

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3544

To amend the Immigration and Nationality Act to modify the requirements of the visa waiver program and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 29, 2010

Ms. MIKULSKI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to modify the requirements of the visa waiver program 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. SHORT TITLE.**

4 This Act may be cited as the “Visa Waiver Program  
5 Updated Framework and Enhanced Security Act of  
6 2010”.

7 **SEC. 2. DEFINITIONS.**

8 (a) DEFINITIONS.—Section 217(c)(1) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1187(c)(1)) is  
10 amended to read as follows:

1           “(1) AUTHORITY TO DESIGNATE; DEFINI-  
2 TIONS.—

3           “(A) AUTHORITY TO DESIGNATE.—The  
4 Secretary of Homeland Security, in consultation  
5 with the Secretary of State, may designate any  
6 country as a program country if that country  
7 meets the requirements under paragraph (2).

8           “(B) DEFINITIONS.—In this subsection:

9           “(i) APPROPRIATE CONGRESSIONAL  
10 COMMITTEES.—The term ‘appropriate con-  
11 gressional committees’ means—

12                   “(I) the Committee on Foreign  
13 Relations of the Senate;

14                   “(II) the Committee on the Judi-  
15 ciary of the Senate;

16                   “(III) the Committee on Foreign  
17 Affairs of the House of Representa-  
18 tives; and

19                   “(IV) the Committee on the Ju-  
20 diciary of the House of Representa-  
21 tives.

22           “(ii) PROGRAM COUNTRY.—The term  
23 ‘program country’ means a country des-  
24 ignated as a program country under sub-  
25 paragraph (A).

1 “(iii) VISA OVERSTAY RATE.—

2 “(I) IN GENERAL.—The term  
3 ‘visa overstay rate’ means, with re-  
4 spect to a country, the ratio of—

5 “(aa) the total number of  
6 nationals of that country who  
7 were admitted to the United  
8 States on the basis of a non-  
9 immigrant visa whose periods of  
10 authorized stay ended during a  
11 fiscal year but who remained un-  
12 lawfully in the United States be-  
13 yond such periods; to

14 “(bb) the total number of  
15 nationals of that country who  
16 were admitted to the United  
17 States on the basis of a non-  
18 immigrant visa during that fiscal  
19 year.

20 “(iv) COMPUTATION OF VISA OVER-  
21 STAY RATE.—In determining the visa over-  
22 stay rate for a country the Secretary of  
23 Homeland Security—

1 “(I) shall utilize information  
2 from all available databases to ensure  
3 the accuracy of such rate; and

4 “(II) shall not include any visa  
5 overstay which incorporates any pro-  
6 cedures based on, or are otherwise  
7 based on, race, sex, or disability, un-  
8 less otherwise specifically authorized  
9 by law or regulation.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
11 Section 217(e)(2)(C) of the Immigration and Nationality  
12 Act (8 U.S.C. 1187(e)(2)(C)) is amended—

13 (1) by striking “Attorney General,” and insert-  
14 ing “Secretary of Homeland Security,”; and

15 (2) in clause (iii), by striking “Committee on  
16 the Judiciary and the Committee on International  
17 Relations of the House of Representatives and the  
18 Committee on the Judiciary and the Committee on  
19 Foreign Relations of the Senate” and inserting “ap-  
20 propriate congressional committees”.

21 **SEC. 3. DESIGNATION OF PROGRAM COUNTRIES BASED ON**  
22 **VISA OVERSTAY RATES.**

23 (a) IN GENERAL.—Section 217(e)(2)(A) of the Immi-  
24 gration and Nationality Act (8 U.S.C. 1187(e)(2)) is  
25 amended to read as follows:

1           “(A) LOW NONIMMIGRANT VISA OVERSTAY  
2           RATE.—The visa overstay rate for that country  
3           was not more than 3 percent during the pre-  
4           vious fiscal year.”.

