

# United States Senate

WASHINGTON, DC 20510

September 8, 2023

The Honorable Antony Blinken  
United States Secretary of State  
The State Department  
2201 C Street Northwest  
Washington, DC 20520

Dear Secretary Blinken:

We appreciate the briefings on Israel's candidacy for the Visa Waiver Program (VWP), provided to us by your team and a team from the Department of Homeland Security on June 15, 2023, as well as the follow-up briefing on July 26, 2023. However, many questions remain unanswered and the terms of the July 19, 2023 VWP Memorandum of Understanding (MOU) between the United States and Israel raise serious concerns.

As you know, the Secretary of State may nominate a country for participation in the Visa Waiver Program once that country has fulfilled all of the requirements described in 8 U.S. Code 1187, and the law gives you the responsibility to ensure that a candidate country is fully compliant with all aspects of this law prior to nomination into the program. Based on all available information, including the response letter we received on July 13, 2023, the MOU signed on July 19, 2023, the briefings we have received to date, and the contacts we have had from U.S. citizens seeking to travel to Israel since the MOU went into effect, it is clear that Israel is not in compliance with this law as it relates to reciprocal treatment for all U.S. citizens, and is not on track to come into compliance before the September 30, 2023 deadline. Indeed, our reading of the MOU is that it envisions that the program would be launched with a two-tiered system that discriminates between different groups of U.S. citizens – a system that clearly fails to meet the reciprocity requirements of the law.

According to the MOU itself, Israel is not expected to fully implement one system that all U.S. citizen travelers can use for purposes of visa waiver travel until May 1, 2024, well beyond the September 30, 2023 deadline for meeting program requirements. The MOU states that Israel will employ “an interim process for a U.S. citizen who is a resident of the West Bank.”<sup>1</sup> Such a two-tiered system of entry inherently violates the Administration's own standard for reciprocity that “Blue is Blue”<sup>2</sup> – meaning “equal treatment and freedom of travel for all U.S. citizens regardless of national origin, religion, or ethnicity.”<sup>3</sup> There is no provision in law that provides that a visa waiver country can discriminate against certain groups of U.S. citizens for the first seven months of the program (i.e., October 1<sup>st</sup> through April 30<sup>th</sup>) simply because a country claims they will

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<sup>1</sup> Memorandum of Understanding between The Government of the United States of America And The Government of the State of Israel On Extension of Reciprocal Privileges and the Visa Waiver Program (US-Israel VWP MOU)

<sup>2</sup> Chargé d'Affaires Stephanie Hallett[@USAmbIsrael] (January 30, 2023) *Important progress on the visa waiver program - watch this video for more information. For U.S. passports, “Blue is blue.”* [Twitter Video] <https://twitter.com/USAmbIsrael/status/1619984222936260610?s=20>

<sup>3</sup> US-Israel VWP MOU

treat all U.S. citizens equally for the last five months of the fiscal year.

If Israel cannot fully comply with the reciprocity requirements of the Visa Waiver Program by October 1<sup>st</sup>, 2023, then it can spend the following twelve months coming into full compliance so that Israel has the opportunity to enter the program before September 30<sup>th</sup>, 2024. During the July 26, 2023 briefing, the representative from the Department of Homeland Security indicated that next fiscal year Israel may not meet another factor required for entry into the Visa Waiver Program – the requirement that the Non-Immigrant Visa refusal rate be below the 3% threshold<sup>4</sup>. We don't know if that is likely or not. We do know that it would be a violation of law to rush to admit a country that does not meet a key requirement of the program in one year simply because it may not be able to comply with a different requirement the following year.

There are also inconsistencies between the language in the MOU and the Government of Israel's guidance that purports to implement its provisions. Specifically, while the MOU states that "All U.S. citizens and nationals traveling with a U.S. passport (hereinafter "U.S. citizens") are to be recognized by Israel as U.S. citizens,"<sup>5</sup> the guidance published the same day on the Israeli Population and Immigration Authority website states that visa waiver travel "does not include U.S. citizens whose documents identify them as residents of the Gaza Strip"<sup>6</sup>— regardless of their final travel destination. We have already learned of a number of U.S. citizen families who flew to Israel to take advantage of visa waiver travel under the new MOU who were denied entry for having Gaza IDs. As you know, all Palestinians appear on the Palestinian Population Registry – some are designated as residing in the West Bank while others are designated as residing in Gaza<sup>7</sup>. The exclusion of an entire group of U.S. citizens because of their Gaza designation on the Palestinian Population Registry is a clear violation of "Blue is Blue" and a concerning indication of Israel's failure to implement the reciprocity requirements.

