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United States Senate

COMMITTEE ON THE JUDICIARY

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January 12, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable John F. Kerry
Secretary of State
Washington, D.C. 20520

Dear Secretary Kerry:

On September 4, 2015, the Senate received Executive Communication 2850 from the Assistant Secretary, Legislative Affairs, United States Department of State: the report of a rule entitled "Visas: Interview Waiver Authority" (RIN1400-AD80). The Executive Communication was referred on September 16 to the Senate Committee on the Judiciary. The regulation was published in the Federal Register on November 10, 2015.¹ Given the heightened national security concerns around the world, I have questions regarding the Department's intent to water down once again rules pertaining to interviews of visa applicants.

Prior to the September 11th atrocities, only two of the fifteen hijackers from Saudi Arabia had been interviewed. As a result, Congress specifically amended the immigration statute to ensure that, with very few exceptions, all persons between the ages of 14 and 79 who are applying for visas to the United States are interviewed in person by a consular officer.²

However, a visa interview waiver program implemented by then-Secretary Clinton in 2012 substantially watered down the visa interview requirement.³ Section 222(h)(1)(C) of the Immigration and Nationality Act provides an exemption from the visa interview requirement that the Secretary may exercise if she deems it to be "in the national interest of the United States to do so." Secretary Clinton exploited that exemption to designate entire categories of visa applicants to be exempt from the visa interview requirement.⁴ The primary "national interest" upon which such class-wide exemptions were based appeared to be nothing more than reduction

¹ 80 Fed. Reg. 69588 (Nov. 10, 2015).

² Immigration and Nationality Act, section 222(h).

³ Fact Sheet: Visa Pilot Program, U.S. Department of State (Jan. 19, 2012), available at <http://www.state.gov/r/pa/prs/ps/2012/01/181500.htm>.

⁴ For example, one of the changes made by the program is to allow certain posts to raise the minimum age for interview from 14 to 16 and to lower the maximum age from 79 to 66. See, e.g., Waiver of Interview, U.S. Diplomatic Mission to Brazil, at <http://brazil.usembassy.gov/waiver2.html>. Instead of exempting specific individuals from the interview requirement, the Department used the national interest exemption to effectively re-write the underlying statute, a result that was certainly not the intent of Congress in establishing the national interest exemption.

of visa application wait times and facilitation of travel by foreign visitors.⁵ One well-known immigration lawyer's website cheered the program as a welcome reversion to the "pre-September 11th era."⁶ This administration appears to be circumventing the law and ignoring the safeguards that Congress has put in place to prevent terrorists from arriving at our shores.

Attached are a number of questions I would like answered pertaining to visa interviews and the recently published rule. Please number your responses according to their corresponding questions. If you have any questions, please contact Kathy Nuebel Kovarik of my Committee staff at Kathy_Nuebel@judiciary-rep.senate.gov or 202-224-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman

⁵ Ambassador Locke Announces New Interview Waiver Pilot Program, Embassy of the United States –Beijing (Feb. 9, 2012), available at <http://beijing.usembassy-china.org.cn/20120209amb-visa.html> ("We expect that this will benefit tens of thousands of applicants in China, saving them time and money, and making it easier for them to travel to the United States more frequently. It will also free our resources to interview more first-time applicants, and to do so quickly.").

⁶ Visa Interview Waiver Program: Two-Year Pilot, Murthy Law Firm (April 13, 2012), available at <http://www.murthy.com/2012/04/13/visa-interview-waiver-program-two-year-pilot/>.

Questions Regarding Visa Interview Waivers and the Visa Interview Waiver Authority
Regulation, 80 Fed. Reg. 69588 (Nov. 10, 2015)

1. Please provide a description of each of the classes of visa applicants who are eligible to receive a waiver of the visa interview under the Visa Interview Waiver Program, and the consular posts at which such interview waivers are in effect.
2. Please provide any guidance or policy memos sent to consular officers relating to:
 - a. the Visa Interview Waiver Program; and
 - b. visa interview waivers generally.
3. Please provide a chart for the past five years detailing how many interview waivers have been granted under the Visa Interview Waiver Program, including, for each waiver recipient, the country in which the visa applicant resided, and the visa classification for which the interview was waived.
4. Does the Department plan to expand the Visa Interview Waiver Program?
5. In the past five years, aside from interviews waived under the Visa Interview Waiver Program, how many interviews have been waived, and for what reasons have interviews been waived, under Section 222(h)(1)(C)(i) of the Immigration and Nationality Act (INA)?
6. In the past five years, how many interviews have been waived, and for what reasons have interviews been waived, under Section 222(h)(1)(C)(ii) of the INA?
7. Does the Department collect fingerprints despite waiving in-person interviews?
8. Section 222(h)(1)(A)(iii) of the INA provides for an interview waiver for “nonimmigrants enumerated in section 101(a)(15)(C)(iii)” of the INA. However, the definitional section for the “C” visa category in the INA does not appear to provide a breakdown of the “C” visa category:

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

 - a. The Department’s regulations at 22 CFR 41.102(b)(1) authorize an interview waiver for nonimmigrants classifiable under the visa symbols “C-2” and “C-3”. Since the definitional section of the statute does not break down the “C” classification, which categories of aliens does the Department intend to cover in its interview waiver provision regulation by referencing the “C-2” and “C-3” categories?

- b. Putting aside what is intended by “C-2” and “C-3”, the statute provides an interview waiver option only for “C-3” nonimmigrants. Why does the regulation also provide a waiver option for “C-2” nonimmigrants?
9. Regarding 22 CFR 41.102(e), as amended, why are aliens covered under paragraphs (b)(1), (b)(2), and (c) exempted from the cases in which personal presence may not be waived? INA 222(h)(2) doesn’t provide such a general exemption. INA 222(h)(2) provides an exemption for A and G visa applicants, NATO visa applicants, “C-3” visa applicants and aliens qualifying for diplomatic or official visas, but those exemptions apply only to the prohibition on visa interview waivers for aliens requiring a Security Advisory Opinion; those exemptions do not cover *all* of the situations listed in INA 222(h)(2)(A)-(F).
10. Please provide the names of all the groups or sectors that the Secretary of State has at any time designated under INA 222(h)(2)(F).