5           (b) CONFORMING AMENDMENTS.—Section 217(c) of  
6 the Immigration and Nationality Act (8 U.S.C. 1187(c))  
7 is amended—

8           (1) by amending paragraph (6) to read as fol-  
9           lows:

10           “(6) INAPPLICABILITY OF JUDICIAL REVIEW.—  
11           No court shall have jurisdiction to review the denial  
12           of admission to the United States of any alien by the  
13           Secretary of Homeland Security, the Secretary’s  
14           computation of a visa overstay rate, or the designa-  
15           tion or nondesignation of a country as a program  
16           country.”; and

17           (2) in paragraph (8)—

18           (A) in subparagraph (B)—

19           (i) in clause (iii), by striking “rate of  
20           refusals for nonimmigrant visas” and in-  
21           serting “visa overstay rate”; and

22           (ii) by amending clause (v) to read as  
23           follows:

24           “(v) the visa overstay rate for nation-  
25           als of the country during the previous full

1 fiscal year was not more than 10 per-  
2 cent.”; and

3 (B) by striking subparagraph (C).

4 **SEC. 4. ANNUAL REPORT ON PROGRAM COMPLIANCE.**

5 (a) ANNUAL REPORT ON PROGRAM.—Section  
6 217(c)(3) of the Immigration and Nationality Act (8  
7 U.S.C. 1187(c)(3)) is amended to read as follows:

8 “(3) ANNUAL REPORT ON PROGRAM COMPLI-  
9 ANCE.—

10 “(A) REQUIREMENT FOR ANNUAL RE-  
11 PORT.—Not later than 180 days after the date  
12 of the enactment of the Visa Waiver Program  
13 Updated Framework and Enhanced Security  
14 Act of 2010, and not later than May 1 of each  
15 year thereafter, the Secretary of Homeland Se-  
16 curity, in consultation with the Secretary of  
17 State, shall submit an annual report on the  
18 compliance with the program to appropriate  
19 congressional committees, the Committee on  
20 Homeland Security and Governmental Affairs  
21 of the Senate, and the Committee on Homeland  
22 Security of the House of Representatives.

23 “(B) CONTENT.—

24 “(i) INFORMATION REGARDING PRO-  
25 GRAM COUNTRIES.—Each annual report

1 required under subparagraph (A) shall in-  
2 clude, for each program country—

3 “(I) an evaluation, after consid-  
4 eration of the independent review of  
5 the program country conducted by the  
6 Director of National Intelligence  
7 under paragraph (7)(A), of the effect  
8 of the program country’s continued  
9 designation on the law enforcement  
10 and security interests of the United  
11 States, including—

12 “(aa) the interest in enforce-  
13 ment of the immigration laws of  
14 the United States;

15 “(bb) the existence and ef-  
16 fectiveness of its agreements and  
17 procedures for extraditing to the  
18 United States, individuals, in-  
19 cluding its own nationals, who  
20 commit crimes that violate  
21 United States law; and

22 “(cc) any other potential  
23 threat to the United States from  
24 the program country’s continued  
25 designation;

1                   “(II) an assessment of the com-  
2                   pliance with the program require-  
3                   ments by the program country during  
4                   the previous year;

5                   “(III) the visa overstay rate for  
6                   the program country during the pre-  
7                   vious year;

8                   “(IV) the total of number of na-  
9                   tionals from the program country who  
10                  entered the United States during the  
11                  previous year;

12                  “(V) an assessment of the infor-  
13                  mation sharing required under this  
14                  section with respect to the program  
15                  country; and

16                  “(VI) a determination as to  
17                  whether any such designation ought  
18                  to be continued or terminated under  
19                  subsection (d) or subsection (f) that  
20                  includes an explanation of such deter-  
21                  mination and of the effects described  
22                  in subclause (I).

23                  “(ii) OTHER INFORMATION.—Each  
24                  annual report required under subpara-  
25                  graph (A) shall include an evaluation of—



1           “(I) the implementation of the  
2           electronic travel authorization system  
3           required under subsection (h)(3); and

4           “(II) the effect of participation of  
5           new countries in the program pursu-  
6           ant to a waiver under paragraph  
7           (5)(B).”.

