment of this Act,  
17 the Secretary shall submit a report to the Congress  
18 that describes—

19 (A) the progress made in developing and  
20 deploying the exit system established under this  
21 subsection; and

22 (B) the procedures by which the Secretary  
23 will improve the manner of calculating the rates  
24 of nonimmigrants who overstay their authorized  
25 period of stay in the United States.

1           (4) ANNUAL REPORT ON EXIT DATA.—Com-  
2           mencing not later than 2 years after the date of the  
3           enactment of this Act, the Secretary shall submit an  
4           annual report to the Congress that provides entry  
5           and exit data and overstay rates for nationals of  
6           each of the countries participating in the visa waiver  
7           program. The report shall also designate which, if  
8           any, countries are no longer eligible to participate in  
9           the such program under the provisions of section  
10          217(c)(3)(A) of the Immigration and Nationality  
11          Act (8 U.S.C. 1187(c)(3)(A)).

12          (f) REPORTS TO CONGRESS.—Any report to the Con-  
13          gress required by this section, or any amendment made  
14          by this section, shall be made to the following committees:

15                (1) The Committee on Homeland Security and  
16                Governmental Affairs of the Senate.

17                (2) The Committee on the Judiciary of the Sen-  
18                ate.

19                (3) The Select Committee on Intelligence of the  
20                Senate.

21                (4) The Committee on Appropriations of the  
22                Senate.

23                (5) The Committee on Homeland Security of  
24                the House of Representatives.

1           (6) The Committee on the Judiciary of the  
2 House of Representatives.

3           (7) The Permanent Select Committee on Intel-  
4 ligence of the House of Representatives.

5           (8) The Committee on Appropriations of the  
6 House of Representatives.

7           (9) The Committee on Foreign Affairs of the  
8 House of Representatives.

9           (10) The Committee on Foreign Relations of  
10 the Senate.

11       (g) AUTHORIZATION OF APPROPRIATIONS.—There  
12 are authorized to be appropriated to such sums as may  
13 be necessary to carry out this section and the amendments  
14 made by this section.

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