We are also very concerned that the Government of Israel insisted that the MOU explicitly indicate that equal treatment requirements would not extend beyond the strict confines of the visa waiver process. Specifically, the MOU includes a provision that "Nothing in this Memorandum is intended to apply to principles and commitments not otherwise addressed in this Memorandum, to include... regulations applicable to use of Israeli vehicles and vehicle transit."<sup>8</sup> While we understand that ground transportation is not directly a part of the Visa Waiver Program, the inclusion of that provision indicates that the Government of Israel reserves the right to provide unequal treatment to certain groups of U.S. citizens once they enter the country. Indeed, we have already received reports that U.S. citizens with Palestinian ID cards who land at Ben Gurion Airport cannot then rent cars to travel within Israel. We have also received reports of U.S. citizens with Palestinian ID cards being stopped at checkpoints, as Palestinians are not permitted to drive across certain checkpoints within Israel. This practice denies U.S. citizens the rights and privileges of their citizenship by treating them as Palestinians inside the borders of

<sup>4</sup> US Embassy Israel, *Israel Meets NIV Refusal Rate Requirement for Visa Waiver Program*, US State Department, January 30, 2023. <https://il.usembassy.gov/israel-meets-niv-refusal-rate-requirement-for-visa-waiver-program/>

<sup>5</sup> US-Israel VWP MOU

<sup>6</sup> *Reciprocal privileges for US citizens at border control*, Government of Israel, July 9, 2023.

[https://www.gov.il/en/departments/news/reciprocal\\_privileges\\_us\\_citizens\\_border\\_control](https://www.gov.il/en/departments/news/reciprocal_privileges_us_citizens_border_control)

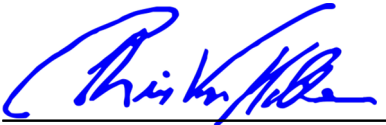
<sup>7</sup> *The Population Registry Office is responsible for updating and archiving the Palestinian population registry held by Israel, in coordination with the Palestinian Authority*, Government of Israel, Coordination of Government Activities in the Territories. [https://www.gov.il/en/departments/units/population\\_registrar\\_unit](https://www.gov.il/en/departments/units/population_registrar_unit)

<sup>8</sup> US-Israel VWP MOU

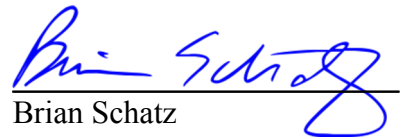
Israel, despite the promise that the agreements in the MOU “supersede all applicable Coordinator of Government Activities in the Territories (COGAT) rules and regulations.”<sup>9</sup> This is, of course, problematic. If the U.S. were to reciprocate, it would mean that certain groups of Israelis like, for example, those living in settlements on the West Bank, would not be permitted to rent cars upon arrival in the United States, or would be otherwise given different treatment.

Mr. Secretary, the State Department has documented the history of disparate treatment that U.S. citizen travelers to Israel have experienced based on their ethnicity, religion, and national origin. That is why it is absolutely critical that you be able to verify and certify Israel’s compliance with the reciprocity and equal treatment requirements *prior to* admission into the Visa Waiver Program – not at some point in time after the program has been initiated. Those requirements clearly have not been met and the MOU itself indicates that they will not be met by September 30. While we very much hope that Israel will meet all the requirements at some future date, its entry into the program cannot come at the expense of the “Blue is Blue” principle and the requirement of reciprocity for all U.S. citizens. We request a phone call with you to discuss the continued implementation of this MOU as soon as possible.

Sincerely,



Chris Van Hollen  
United States Senator



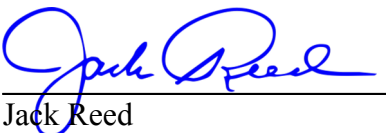
Brian Schatz  
United States Senator



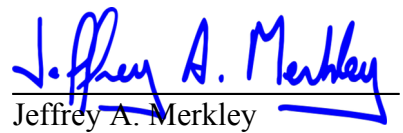
Richard J. Durbin  
United States Senator



Jeanne Shaheen  
United States Senator



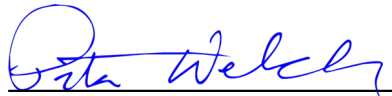
Jack Reed  
United States Senator



Jeffrey A. Merkley  
United States Senator

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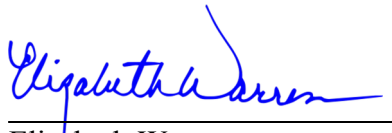
<sup>9</sup> US-Israel VWP MOU



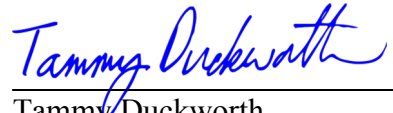
Peter Welch  
United States Senator



Bernard Sanders  
United States Senator



Elizabeth Warren  
United States Senator



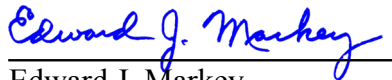
Tammy Duckworth  
United States Senator



Thomas R. Carper  
United States Senator



Tina Smith  
United States Senator



Edward J. Markey  
United States Senator



Martin Heinrich  
United States Senator



Tammy Baldwin  
United States Senator

CC: Secretary of Homeland Security Alejandro Mayorkas