8           “(C) CONSIDERATION OF COUNTRIES FOR  
9           THE PROGRAM.—Upon notification by the Sec-  
10          retary of Homeland Security that a country is  
11          under consideration for inclusion in the pro-  
12          gram, the Secretary of State shall provide all  
13          appropriate information described in subpara-  
14          graph (B) for such country to the Secretary of  
15          Homeland Security.

16          “(D) CERTIFICATION.—Not later than  
17          May 1 of each year, the United States chief of  
18          mission, acting or permanent, to each country  
19          under consideration for inclusion in the pro-  
20          gram shall—

21                 “(i) certify that the information pro-  
22                 vided under subparagraph (C) for such  
23                 country is accurate; and

24                 “(ii) submit such certification to the  
25                 appropriate congressional committees.”.

1 (b) CONFORMING AMENDMENTS.—Section 217(c) of  
2 the Immigration and Nationality Act (8 U.S.C. 1187) is  
3 amended—

4 (1) by striking paragraphs (4), (5), and (7);

5 (2) by redesignating paragraphs (6) (as amend-  
6 ed by section 3(b)(1)), (8) (as amended by section  
7 3(b)(2)), (9), (10), and (11), as paragraphs (4), (5),  
8 (6), and (7), respectively;

9 (3) in paragraph (6), as redesignated by para-  
10 graph (2), by striking “paragraph (8),” and insert-  
11 ing “paragraph (5),”; and

12 (4) in subparagraph (A) of paragraph (7), as  
13 redesignated by paragraph (2), by striking “Prior to  
14 the admission of a new country into the program  
15 under this section, and in conjunction with the peri-  
16 odic evaluations required under subsection  
17 (c)(5)(A),” and inserting “Prior to the designation  
18 of a new country as a program country and for each  
19 annual report submitted required under paragraph  
20 (3)(A),”.

21 **SEC. 5. TERMINATION OF DESIGNATION; PROBATION.**

22 Section 217(f) of the Immigration and Nationality  
23 Act (8 U.S.C. 1187(f)) is amended to read as follows:

24 “(f) TERMINATION OF DESIGNATION; PROBATION.—

25 “(1) DEFINITIONS.—In this subsection:

1           “(A) PROBATIONARY COUNTRY.—The term  
2           ‘probationary country’ means a program coun-  
3           try placed in probationary status under para-  
4           graph (2)(B).

5           “(B) PROBATIONARY PERIOD.—The term  
6           ‘probationary period’ means the fiscal year in  
7           which a probationary country is placed in pro-  
8           bationary status under paragraph (2)(B).

9           “(C) PROGRAM COUNTRY.—The term ‘pro-  
10          gram country’ has the meaning given that term  
11          in subsection (c)(1)(B).

12          “(D) VISA OVERSTAY RATE.—The term  
13          ‘visa overstay rate’ has the meaning given that  
14          term in subsection (c)(1)(B).

15          “(2) DETERMINATION AND NOTICE OF DIS-  
16          QUALIFICATION.—

17                 “(A) DETERMINATION.—Upon a deter-  
18                 mination by the Secretary of Homeland Secu-  
19                 rity that a program country’s visa overstay rate  
20                 was more than 3 percent for the preceding fis-  
21                 cal year or that the program country is not in  
22                 compliance with all other program requirements  
23                 under subsection (c)(2), the Secretary shall no-  
24                 tify the Secretary of State.

1           “(B) PROBATIONARY STATUS.—If the Sec-  
2           retary of Homeland Security makes a deter-  
3           mination under subparagraph (A) for a pro-  
4           gram country, the Secretary of Homeland Secu-  
5           rity shall place the program country in proba-  
6           tionary status for the fiscal year following the  
7           fiscal year for which such determination was  
8           made.

9           “(3) ACTIONS AT TERMINATION OF THE PROBA-  
10          TIONARY PERIOD.—At the end of the probationary  
11          period of a probationary country, the Secretary of  
12          Homeland Security shall take one of the following  
13          actions:

14               “(A) COMPLIANCE DURING PROBATIONARY  
15               PERIOD.—The Secretary shall redesignate the  
16               probationary country as a program country if  
17               the Secretary determines that during the proba-  
18               tionary period the probationary country—

19                       “(i) had a visa overstay rate not more  
20                       than 3 percent; and

21                       “(ii) was in compliance with all other  
22                       program requirements under subsection  
23                       (c)(2).

24               “(B) COMPLIANCE WITH VISA OVERSTAY  
25               RATE.—The Secretary may redesignate the pro-

1           probationary country as a program country if the  
2           Secretary determines that during the proba-  
3           tionary period the probationary country had a  
4           visa overstay rate of not more than 3 percent.

5           “(C) NONCOMPLIANCE WITH VISA OVER-  
6           STAY RATE.—

7                   “(i) IN GENERAL.—Subject to clause  
8                   (ii), the Secretary shall terminate the pro-  
9                   bationary country’s participation in the  
10                  program if the Secretary determines that  
11                  during the probationary period the proba-  
12                  tionary country had a visa overstay rate of  
13                  more than 3 percent.

14                  “(ii) ADDITIONAL PROBATIONARY PE-  
15                  RIOD.—The Secretary may waive the appli-  
16                  cation of clause (i) for the probationary  
17                  country if the Secretary, in consultation  
18                  with the Director of National Intelligence,  
19                  certifies that the probationary country’s  
20                  continued participation in the program  
21                  does not pose a threat to law enforcement,  
22                  security, or enforcement of immigration  
23                  laws, and place the country in probationary  
24                  status for one additional fiscal year.

1           “(4) ACTIONS AT THE END OF ADDITIONAL  
2           PROBATIONARY PERIOD.—At the end of the addi-  
3           tional 1-year period of probation granted to a proba-  
4           tionary country pursuant to subparagraph (C)(ii),  
5           the Secretary shall take one of the following actions:

6                   “(A) COMPLIANCE DURING ADDITIONAL  
7                   PERIOD.—The Secretary shall redesignate the  
8                   probationary country as a program country if  
9                   the Secretary determines that during such addi-  
10                  tional period the probationary country had a  
11                  visa overstay rate not more than 3 percent.

12                  “(B) NONCOMPLIANCE DURING ADDI-  
13                  TIONAL PERIOD.—The Secretary shall termi-  
14                  nate the probationary country’s participation in  
15                  the program if the Secretary determines that  
16                  during such additional period the probationary  
17                  country had a visa overstay rate of more than  
18                  3 percent.

19           “(5) EFFECTIVE DATE.—The termination of a  
20           country’s participation in the program under para-  
21           graph (3) or (4) shall take effect on the first day of  
22           the first fiscal year following the fiscal year in which  
23           the Secretary determines that such participation  
24           shall be terminated. Until such date, nationals of the

1 country shall remain eligible for a waiver under sub-  
2 section (a).

3 “(6) NONAPPLICABILITY OF CERTAIN PROVI-  
4 SIONS.—Paragraphs (3) and (4) shall not apply to  
5 a program country unless the total number of na-  
6 tionals of the program country that entered the  
7 United States during the prior fiscal year exceeds  
8 100.

9 “(7) EMERGENCY TERMINATION.—

10 “(A) IN GENERAL.—In the case of a pro-  
11 gram country in which an emergency occurs  
12 that the Secretary of Homeland Security, in  
13 consultation with the Secretary of State, deter-  
14 mines threatens the law enforcement or security  
15 interests of the United States (including the in-  
16 terest in enforcement of the immigration laws  
17 of the United States), the Secretary of Home-  
18 land Security shall immediately terminate the  
19 designation of the country as a program coun-  
20 try.

21 “(B) EMERGENCY DEFINED.—In this  
22 paragraph, the term ‘emergency’ means—

23 “(i) the overthrow of a democratically  
24 elected government in the program coun-  
25 try;

1           “(ii) war (including undeclared war,  
2           civil war, or other military activity) on the  
3           territory of the program country;

4           “(iii) a severe breakdown in law and  
5           order affecting a significant portion of the  
6           program country’s territory;

7           “(iv) a severe economic collapse in the  
8           program country; or

9           “(v) any other extraordinary event in  
10          the program country that threatens the  
11          law enforcement or security interests of the  
12          United States (including the interest in en-  
13          forcement of the immigration laws of the  
14          United States) and where the country’s  
15          participation in the program could con-  
16          tribute to that threat.

17          “(C) REDESIGNATION.—The Secretary of  
18          Homeland Security may redesignate the coun-  
19          try as a program country, without regard to  
20          paragraph (3) or (4) or subsection (c)(2), if the  
21          Secretary, in consultation with the Secretary of  
22          State, determines that—

23                 “(i) at least 6 months have elapsed  
24                 since the effective date of the emergency  
25                 termination under subparagraph (A);



1           “(ii) the emergency that caused the  
2           termination has ended; and

3           “(iii) the average visa overstay rate  
4           for that country during the period of ter-  
5           mination under this subparagraph was not  
6           more than 3 percent.

7           “(D) PROGRAM SUSPENSION AUTHOR-  
8           ITY.—The Director of National Intelligence  
9           shall immediately inform the Secretary of  
10          Homeland Security of any current and credible  
11          threat which poses an imminent danger to the  
12          United States or its citizens and originates  
13          from a country participating in the visa waiver  
14          program. Upon receiving such notification, the  
15          Secretary, in consultation with the Secretary of  
16          State—

17                  “(i) may suspend a program country  
18                  from the visa waiver program without prior  
19                  notice;

20                  “(ii) shall notify any country sus-  
21                  pended under clause (i) and, to the extent  
22                  practicable without disclosing sensitive in-  
23                  telligence sources and methods, provide  
24                  justification for the suspension; and

1           “(iii) shall restore the suspended  
2           country’s participation in the visa waiver  
3           program upon a determination that the  
4           threat no longer poses an imminent danger  
5           to the United States or its citizens.

6           “(8) TREATMENT OF NATIONALS AFTER TERMI-  
7           NATION.—For purposes of this subsection and sub-  
8           section (d)—

9           “(A) nationals of a country whose designa-  
10          tion is terminated under paragraph (3), (4), or  
11          (7) shall remain eligible for a waiver under sub-  
12          section (a) until the effective date of such ter-  
13          mination; and

14          “(B) a waiver under this section that is  
15          provided to such a national for a period de-  
16          scribed in subsection (a)(1) shall not, by such  
17          termination, be deemed to have been rescinded  
18          or otherwise rendered invalid, if the waiver is  
19          granted prior to such termination.”.

20 **SEC. 6. REVIEW OF OVERSTAY TRACKING METHODOLOGY.**

21          Not later than 180 days after the date of the enact-  
22          ment of this Act, the Comptroller General of the United  
23          States shall conduct a review of the methods used by the  
24          Secretary of Homeland Security—

1           (1) to track aliens entering and exiting the  
2           United States; and

3           (2) to detect any such alien who stays longer  
4           than such alien's period of authorized admission.

5 **SEC. 7. REPORTING OF LOST OR STOLEN PASSPORTS.**

6           (a) ENFORCEMENT OF REQUIREMENT FOR AGREE-  
7           MENTS TO REPORT LOST OR STOLEN PASSPORTS.—Not  
8           later than 180 days after the date of the enactment of  
9           this Act, each country designated as a program country  
10          under section 217(c) of the Immigration and Nationality  
11          Act (8 U.S.C. 1187(c)) shall have in effect an agreement  
12          with the United States as required under paragraph  
13          (2)(D) of such section 217(c).

14          (b) INTEGRATION OF DATABASES.—The Secretary of  
15          Homeland Security shall integrate all Department of  
16          Homeland Security databases that contain information on  
17          lost or stolen passports into the Electronic System on  
18          Travel Authorization.

19 **SEC. 8. INFORMATION SHARING WITH LAW ENFORCEMENT.**

20          The Secretary of Homeland Security shall make in-  
21          formation regarding any alien who stays in the United  
22          States longer than such alien's authorized period of admis-  
23          sion available to State and local law enforcement agencies.

○